

[J-60-2003]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

BRIAN KENNEDY AND SUSAN	:	No. 187 MAP 2002
KENNEDY, HUSBAND AND WIFE,	:	
v.	:	
	:	
UPPER MILFORD TOWNSHIP ZONING	:	Appeal from the Order of the
HEARING BOARD, RICHARD C. DEAN,	:	Commonwealth Court entered on July 12,
ROBERT SALASKI, T. RICHARD	:	2001, at 1753 C.D. 2000, reversing the
PARKER, MARYLOU STEFANKO,	:	Order of the Court of Common Pleas of
INDIVIDUALLY AND THE	:	Lehigh County entered on June 30, 2000,
PENNSYLVANIA TURNPIKE	:	at 199-C-0362 & 199 -C-0706
COMMISSION	:	
	:	
BRIAN KENNEDY AND SUSAN	:	779 A.2d 1257 (Pa. Cmwlth. 2001)
KENNEDY, HUSBAND AND WIFE	:	
v.	:	
UPPER MILFORD TOWNSHIP ZONING	:	
HEARING BOARD AND THE	:	
PENNSYLVANIA TURNPIKE	:	
COMMISSION	:	
	:	
APPEAL OF: THE PENNSYLVANIA	:	
TURNPIKE COMMISSION	:	ARGUED: May 13, 2003
	:	
	:	
	:	
	:	
	:	

CONCURRING OPINION

MR. CHIEF JUSTICE CAPPY

Decided: October 27, 2003

I join the majority's decision to reverse the order of the Commonwealth Court. I write separately to emphasize that more specifically and respectfully, I join the majority opinion insofar as it concludes that the Upper Milford Township Zoning Hearing Board (Board) is a

quasi-judicial body; that the Board held an executive session within the meaning of Section 708(5) of the Sunshine Act, 65 Pa.C.S. §708(5), when it engaged in quasi-judicial deliberations during its recess; and that the evidence of record did not support the Commonwealth Court's conclusion that the Board took unlawful official action during that recess.

Messrs. Justice Castille and Nigro join this concurring opinion.