

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL ACTION

THOMAS JOHNSON

v.

EAST HEMPFIELD TOWNSHIP and
MBI DEVELOPMENT COMPANY, INC.

No. CI-16-11141

FILED
2017 FEB 7 PM 2:59
LANCASTER, PA.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION**

BY: ASHWORTH, J., FEBRUARY 7, 2017

This matter is before the Court on Plaintiff Thomas Johnson's petition for injunctive relief, seeking to enjoin East Hempfield Township from requiring or directing that a loop road be built in Amos Herr Park between a proposed apartment complex and existing Naomi Avenue, and MBI Development Company, Inc., from constructing any such road. Based upon the findings of fact and conclusions of law set forth below, this petition will be granted.

FINDINGS OF FACT

1. Plaintiff Thomas Johnson is an adult individual who resides at 35 Naomi Avenue, Landisville, East Hempfield Township, Lancaster County, Pennsylvania.

(Complaint at ¶ 1.)

2. East Hempfield Township is a Pennsylvania municipal corporation with offices located at 1700 Nissley Road, Landisville, Pennsylvania. (Complaint at ¶ 2;

Notes of Testimony, Injunction Hearing, January 5, 2017 (N.T.) at 38.)

3. MBI Development Company, Inc. (MBI), a Pennsylvania corporation with an office located at 5 Powell Lane, Collingsworth, New Jersey, became interested in building an apartment complex in East Hempfield Township. (Complaint at ¶ 3; N.T. at 80.)

4. Mr. Johnson's home is located to the immediate west of Amos Herr Park, a municipal complex and park and recreation area owned by East Hempfield Township (the "Park"). (N.T. at 8, 39-40.)

5. Naomi Avenue comes to a dead end within the western boundary of the Park. (N.T. at 13; Ex. T-4.¹) It does not adversely impact the use of the Park by residents of the Township.

6. The Park consists of 55 acres of land, and includes the township building, police department, public works garage, Amos Herr Homestead, municipal gardens, recreation areas, athletic fields/courts, parking, driveways, and an agricultural area. (N.T. at 39-40.)

7. The Township acquired the land on which the Park was developed through a series of conveyances from Amos Herr, pursuant to three separate deeds. (N.T. at 45-48; Exs. T-1, T-2 and T-3.)

8. By Deed dated May 10, 1977, and recorded May 18, 1977, Mr. Herr conveyed a 14-acre parcel of land to the Township to be used for "park and recreational purposes," which became the southwest corner of the Park. (N.T. at 45-47; Ex. T-1.)

¹The exhibits introduced at the injunction hearing are designated as follows: Plaintiff's exhibits are Exhibits P-1 through P-4; MBI's exhibits are Exhibits M-1 through M-7; and East Hempfield Township's exhibits are Exhibits T-1 through T-4.

9. The 14-acre parcel is currently improved with two paved parking lots/driveways, and served by Nissley Road, which provides ingress and egress to Harrisburg Pike. (Exs. T-1 and M-2.)

10. By Deed dated May 14, 1982, and recorded May 17, 1982, Mr. Herr conveyed a 2.5-acre parcel of land to the Township, upon which the township building and police station were constructed. (N.T. at 47; Ex. T-2.)

11. On March 29, 1984, Mr. Herr executed a Last Will and Testament (the "Herr Will"), which includes a devise of property to the Township, and provides, in pertinent part:

I give and devise the portion of my farm containing fifty-five (55) acres of land, more or less, with the improvements thereon erected, located South of the Penn Central Railroad, East Hempfield Township, Lancaster County, Pennsylvania, unto East Hempfield Township, if it is in existence at the time of my death, or if it has become a part of another municipal corporation, then unto the successor municipal corporation, to be used as a park and/or recreation area; provided, however, that in the event that the Supervisors of the said East Hempfield Township or the governing body of any successor municipal corporation which would be entitled to take the said real estate, should decide within eight (8) months from the date of my death that the interests of said municipality could be better served by the Township renouncing this bequest in favor of a larger political sub-division, including Lancaster County, I then give and devise the said tract of land to such larger municipality which may be designated by the said Supervisors of East Hempfield Township or governing body of any successor municipal corporation to be used for a park and/or recreation area for the benefit of the public. . . .

(Ex. P-2 at ¶ IV.)

12. The use restriction of the Herr Will does not define "park and/or recreation area," and does not mandate that any specific recreational activity occur within the Park. (Ex. P-2 at ¶ IV.)

13. As of the date of the execution of the Herr Will, Mr. Herr had already conveyed approximately 16.5 acres of the 55-acre farm to the Township, a portion of which was not subject to any use restriction. (See N.T. at 47, 49; Ex. T-2.)

14. Following Mr. Herr's death, the Township, on or about December 28, 1987, adopted Resolution #R87-35, pursuant to which the Township agreed to accept the devise of the 55-acres of real property, and to use the property as a park and recreation area. (Ex. P-3.)

15. By Deed dated June 15, 1988, and recorded August 18, 1988, the executor of Mr. Herr's Estate conveyed the final two parcels of Mr. Herr's 55-acre farm to the Township: (1) Tract 1 – an 11 +/- acre parcel which became the northwest corner of the Park upon which the municipal gardens and a sledding hill known as Cooper's Hill are now located ("Tract 1"); and (2) Tract 2 – a 27 +/- acre parcel which became the southeast corner of the Park upon which a parking lot, playground and unimproved fields are located. (N.T. at 48; Ex. T-3.)

16. Tract 1 is currently improved with a paved parking lot that supports the municipal building, and a public works garage. In addition, Naomi Avenue extends slightly into Tract 1, where it comes to a dead end. (Exs. T-3 and M-2.)

17. A substantial portion of Tract 1, known as Cooper's Hill, has been and is used extensively for sledding when there is snow. (N.T. at 31-33, 35-36.)

18. Sledding is a recreational activity. (N.T. at 32.)

19. Although immediately adjacent to Cooper's Hill, Naomi Avenue is not used to exit the Park when Park activities cause persons to park near the garden plots

near Cooper's Hill. Rather, they exit directly south across the Park land to Harrisburg Pike. (N.T. at 70-71; Ex. T-4.)

20. Tract 2 is currently improved with a paved parking lot, and served by Nissley Road. (Exs. T-3 and M-2.)

21. The entire Park, including the township building, police department, and recreational areas, are served by Nissley Road, which provides access to the Park from Harrisburg Pike. (N.T. at 41.)

22. The Park is open to the public year round, and visitors engage in a number of recreational activities including, but not limited to: baseball, basketball, soccer, tennis, walking, playing on the playground, gardening and sledding. (N.T. at 35-36, 40-41.)

23. Throughout the year, the Township also hosts a number of large scale events in the Park, including: Memorial and Labor Day flea markets; the Amos Herr Country Fair; a car show; and the Penn Legacy soccer event. (N.T. at 41.)

24. During large scale events, visitors to the Park enter on Nissley Road, and park their vehicles both in paved parking lots and in the grass on Tract 1. (N.T. at 42.)

25. When visitors who park on Tract 1 exit the Park, they are directed to drive in the grass along the western border of the Park and exit out onto Harrisburg Pike. The exit onto Harrisburg Pike is not an existing roadway. (N.T. at 44.)

26. On May 18, 2016, MBI received final plan approval to construct a residential community known as "The Willows at Landisville" (The Willows) in an area located west of the Park and north of Mr. Johnson's neighborhood. (N.T. at 7, 82.)

27. The Willows is planned as a 60-unit apartment community intended to serve middle-income families earning between \$25,000 and \$47,000 annually. (N.T. at 80-81.)

28. The Township's approval of the final plan was conditioned upon MBI's agreement to construct a road (herein after referred to as "Loop Road") on Tract 1, connecting Caroline Court, the road that will serve The Willows, to Naomi Avenue, at the dead end inside the western boundary of the Park. (N.T. at 82; Ex. M-2.)

29. The proposed Loop Road would be approximately 850 feet long and 22 feet wide, and it would not have curbing or parking. (N.T. at 51, 69; Ex. T-4.)

30. The Loop Road is intended to provide additional ingress and egress as part of a larger future plan to tie into the main entrance and exit (Nissley Road) to the municipal building and its functions. (Ex. T-4; N.T. at 58-62.)

31. The larger future plan shown on Exhibit T-4 proposes to extend Naomi Avenue from its present location over to the municipal building and Nissley Road. (Ex. T-4.)

32. The larger future plan is based upon an expanded police department, alternate police ingress and egress, added egress for persons using Caroline Court and additional access to the municipal building. (Ex. T-4; N.T. at 58-62, 72.)

33. Loop Road would pass through the Park but would not provide access to the Park and recreational areas. (Ex. T-4.)

34. Loop Road would not provide access to the Park activities as there would not be parking along the Loop Road. (N.T. at 69.)

35. Loop Road would serve no purpose other than to create a second access road to The Willows by way of Naomi Avenue. (N.T. at 58-62.)

36. Loop Road would not provide any infrastructural improvement to enhance the recreational use of the Park.

37. Construction of Loop Road would adversely impact Cooper's Hill as a recreational sledding area.

38. Loop Road would not be within the normal scope and ambit of public park purposes.

39. The construction of Loop Road would not be an improvement upon the premises to meet the intended purpose of parks and recreation. (Ex. T-1.)

40. The issue presently before the Court involves the construction of a loop road connecting Caroline Court (proposed) and Naomi Avenue (existing).

41. The issue involving the construction of a road connecting Naomi Avenue and Nissley Road is not before the Court.

Conclusions of Law

1. The parties have stipulated that the hearing on January 5, 2017, was a final hearing on Plaintiff's request for permanent injunctive relief. (N.T. at 4.)

2. In order for the Court to grant a permanent injunction, the party requesting the injunctive relief must establish the following elements relative to their claims: (1) the right to relief is clear; (2) the injunction is necessary to avoid an injury that cannot be compensated by damages; and (3) that greater injury will result if the Court does not

grant the injunction than if it does. **Doe v. Zappala**, 987 A.2d 190, 193 n.2. (Pa. Cmwlth. 2009).

3. The injury complained of must relate exclusively to the use of the Park, and not to any subjective issue particular to Mr. Johnson, MBI or East Hempfield Township.

4. The decision to grant or deny any injunction rests within the sound discretion of the trial court. **Commonwealth v. National Federation of the Blind**, 471 Pa. 529, 539, 370 A.2d 732, 737 (1977); **Grine v. County of Centre**, 138 A.3d 88, 93 (Pa. Cmwlth. 2016).

5. An injunction can be an appropriate remedy where real property rights, such as restrictive covenants, are concerned. **Big Bass Lake Community Association v. Warren**, 950 A.2d 1137, 1145 (Pa. Cmwlth. 2008).

6. A municipality may construct facilities and infrastructure on property which has been designated for park and recreational use. See **Bernstein v. Pittsburgh**, 366 Pa. 200, 77 A.2d 452 (1951). See also **In re: Condemnation of Lands of Loughlin**, 814 A.2d 872, 876 (Pa. Cmwlth. 2003).

7. As permitted by **Bernstein**, *supra*, the Park is currently served by various infrastructure improvements including Nissley Road, driveways and parking lots, all of which support and facilitate the recreational use of the Park by providing access to residents of the Township.

8. The Herr Will, the Township Resolution of December 28, 1987, and the Deeds from Amos Herr and his estate, with the exception of the Deed dated May 14,

1982, which conveys 2.510 acres for the construction of a municipal building, all require that the land is "to be used for park and/or recreation area." (See Exs. P-2, P-3, T-1, T-2, T-3.)

9. The issue before the Court is whether the proposed Loop Road connecting proposed Caroline Court and existing Naomi Avenue causes or contributes to park and recreation activities in Amos Herr Park.

10. The Court finds that the proposed Loop Road will not cause or contribute to park and recreation activities in the Park; therefore, the land to be used for the road will not "be used for a park and/or recreation area."

11. The proposed Loop Road will, in fact, interfere with an existing recreation use of the Park, namely sledding on Cooper's Hill.

12. The proposed Loop Road, therefore, violates the terms of the Herr Will, granting the Township some 55 acres, the Township resolution of December 28, 1987, accepting the ground, and a Deed from Amos Herr dated May 10, 1977, and a Deed from his estate dated June 15, 1988, all of which require that the land is "to be used as a park and/or recreation area." Thus, the right to relief is clear, and greater injury will result if the injunction is not granted than if it is granted.

13. An injunction is appropriate to prevent MBI and East Hempfield Township from constructing a loop road in Amos Herr Park to connect proposed Caroline Court and existing Naomi Avenue, and is necessary to avoid an injury that cannot be compensated by damages.

14. The evidence regarding Mr. Johnson's motivation for bringing suit on his opposition to The Willows is irrelevant.

15. The evidence regarding the impact on MBI of entering an injunction against it and East Hempfield Township preventing the construction of a loop road is irrelevant.

Accordingly, I enter the following:

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ORDER

AND NOW, this 7th day of February, 2017, following a hearing in this matter, it is hereby ORDERED that Thomas Johnson's Petition for Injunctive Relief is GRANTED, and East Hempfield Township is prohibited from requiring or directing that a loop road be built in Amos Herr Park between proposed Caroline Court and existing Naomi Avenue, and MBI Development Company, Inc., is prohibited from constructing any such road.

NOTICE OF ENTRY OF ORDER OR DECREE
PURSUANT TO PA. R.C.P. 121.1
NOTIFICATION - THE ORDER OR DECREE
HAS BEEN FILED IN THE
PROTHONOTARY OF LANCASTER COUNTY, PA
DATE: 2-8-17 *egg*

BY THE COURT:

[Signature]
DAVID L. ASHWORTH
JUDGE

ATTEST: *C. Gerhart*

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