

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: LOYALSOCK TOWNSHIP : No. 01-01,475  
SCHOOL DISTRICT OF CERTAIN :  
REAL PROPERTY LOCATED IN :  
LOYALSOCK TOWNSHIP OWNED BY :  
JAYNE HORNER, EMIL P. :  
HORNER, JR. AND MARY HORNER, :  
ET. AL. :  
:   
:   
vs. :   
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:   
:   
JAYNE HORNER, EMIL P. :  
HORNER, JR., MARY L. HORNER, :  
Defendant : 1925(a) Opinion

OPINION IN SUPPORT OF ORDER IN  
COMPLIANCE WITH RULE 1925(a) OF  
THE RULES OF APPELLATE PROCEDURE

This opinion is written in support of this Court's Orders dated May 30, 2002 and November 8, 2002. The reasons for the Court's denial of the Defendants' preliminary objections can be found in the Opinion accompanying the Order dated May 30, 2002 and in the Order dated November 8, 2002. The Court would supplement its Order dated November 8, 2002 with the following references to the transcripts. The Court's findings regarding the necessity of the taking were supported by the testimony of Dr. Nelson Wruble (N.T., 7/22/02, at pp. 19-32, 36-37, 43-45, 50, 52, 53-57), Richard Witt, Jr. (N.T., 7/22/02, at pp. 60-65, 81, 83-86) and Barbara Anderson (N.T.,

7/22/02, at pp. 93-105). On the issue of de facto taking, counsel for the School District and Dr. Wruble both indicated that the School District intended to condemn the Horner's entire parcel that was adjoining the Four Mile Elementary School. N.T., 10/1/02 at pp. 41-42; N.T., 7/22/02 at p. 29.

When Mr. Horner testified, even he acknowledged he believed the School District condemned the entire parcel. N.T., 10/1/02 at p. 38. With respect to ownership of the property, the record owners of this parcel immediately prior to the filing of the Declaration of Taking were Emil Horner, Jayne Horner, Emil P. Horner and Mary Horner. N.T., 10/1/02 at pp. 55-59. Although Jayne Horner's qualified disclaimer was filed, neither Emil Horner's will nor any other document was filed to indicate the Trust was an owner. Id. Furthermore, since the Trust is not an individual, service upon it would be made upon the trustee. The testimony of Mr. Horner on cross-examination established the trustee was Jayne Horner and the alternate trustees were Mr. Horner and his wife, Mary. N.T., 10/1/02 at pp. 30-32.

DATE: \_\_\_\_\_

By The Court,

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Kenneth D. Brown, Judge