

IN RE: CONDEMNATION BY THE	:	IN THE COURT OF COMMON PLEAS OF
BOROUGH OF SOUTH WILLIAMSPORT:	:	LYCOMING COUNTY, PENNSYLVANIA
OF CERTAIN REAL PROPERTY	:	
SITUATE IN THE BOROUGH OF	:	
SOUTH WILLIAMSPORT,	:	
Condemnor	:	
	:	
vs.	:	NO. 03-01,178
	:	
MERVIN B. MINNICH,	:	
Condemnee	:	PRELIMINARY OBJECTIONS

***Date: March 9, 2004***

**OPINION and ORDER**

Before the Court for determination are the Preliminary Objections of Condemnee Mervin M. Minnich filed August 21, 2003. The Court will deny the Preliminary Objections.

Condemnee owns property in South Williamsport, Lycoming County, Pennsylvania identified as Tax Parcel No. 52-03-466 and recorded in Deed Book No. 3087 at Page 313. The Borough of South Williamsport passed Resolution No. 2003-R23 on July 14, 2003 condemning a portion of said property. The Borough filed a Declaration of Taking on July 24, 2003. Both the Resolution and the Declaration of Taking state that the purpose of the condemnation is the establishment of a public right of way.

Condemnee filed Preliminary Objections to the Declaration of Taking on August 21, 2003. In the Preliminary Objections, Condemnee asserts that the condemnation was not for a public purpose, but instead was for the establishment of a private driveway for a private entity and that the condemnation was arbitrary and capricious, as other similar alleys were not being

widened.<sup>1</sup> On September 5, 2003, a factual hearing and argument were held before this Court on the Preliminary Objections.

**Findings of Fact**

Brion Place is a public roadway in the Borough of South Williamsport. It intersects with Reynolds Street. The portion of Brion Place at issue in the case *sub judice* runs northeast from Reynolds Street and dead ends. Brion Place is ten feet wide and consists of a non-stabilized gravel surface. Condemnee's property is located on the south side of Brion Place. There are no improvements on Condemnee's property. The condemnation calls for a taking of Condemnee's property consisting of a section of property along Brion Place 287.12 feet in length and 15 feet in width. On the north side of Brion Place, moving east from Reynolds Street, there is a two-story house on property owned by the Administration of Veterans' Affairs, a vacant one-story house on property owned by James Ritter, a two-story house on the property of James and Delores Brass, and three parcels owned by Donald Hamilton. A two-story home is located on the middle Hamilton parcel and a garage is on the parcel east of that parcel.

Regarding the condemnation, the proposed plan is to expand Brion Place from ten feet wide to sixteen feet wide and pave it. Along with the paving, a sidewalk would be installed with a storm sewer underneath. The storm sewer would be necessary to handle drainage from the paved roadway. Brion Place would not be extended to intersect with any other road, but would remain a dead end.

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<sup>1</sup> In the preliminary Objections, Condemnee also asserts that the condemnation would render the rest of his property valueless because of the applicable zoning regulations and because of this the Borough should be required to condemn the rest of the property and compensate Condemnee accordingly. In an Order dated October 10, 2003, this Court held that this was not an appropriate preliminary objection and dismissed it.

The Borough's police department has driven Brion Place on patrol. The Borough has maintained the road. It has oiled it in the warmer months and plowed it in the colder months. There is no designated area for vehicles to turn around in on Brion Place. The roadway is only ten feet wide, which makes turning around on it difficult. Often, this causes the traveling public to use one of the properties along Brion Place to reverse direction.

### Discussion

Preliminary objections are the exclusive method of challenging the condemnation proceedings. 26 P.S. §1-406(a); *In re condemnation of Lands of Laughlin*, 814 A.2d 872, n.1 (Pa. Cmwlth. 2003). In the context of eminent domain actions, preliminary objections serve a different purpose than preliminary objections filed in other civil actions. *In re Condemnation of .036 Acres*, 674 A.2d 1204, 1207 (Pa. Cmwlth 1996). "In eminent domain cases, preliminary objections are intended as a procedure to resolve expeditiously the factual and legal challenges to the declaration of taking before the parties proceed to determine damages." *Ibid*.

In reviewing a municipality's decision to condemn property, the trial court is limited to the question of "whether the municipality is guilty of fraud, bad faith, or abuse of discretion." *Appeal of Heim*, 617 A.2d 74, 77 (Pa. Cmwlth. 1992); *In re Condemnation Property of Waite*, 641 A.2d 25, 28 (Pa. Cmwlth. 1994). There is a strong presumption that the municipality has acted properly and the condemnee carries a heavy burden in attempting to show an abuse of discretion. *Appeal of Heim*, 617 A.2d at 77. A court has no power to substitute its discretion for that of the municipality or to correct mistakes in judgment. *Swartz v. Pittsburgh Public Parking Auth.*, 439 A.2d 1254, 1256 (Pa. Cmwlth. 1981). Evidence that

the proposed plan may not be the best or most ideal is not grounds for reversal of condemnation. *Id.* at 1256.

It is well established the power of eminent domain cannot be used to acquire property for private rather than public purposes. *Riehl v. Millcreek Twp. Sewer Auth.*, 362 A.2d 478, 480 (Pa. Cmwlth. 1976). However, a “taking does not lose its public character merely because there may exist in the operations some feature of private gain, for if the public good is enhanced it is immaterial that a private interest may also be benefited.” *Appeal of Heim*, 617 A.2d at 77; *Borough of Big Run v. Shaw*, 330 A.2d 315, 317 (Pa. Cmwlth. 1975). A public use is a use that benefits the public. *Borough of Big Run*, 330 A.2d at 317. “The establishment and operation of highways and roadways to be used by the public constitute public uses for which private property may be appropriated under the power of eminent domain.” *Ibid.* It is important to note that the length of the street is not the determining factor relative to the question of public use. *Ibid.*

The decision to condemn part of Condemnee’s property was not the result of fraud, bad faith, or an abuse of discretion. The condemnation is for a public purpose. The condemnation is for the expansion of an existing public roadway. The new paved surface of the roadway will be easier to drive on. The widened roadway will make it easier for vehicles to turn around on the dead end roadway. The condemnation is necessary to improve the roadway and permit easier use by the public.

The residents along Brion Place will be the ones that most directly benefit from the improved roadway. However, this does not strip the condemnation of its public purpose.

The roadway is still a public roadway. There are no gates or impediments that prevent the public from using Brion Place. The public, as well as the residents, is free to use Brion Place.

The condemnation of this property was not arbitrary and capricious. The mere fact that other alleys in the Borough are not being expanded and paved is not grounds for reversal of the condemnation. This condemnation is for a public purpose. The Borough has the discretion to determine how it will pursue a public purpose. The Court will not and cannot substitute its determination for that of the Borough's regarding how that purpose should be achieved.

Accordingly, the Preliminary Objections shall be denied.

**ORDER**

It is hereby ORDERED that the Preliminary Objections of the Condemnee Mervin M, Minnich filed August 21, 2003 are DENIED.

BY THE COURT:

William S. Kieser, Judge

cc: Joseph F. Orso, III, Esquire  
James R. Protasio, Esquire  
Judges  
Christian J. Kalas, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)