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Greenway Trail /City of Philadelphia: Pennsylvania Appellate Court Addresses Challenge to Condemnation Action

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The Commonwealth Court of Pennsylvania (“Appellate Court”) in a July 23rd Opinion addressed a challenge to the City of Philadelphia’s (“City”) condemnation of certain property (“Property”) for construction of the North Delaware Greenway. See *In Re: Condemnation by the City of Philadelphia of 0.59263 Acres in the City of Philadelphia*, 2020 WL 4219716.

The condemnee filed objections to the City’s Declaration which the trial court overruled.

The condemnee appealed.

The City began planning in 2001 for the North Delaware Greenway. The intention was to use the abandoned Kensington & Tacony Railroad bed. The 30-foot-wide bed would be used to construct a trail for walking/biking that would connect with the East Coast Greenway, “a several-thousand-mile trail that extends from Maine to Florida along the East Coast, connecting major cities . . . [including] Boston, New York, Philadelphia, [and] Wilmington . . .” .

The stated reasons for the City’s desire to use the railroad included :

- The bed had already been graded
- The proximity to the river
- The design and cost made sense

The City mistakenly thought it owned a stretch of the railroad bed that ran across the property owned by Unruh Avenue Associates (“UAA”). UAA filed a quiet title action against the City. The City “acknowledged that it did not have any property interest in the 30-foot-wide K&T Railroad bed located at the Property.”

The City subsequently enacted an ordinance authorizing the taking of property on which the railroad bed ran across. It then filed a declaration of taking, “condemning an 88-foot-wide strip of the Property consisting of approximately 0.6 acres that included the 30-foot-wide K&T Railroad bed, the riverbank, and the underwater land that extended to the Bulkhead Line.” *Id.*

UAA challenged the taking, raising two arguments:

1. the taking of approximately 58 feet more of the Property than is necessary to construct the K&T Trail, including UAA’s riverfront access, was excessive

2. the Declaration did not adequately establish the extent or effect of the taking because, although UAA owns the land to the former Port Warden's Line, the City is only taking to the Bulkhead Line

The City responded with a declaration from the Deputy Commissioner for Capital Infrastructure and Natural Lands Management, Parks and Facilities, for the City's Department of Parks and Recreation and testimony from the Preservation and Capital Projects Manager for the City's Department of Parks and Recreation. The declaration explained the rationale behind taking the extra land by stating it was "to prevent boats from docking at the property . . . and to construct any necessary underwater structures to prevent the riverbank from eroding and threatening the trail."

The testimony confirmed that "the shoreline was eroding significantly[into the K&T Railroad bed], and in order for [the City] to protect its trail, [its] asset, as well as [the] users of the trail, for the future [the City] need[ed] to protect the shoreline . . . [and] put rip[ra]p [into the river] on the shoreline." The City also stated it condemned more property to be able to create a riparian park, or a park that is on the bank of the river.

The Appellate Court held that UAA's arguments did not establish that the City abused its discretion when taking more land than had been originally planned. Since "there is a strong presumption that the condemner has acted properly[.]" UAA apparently convinced the court that the taking was "excessive for the actual purpose of the public use." *Id.*, at 4 (citing *In re Pa. Tpk. Comm'n*, 84 A.3d 768, 776 (Pa. Cmwlth. 2014), *In re Condemnation by Dep't of Transp. Of Right-of-Way for State Route 002, Section 034, in Twp. Of Frankstown*, 194 A.3d 722, 735 (Pa. Cmwlth. 2018)).

Considering the City gave two reasons for condemning extra land, the Court determined it was not excessive, nor was it an abuse of discretion.

A copy of the Opinion can be downloaded [here](#).