

**JOHN McCREA v. PENN TOWNSHIP, BIG SPRING
SCHOOL DISTRICT AND PanCAL 954 CENTERVILLE
(UNIT B) LLC, CUMBERLAND CO., COMMON PLEAS,
No. 12-3049 CIVIL TERM.**

Civil Law—Defendants’ Preliminary Objections to Plaintiff’s Amended Complaint—Declaratory Judgment—Tax Incentive Ordinance—Pennsylvania’s Local Economic Revitalization Tax Assistance Act (LERTA)—72 P.S. §4722-26—“Deteriorated Property”—Lack of Standing—**Wm. Penn Parking Garage, Inc. v. City of Pittsburgh**, 464 Pa. 168, 356 A.2d 269 (1975)—Defendants’ Preliminary Objections Sustained—Amended Complaint Dismissed.

1. In order to have standing to challenge a municipal ordinance, a plaintiff must demonstrate that he is “aggrieved by the ordinance.”

2. It is not sufficient for the person claiming to be an “aggrieved” to assert the common interest of all citizens in procuring obedience to the law.

3. Where Plaintiff identifies no other way that he is aggrieved other than potentially increased tax liability that he will share pro rata with all the other taxpayers in the School District, Plaintiff fails to aver any facts sufficient to demonstrate any harm unique to him that would confer on him aggrieved status and standing to seek a declaratory judgment

John McCrea, Pro Se.

MARCUS A. McKNIGHT, III, ESQUIRE, for Penn Township.

PHILIP H. SPARE, ESQUIRE, for Big Spring School District.

IN RE: PRELIMINARY OBJECTIONS OF DEFENDANTS PENN
TOWNSHIP AND BIG SPRING SCHOOL DISTRICT
TO THE AMENDED COMPLAINT OF PLAINTIFF

Before HESS, P.J., MASLAND and PLACEY, JJ.

OPINION AND ORDER OF COURT

MASLAND, J., November 9, 2012:—

Before the court are the Preliminary Objections filed by Defendants Penn Township and Big Spring School District to the Amended Complaint filed by Plaintiff, John McCrea.¹ After briefing by the parties and argument en banc, we will sustain the Defendants’ objections and dismiss the Amended Complaint for lack of standing.

I. BACKGROUND

At issue in this Declaratory Judgment action is a tax incentive ordinance passed by Penn Township under Pennsylvania’s Local Economic Revitalization Tax Assistance Act (LERTA). 72 P.S. §4722-26. In short,

¹ In the Amended Complaint, Plaintiff named an additional Defendant PanCal 954 Centerville (Unit B) LLC. Plaintiff contends this Defendant will be the primary beneficiary of the tax incentives to which he objects. PanCal has not filed Preliminary Objections at this time.

LERTA allows local taxing authorities to grant tax exemptions to new construction projects in deteriorated areas of economically depressed communities. 72 P.S. §4723. Penn Township, a largely rural township, decided to try to encourage warehouse development in the portion of its territory in the vicinity of Interstate 81. To do so, the Township devised a LERTA Ordinance that attached the “deteriorated” label to certain property that was eligible for warehouse projects. After advertisement and a public meeting, the Ordinance was passed. Following the passage of the Ordinance, Big Spring School District adopted a resolution exempting from real property taxation the value of improvements made within Penn Township’s deteriorated zone. According to Plaintiff, these measures would afford developers a real estate tax exemption in excess of \$800,000.

Plaintiff brought this Declaratory Judgment action seeking to have the Ordinance declared illegal and invalid, null and void. The Township and the School District each filed Preliminary Objections to the Amended Complaint. The Township raises the following arguments:

Should the Plaintiff be barred from challenging the validity of a township ordinance based on a case in which he did not make an appearance at the Public Hearing, and where he is not a resident of Penn Township?

Is the Court without subject [matter] jurisdiction in order to render a decision in a case in which no action has been taken which causes harm to the Plaintiff?

The School District raises the following objection:

Whether Plaintiff has failed to state an actual case or controversy which is ripe for review such that this Court lacks subject matter jurisdiction over this action?

Ultimately, we need not address all three objections, as we will dismiss Plaintiff’s Amended Complaint on the grounds that he lacks standing to bring this Declaratory Action.

II. DISCUSSION

To have standing to challenge a municipal ordinance, a plaintiff must demonstrate that he is “aggrieved by the ordinance.” **Wm. Penn Parking Garage, Inc. v. City of Pittsburgh**, 464 Pa. 168, 190, 346 A.2d 269, 280 (1975). Our Supreme Court has described that status as follows:

The core concept, of course, is that a person who is not adversely affected in any way by the matter he seeks to challenge is not ‘aggrieved’ thereby and has no standing to obtain a judicial resolution of his challenge. In particular, **it is not sufficient for**

the person claiming to be ‘aggrieved’ to assert the common interest of all citizens in procuring obedience to the law.

Id. at 192, 346 A.2d at 280-81 (emphasis added).

Here, Plaintiff avers the following in his Amended Complaint:

Plaintiff will be adversely impacted by having the Big Spring School District lose more than \$800,000 in real estate tax revenue over the five years exemption period, in that Plaintiff will be required to make up a percentage of the \$800,000 in lost tax revenues by increased real property taxes on real estate owned by him ...

Am. Compl. ¶19. Plaintiff identifies no other way he is aggrieved other than potentially increased tax liability that he will share pro rata with all the other taxpayers in the School District.

In his brief in opposition to the Preliminary Objections, Plaintiff further demonstrates that the harm he complains of is not unique to him. Ironically, in combating the argument that he does not reside in Penn Township, Plaintiff confirms that (if there is any harm at all) all taxpayers are similarly situated.

Both Penn Township and Big Spring School District appear to have lost sight of the fact that the action of Penn Township in enacting its LERTA Ordinance will have **a deleterious financial impact on taxpayers of the entire Big Spring School District**, not just on those taxpayers who reside in Penn Township.

Br. at 4 (emphasis added). Plaintiff has failed to aver any facts sufficient to demonstrate any harm unique to him that would confer on him aggrieved status and standing to seek a declaratory judgment.

Ultimately, Plaintiff has a tax policy disagreement with Penn Township and the Big Spring School District. His remedy is in the political process, not the courts. To paraphrase Chief Justice ROBERTS of the Supreme Court of the United States, where a tax exemption is lawful, it is not our role to forbid it, or to pass upon its wisdom or fairness.²

III. CONCLUSION

In conclusion, Plaintiff was not aggrieved by the passage of the LERTA Ordinance and therefore lacks standing to challenge it via the instant Declaratory Judgment Action. Accordingly, his Amended Complaint is dismissed.

² “Because the Constitution permits such a tax, it is not our role to forbid it, or to pass upon its wisdom or fairness.” **National Federation of Independent Business v. Sebelius**, 132 S. Ct. 2566, 2600 (2012).

ORDER OF COURT

AND NOW, this ____ day of November, 2012, upon consideration of the Defendants' Preliminary Objections, Plaintiff's response thereto, briefing by the parties, and argument en banc, the Objections are **SUSTAINED** and the Amended Complaint is **DISMISSED**.

ESTATE AND TRUST NOTICES

Notice is hereby given that, in the estates of the decedents set forth below, the Register of Wills has granted letters testamentary or of administration to the persons named. Notice is also hereby given of the existence of the trusts of the deceased settlors set forth below for whom no personal representatives have been appointed within 90 days of death. All persons having claims or demands against said estates or trusts are requested to make known the same, and all persons indebted to said estates or trusts are requested to make payment, without delay, to the executors or administrators or trustees or to their attorneys named below.

FIRST PUBLICATION

Bryson, Paul H., dec'd.

Late of South Middleton Township.

Administrator: John A. Bryson, 20 Bayberry Drive, Mechanicsburg, PA 17050.

Attorneys: Keith O. Brenneman, Esquire, Snelbaker & Brenneman, P.C., 44 W. Main Street, P.O. Box 318, Mechanicsburg, PA 17055.

Mentzer, Dale W., dec'd.

Late of Cumberland County.

Executrix: Bonnie R. Wilt.

Attorneys: David A. Baric, Esquire, Baric Scherer LLC, 19 West South Street, Carlisle, PA 17013, (717) 249-6873.

SECOND PUBLICATION

Bowersox, Robert H., dec'd.

Late of South Middleton Township.

Executor: Roger B. Irwin, Irwin & McKnight, P.C., 60 West Pomfret Street, Carlisle, PA 17013.

Attorneys: Irwin & McKnight, P.C.

Brehm, Naomi R., dec'd.

Late of Dickinson Township.

Executor: Rickey L. Brehm c/o Mark W. Allshouse, Esquire, Christian Lawyer Solutions, LLC, 4833 Spring Road, Shermans Dale, PA 17090.

Attorneys: Mark W. Allshouse, Esquire, Christian Lawyer Solutions, LLC, 4833 Spring Road, Shermans Dale, PA 17090, (717) 582-4006.

Clarkson, Katherine, dec'd.

Late of Carlisle.

Administrator: William Clarkson c/o John C. Oszustowicz, Esquire, 104 South Hanover Street, Carlisle, PA 17013.

Attorney: John C. Oszustowicz, Esquire, 104 South Hanover Street, Carlisle, PA 17013.

Erney, Edwin S., dec'd.

Late of Mechanicsburg.

Executrix: Joan L. Erney c/o E. Ralph Godfrey, Esquire, Cipriani & Werner, P.C., 1011 Mumma Road, Suite 201, Lemoyne, PA 17043.

Attorneys: E. Ralph Godfrey, Esquire, Cipriani & Werner, P.C., 1011 Mumma Road, Suite 201, Lemoyne, PA 17043.

Herlihy, Rose Helen, dec'd.

Late of Carlisle.

Executrix: Eileen R. Simpson c/o Gary J. Imblum, Esquire, Imblum Law Offices PC, 4615 Derry Street, Harrisburg, PA 17111.

Attorneys: Gary J. Imblum, Esquire, Imblum Law Offices PC, 4615 Derry Street, Harrisburg, PA 17111.

Norris, Michael C., dec'd.

Late of Newville.

Administrator: John M. Norris, 3100 Liverpool Court, Chambersburg, PA 17201.

Attorneys: John W. Frey, Esquire, Dick, Stein, Schemel, Wine & Frey, LLP, 119 E. Baltimore Street, Greencastle, PA 17225.

Slovensky, John G., dec'd.

Late of Hampden Township.
Executrix: Susan Dunmire, 115 Hillview Lane, Kittanning, PA 16201.
Attorney: Murrel R. Walters, III, Esquire, Attorney-at-Law, 54 East Main Street, Mechanicsburg, PA 17055.

Stoner, Ronald L., dec'd.

Late of the Township of Monroe.
Executrix: Rebecca L. Waddell, 1534 Leidigh Drive, Boiling Springs, PA 17007.
Attorneys: Jerry A. Weigle, Esquire, Weigle & Associates, P.C., 126 East King Street, Shippensburg, PA 17257.

Taylor, Warren G., dec'd.

Late of Middlesex Township.
Executrix: Ellen Frownfelter, 25 Gwen Circle, Marietta, PA 17547.
Attorney: None.

Walp, Dr. William R., dec'd.

Late of Carlisle.
Executor: Hulett H. Askew c/o John C. Oszustowicz, Esquire, 104 South Hanover Street, Carlisle, PA 17013.
Attorney: John C. Oszustowicz, Esquire, 104 South Hanover Street, Carlisle, PA 17013.

Westermeier, Richard J., dec'd.

Late of Hampden Township.
Executrix: Heidi B. Muck.
Attorney: Linda A. Clotfelter, Esquire, 5021 E. Trindle Road, Suite 100, Mechanicsburg, PA 17050, (717) 796-1930.

THIRD PUBLICATION

Clepper, Richard D. a/k/a Richard DeWitt Clepper, dec'd.

Late of South Middleton Township.

Executor: Richard L. Clepper c/o Theodore L. Brubaker, Esquire, 480 New Holland Avenue, Suite 6205, Lancaster, PA 17602.
Attorneys: Brubaker, Connaughton, Goss & Lucarelli LLC.

Goudy, William R., dec'd.

Late of Marysville, Perry County.
Administratrix: Therese M. Goudy c/o Edmund G. Myers, Esquire, Johnson, Duffie, Stewart & Weidner, 301 Market Street, P.O. Box 109, Lemoyne, PA 17043.
Attorneys: Edmund G. Myers, Esquire, Johnson, Duffie, Stewart & Weidner, 301 Market Street, P.O. Box 109, Lemoyne, PA 17043.

Groninger, Marian L., dec'd.

Late of the Borough of Carlisle.
Executrix: Lynne G. Beiswanger c/o Matthew A. McKnight, Esquire, Irwin & McKnight, P.C., 60 West Pomfret Street, Carlisle, PA 17013.
Attorneys: Irwin & McKnight, P.C.

Helman, Jennifer K. a/k/a Jennifer Kristine Helman a/k/a Jenn Helman, dec'd.

Late of East Pennsboro Township.
Administratrix: Christiana R. Noel, 9 Louis Lane, Enola, PA 17025.
Attorneys: Elizabeth H. Feather, Esquire, Caldwell & Kearns, P.C., 3631 North Front Street, Harrisburg, PA 17110, (717) 232-7661.

McClintock, Duane E., dec'd.

Late of Cumberland County.
Administratrix: Sally A. McClintock c/o Adam R. Deluca, Esquire, 61 West Louthier St., Carlisle, PA 17013.
Attorney: Adam R. Deluca, Esquire, 61 West Louthier St., Carlisle, PA 17013.

Riester, William C., Sr., dec'd.

Late of West Pennsboro Township.

Co-Executors: William C. Riester, Jr., 8 Wooded Drive, Shippensburg, PA 17257 and John H. Riester, 12025 Paul Meadows Drive, Cincinnati, OH 45249.
Attorneys: Stephen E. Patterson, Esquire, Salzmänn Hughes, P.C., 239-B East Main Street, Waynesboro, PA 17268.

Shader, Mildred E. a/k/a Mildred Estella Shader, dec'd.
Late of Hampden Township.
Executor: Russel G. Shader c/o Charles E. Shields, III, Esquire, 6 Clouser Rd., Mechanicsburg, PA 17055.
Attorney: Charles E. Shields, III, Esquire, 6 Clouser Rd., Mechanicsburg, PA 17055.

Wilhide-Greene, Lauren, dec'd.
Late of the Township of West Pennsboro.
Administrator: Jesse Greene, 353 Crossroad School Road, Newville, PA 17241.
Attorneys: Jerry A. Weigle, Esquire, Weigle & Associates, P.C., 126 East King Street, Shippensburg, PA 17257.

NOTICE

NOTICE IS HEREBY GIVEN that an Application for Registration of Fictitious Name has been filed with the Department of State of the Commonwealth of Pennsylvania pursuant to Section 311 of the Act of Assembly of December 16, 1982, No. 295, 54 Pa. C.S.A. §311, as amended.

The fictitious name was registered on or about November 15, 2012, for the purpose of conducting a business under the name of:

NORTH MOUNTAIN INN
with a mailing address of: 3636 Waggoners Gap Road, Carlisle, Cumberland County, Pennsylvania 17015.

The names of the interested parties to the above registration are: Harrison & Yinger, Inc., Rebecca H. Harrison and Julie A. Yinger.

HAROLD S. IRWIN, III, ESQUIRE
IRWIN LAW OFFICE
64 South Pitt Street
Carlisle, PA 17013
(717) 243-6090

Nov. 30