

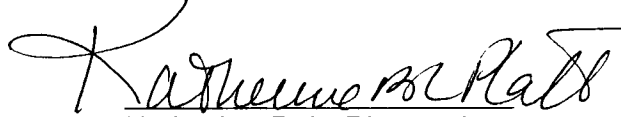
11-18-11

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IN THE COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION
IN RE: COUNCIL OF BOROUGH OF DOWNINGTOWN
1511-1629

AND NOW, this 17th day of November, 2011, upon consideration of the Petition of the Borough of Downingtown, J. Loew & Associates, Inc. and Progressive Housing Ventures, LLC for Declaration that no Orphans' Court approval is required for the utilization of certain real property retained in the Borough, the response thereto, and after oral argument, it is hereby Ordered that the Petition is granted. No approval by the Orphans' Court is required, as the Donated or Dedicated Property Act is not implicated.¹

BY THE COURT:


 Katherine B. L. Platt, J.

¹ Petitioners J.Lowe & Associates, Inc. and Progressive Housing Ventures, LLC own 7 acres of property in East Caln Township. It is undisputed that the 7 acres is land that has not been donated or dedicated for the public use. The Borough of Downingtown has agreed to grant Petitioners two easements: one to discharge stormwater into an existing pond located in an area dedicated to the public, known as Kardon Park, and one to perform improvements and environmental remediation.

Petitioners and the Borough contend that Orphans' Court approval is not required for the grant of the proposed easements.

The Orphans' Court has jurisdiction to settle disputes concerning a municipality's decision to sell or discontinue use of dedicated or donated property. Donated or Dedicated Property Act ("DDPA"), 53 P. S. §§3381-3386. Section 3384 of the DDPA, provides that when the original use of a particular property held in trust as a public facility is no longer practicable or possible and has ceased to serve the public interest, the municipality acting as trustee of the property may apply to the Orphans' court of the county in which it is located for appropriate relief. The court may permit the trustee to--

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CHESTER COUNTY, PA.

(1) Substitute other lands or property of at least equal size and value held or to be acquired by the political subdivision in exchange for the trust property in order to carry out the trust purposes.

(2) If other property is not available, sell the property and apply the proceeds to carry out the trust purposes.

(3) In the event the original trust purpose is no longer practicable or possible or in the public interest, apply the property or the proceeds therefrom in the case of a sale to a different public purpose.

(4) Relinquish, waive or otherwise quitclaim all right and title of the public in and to such land and buildings as have been apparently dedicated but for which no formal acceptance appears of record: Provided, only, That the court is satisfied upon hearing the evidence that there is no acceptance by implication arising out of public user or otherwise, the court shall also determine the consideration, if any, to be paid to the political subdivision.

(53 P. S. §3384, emphasis added).

In order for the DDPA to apply, there must be a sale or alienation of property held in trust for the public. As stated above, the 7 acre parcel in East Caln Township is not property held in trust for the public. The grant of easements to discharge stormwater into a pond located on Kardon Park, and to perform temporary construction improvements is not a sale of the property, nor a change of the use of the property. An "easement" is a liberty, privilege, or advantage which one may have in the lands of another without profit...But it cannot be an estate or interest in the land itself, or a right to any part of it. An easement is a right in the owner of one parcel of land by reason of such ownership to use the land of another for a special purpose not inconsistent with a general property in the owner. *Assalita v. Chestnut Ridge Homeowners Ass'n*, 866 A.2d 1214, 1218 (Pa. Cmwlth. 2005)(citations omitted). Additionally, a municipality has the right to upgrade facilities that are used for the public.

Kardon Park will continue to be used for public park purposes after the creation of the easements. Thus, the proposed use does not violate the DDPA or the public trust doctrine, and Orphans' Court approval is not required for the utilization of the real property.

CLERK OF THE ORPHANS' COURT

CHESTER COUNTY JUSTICE CENTER
201 W. MARKET STREET, SUITE 2200
P.O. BOX 2746
WEST CHESTER, PA 19380-0989

November 17, 2011

LOUIS J. COLAGRECO JR.
717 CONSTITUTION DRIVE STE 201
PO BOX 1265
EXTON, PA 19341

COUNCIL OF THE BOROUGH OF DOWNINGTOWN,
In the Matter of: Primary

File # 1511-1629

NOTIFICATION IN ACCORDANCE WITH LOCAL ORPHANS' COURT RULE L1.2H

Enclosed is a copy of the Order, Decree or Adjudication, entered on November 17, 2011, in the above referenced matter. **If a Bond is required, no copy is provided until the Bond is posted.**

The cost for each certified copy is \$ 10.00

To obtain a **CERTIFIED** copy of the Order, Decree or Adjudication, do the following:

1. How many certified copies? _____
2. Enclose a self-addressed, stamped envelope.
3. Enclose a check payable to Clerk of the Orphans' Court for the appropriate fee.
4. Return this form and the payment to the address indicated above.

***If you are no longer the attorney for this matter, you must withdraw
in accordance with Chester County Orphans' Court Local Rule L1.2C***