LOCAL GOVERNMENT COMMISSION
Quarterly Legal Update

Issue 2, 2022

Greetings from the Director:

As budget season winds down here at the General Assembly, staff of the Commission is yet again presenting you with a collection of cases and legislation of note. This edition contains decisions on land use, taxation and the conveyance of the projects of a municipal authority. Best wishes to all for a happy summer season.

-David Greene, Executive Director of the Local Government Commission

Legislative Updates:

SB 478, PN 503: Amends Act 78 of 1977 to authorize political subdivisions and authorities to enter into contracts for services when two consecutive advertisements fail to induce bids, as specified and conditioned. This legislation, sponsored by the Local Government Commission, was signed as Act 18 of 2022.

SN 479, PN 504: Amends the Municipalities Financial Recovery Act ("Act 47") to delineate additional requirements related to ethics for the appointees, recovery coordinators and receivers who work directly with financially distressed municipalities on behalf of DCED. This legislation, sponsored by the Local Government Commission, was signed as Act 19 of 2022.

Continued on page 5 >>

Keep up with the latest from the Local Government Commission:
@PA_LGC
www.lgc.state.pa.us

Civil Rights

Dvortsova v. City of Philadelphia, 2022 WL 407637 (E.D. Pa., Feb. 9, 2022). On September 9, 2020, a "311" call (pertaining to non-emergency municipal services) was made to report a wall collapse at Plaintiff's property. Plaintiff received certified notice of "imminently dangerous" building violations on October 3rd; was given until October 4th to file an appeal; and until October 8th to make repairs. Plaintiff drove to the property on October 3rd, only to discover that the house was partially demolished.

Plaintiff property owner sued the City of Philadelphia under 42 U.S.C. § 1983, asserting the City violated her rights under the Fourth and Fourteenth Amendments when it demolished the house, Plaintiff owns but does not live in, without providing notice and an opportunity to be heard.

In this fact-based matter, the court found that genuine disputes remain regarding the reasonableness of the decision of the City's demolition coordinator for an on-the-spot order for demolition of Plaintiff's property and the existence of a municipal custom of demolishing buildings without notice, in the absence of exigent circumstances.

The court noted that the Constitution affords government officials some leeway in deciding whether exigent circumstances make pre-deprivation process unfeasible. If "competent evidence" could lead an official to reasonably believe an emergency exists, then only an arbitrary decision to forgo pre-deprivation process would violate due process.

Consequently, the court held that the City's curbside bid process is not inherently unconstitutional. When City officials reasonably conclude the property represents an immediate danger, demolition without notice is appropriate. Therefore, the City cannot be held liable for simply for having a "custom of making the decision to demolish, and then, within hours, soliciting bids from contractors and demolishing the building."

There must be evidence the City had a custom of using that procedure in circumstances where doing so "does not comport with due process." As a result,

a genuine issue of fact remained regarding whether the decision of the City's demolition coordinator to invoke emergency procedures was reasonable. If a miscommunication between City officials, rather than the facts available to them, created the appearance of an emergency, the coordinator's decision to forego notice would be arbitrary.

For this reason, summary judgment was denied.

Land Use

Troiani Group v. City of Pittsburgh Planning Commission, 2022 WL 829832 (Pa. Cmwlth., Mar. 21, 2022).** Appellant development group received a permit to demolish a structure (First Avenue Structure) because it was in imminent danger of collapse. This request came as part of a demolition plan (Plan). Thereafter, as part of the Plan, Appellant sought approval to demolish other Appellant-owned vacant structures (Market Street Structures) located adjacent to the First Avenue Structure. The Market Street Structures were not an immediate risk of imminent danger to the public. The Market Street Structures are not in an historic district, but they are "deemed to contribute to" an historic district. After testimony, Pittsburgh's planning commission (Commission) denied the Plan. The Court of Common Pleas affirmed the Commission. Appellant appealed to Commonwealth Court. Commonwealth Court affirmed the trial court, stating that "the burden is on a …[an] applicant to submit evidence that shows the project development plan meets …[z]oning [c]ode criteria." The court concluded that Appellant did not comply with Pittsburgh zoning code's (Code) designated criteria for an overall development plan.

Referencing Appellant's burden, the Code and citing to the Commission's findings, the court determined: that there was only a speculative plan for redevelopment, particularly when presented with credible evidence that an office building at that location may not be financially viable; the inability to determine the impact of the demolition "on retail and residential uses, parking, traffic, pedestrian activity, historic preservation, architectural design, microclimate effects, views, and open space" without a clear understanding of how long the property might sit vacant; how long the salvaged materials would have to be stored and the cost involved with storage; and although a "signature tower" could be incorporated, while preserving these historical structures, options presented to Appellant, did not suit him.

For these reasons, the court ruled that it "is not to substitute its judgment on the merits for that of the municipal body" and if the record demonstrates the existence of substantial evidence, "the court is bound by the municipal body's findings which are the result of resolutions of credibility and conflicting testimony."

[I]f an authority could override the power granted to a municipality in section 5622(a) [of the MAA] by simply incurring contractual obligations, then the last clause of section 5622(a) would be rendered nugatory.

- ***- County of Delaware v. Delaware County Regional Water Quality Control Authority***

Municipal Services

County of Delaware v. Delaware County Regional Water Quality Control Authority, 272 A.3d 567 (Pa. Cmwlth., March 3, 2022). DELCORA is a municipal authority formed by Delaware County (County) pursuant to the Municipality Authorities Act, Title 53, §§5601-5623, (MAA) for the purpose of wastewater collection/treatment. The County is governed under its Home Rule Charter and is the only municipal incorporator of DELCORA. Because of dramatically increasing costs, in 2019 DELCORA entered into an agreement to sell the facility to a private buyer. In May 2019, the County filed a writ of mandamus to prevent the authority from selling its assets to a private buyer. The authority and buyer filed a counterclaim for injunctive relief, asking that the sale continue. On June 3, 2020, the County approved and enacted an ordinance (Ordinance) that conferred the power to dissolve an authority and obtain and later transfer and/or convey the authority's assets as it deems fit, without any input on the part of the authority.

The Court of Common Pleas granted injunctive relief and denied mandamus relief finding that the sale was valid and enforceable. On appeal to Commonwealth Court, the court agreed with the County and held that the Ordinance is valid and enforceable to the extent that it directs the termination/dissolution of DELCORA and dictates that, after termination is underway, DELCORA must effectuate the transfer of its assets and the assumption of its liabilities/obligations to the County.

The court concluded that the County possesses the sole power under §5622(a) of the Municipality Authorities Act to demand and compel the conveyance of the authority and its assets by enacting the appropriate ordinance.

In reaching this holding, the court reasoned that based upon the plain reading of Section 5622(a), in particular the last clause of Section 5622(a), a municipality can "assume" all of the "obligations incurred" by an authority, including those in a contract to sell its assets, by obtaining an authority's project and legal title to the assets of the project. Otherwise, "if an authority could override the power granted to a municipality in section 5622(a) by simply incurring contractual obligations, then the last clause of section 5622(a) would be rendered nugatory."

The court noted that: "irrespective whether it can live up to the contractual promises made in the APA, [the County] will have no choice but to abide by and fully perform its obligations [under the terms and conditions of the sales agreement to the private buyer] or else be potentially subjected to a breach of contract suit by [the private buyer]."

Police Power

City of Philadelphia v. Armstrong, 271 A.3d 555 (Pa. Cmwlth., Feb. 14, 2022). City of Philadelphia (City) filed a complaint alleging that Appellant failed to report a firearm missing or stolen within 24 hours to the police department in violation of City code and seeking a $2,000 fine. Appellant sought a permanent injunction on the ground that this City code is preempted by §6120(a) of the Pennsylvania Uniform Firearms Act (UFA), 18 Pa.C.S. §6120(a) (limitation on the regulation of firearms and ammunition).

An injunction is given to enjoin a prosecution when the statute is flagrantly and patently unconstitutional, there has been bad faith or harassment in the enforcement of the statute, and it is possible that the governmental entity will continue with multiple prosecutions for the same offense. Here, the facts, procedural history, and legal background of this case establish that the City is attempting to enforce a law that it knew, or reasonably should have known, was unenforceable because regulation of a firearm is an activity "vested singularly and absolutely in the General Assembly of the Commonwealth."

The court found that where a municipal entity seeks to enforce an ordinance and/or law that is preempted by Section 6120(a) of the UFA, the balance of harms will always favor the individual: "When the Legislature declares certain conduct to be unlawful it is tantamount in law to calling [the conduct] injurious to the public … [an] injunction is reasonably suited to abate the offending activity by enjoining the enforcement of this unlawful and unenforceable ordinance; and the injunction will not adversely affect the public interest… ." As such, the court concluded that Appellant is entitled to a permanent injunction against enforcement of this City code.

Public Employment

Abington Heights School District v. Pennsylvania Labor Relations Board, 2022 WL 401191 (Pa. Cmwlth., Feb. 10, 2022).** Pursuant to an agreement between the parties (Agreement), Abington Heights School District (District) offered dual enrollment courses with a local college where high school students would take classes and receive credit for high school and postsecondary education. This program is offered pursuant to Act 46 of the School Code. The college courses are taught by faculty at the college, appear on the students' high school report card and count toward high school education requirements.

The District's bargaining unit (Unit) filed unfair labor practice allegations with the Pennsylvania Labor Relations Board (LRB), which concluded that the District violated Section 1201(a)(1),(5) of the Public Employe Relations Act (PERA) by unilaterally transferring the bargaining work of

instructing high school students to employees of the college without bargaining with the Unit.

On appeal to the Commonwealth Court of Pennsylvania, the court reversed the LRB, holding that: there was no violation of PERA because the District's decision to enter into the Agreement was an exercise of its "inherent managerial prerogative" to create and dictate its academic curriculum.

Moreover, the court found that "on the current record, it is almost impossible to gage the impact, if any, that the Agreement could have on the terms, hours or conditions of the … teachers' employment with the District…. [I]t is hard to see how a … decrease in the number of students [in a classroom is] … directly related to the terms and conditions of employment or … [is] a matter reserved for collective bargaining. Indeed, such a decrease in student attendance/enrollment could be accounted for in a variety of circumstances, implicating numerous factors that are beyond the control of the District or is school board as a decision-making body[.]"

Municipal and Tax Claims

Turns v. Dauphin County, 273 A.3d 66 (Pa. Cmwlth., March 22, 2022). In 1973, decedent purchased a tract of land in Dauphin County, Pennsylvania for $450 at a judicial sale. Decedent received a tax claim bureau deed. As such, she acquired no warranty of title for the parcel. The deed listed the prior owner as "unknown" and described the parcel only by its tax parcel number, without a metes and bounds description or other legal description. Until her death in 2014, Decedent paid real estate taxes on the parcel totaling $3,612.80. Appellant, who inherited the property, questioned the parcel's assessment. At this time, the tax office sent a letter explaining that the parcel didn't exist and would be removed from mapping and tax roll.

Consequently, Appellant filed a petition with the Dauphin County Court of Common Pleas seeking relief for unjust enrichment; an accounting of the total tax funds paid by decedent; requested that the funds be held in a constructive trust for the benefit of the decedent's estate, with interest, compounded over the 41 years that decedent paid taxes; and alleged that through the taxing authority's actions, violated the Uniformity Clause of the Pennsylvania Constitution (all taxes shall be uniform). The taxing authority filed preliminary objections alleging that the claims were barred by the doctrine of *caveat emptor* (let the buyer beware) and filed an answer asserting the affirmative defenses of laches, failure to mitigate damages and unclean hands. The trial court held that the conveyance to decedent by the taxing authority was void *ab initio* (void from the beginning) by reason of the parties' mutual mistake. The court declined to award compound interest; did not find unclean hands and rejected Appellant's claim of a violation of the Pennsylvania Constitution.

> ***The Assignment to the Purported Property of a tax parcel identification number and the appearance of the Purported Property on tax maps did not magically transmute the Purported Property into physical existence or somehow confer legal status upon the nonexistent Purported Property. If anything, these errors compound the fundamental mistake regarding the existence of the Purported Property.***
>
> ***- Turns v. Dauphin County***

In its decision on appeal, the Pennsylvania Commonwealth Court stated that it is undisputed that the parcel does not exist, therefore by definition, the parcel cannot lie within Dauphin County and the rule of *caveat emptor* does not apply. The court further held that because the parcel never existed, the sale to decedent was void *ab initio* (from the beginning). As such, "the [t]axing [a]uthorities had no right to collect either the purchase price or taxes on the nonexistent property." The court also held that the tax sale was void based on the related reason of mutual mistake, where a mutual mistake exists if, at the time a contract is executed, both parties are mistaken as to the existing facts. "There can be no more fundamental mistake in a land transfer than the actual nonexistence of the land purportedly transferred." However, the court held that there was no entitlement to compounded interest because no legal

ground exists to apply interest to a sovereign that *mistakenly* collects taxes not due.

Taxation and Finance

Lay v. County of Erie Tax Claim Bureau, 2022 WL 610120 (Pa. Cmwlth., Mar. 2, 2022).** Lay owned a primary residence (Property) in Millcreek Township. Lay experienced financial difficulties and she purposefully deferred payments. Her tax liabilities became delinquencies. The Property was posted for tax sale. Lay asserted that she never received personal service. However, prior to the sale, Lay states she became aware of the impending sale by way of second-hand information. As a result, Lay paid just under 25% of the Property's outstanding tax delinquency. A payment of 25% would have stayed the sale of the Property pursuant to Section 603 of the Real Estate Tax Sale Law (RETSL), 72 PS. §5860.603. The Property was thereafter sold at a tax sale.

Lay filed a petition to set aside the tax sale (Petition), which the trial court granted based on the Bureau's failure to personally serve Lay. On appeal Commonwealth Court agreed, noting that in all tax sale cases, a tax claim bureau has the burden of proving compliance with the statutory notice provisions of Section 602 (pertaining to three different notices to owners prior to a tax sale – publication, posting and mail) and section 601(a)(3) (personal service notice). The court found that an owner-occupant of a property subject to a tax sale must receive personal service of the notice, and this failure was not cured by Lay's actual knowledge of the sale or her status as a "serial and willing tax delinquent". Consequently, the court affirmed the trial court's granting of the petition to set aside the tax sale.

** Indicates that this case is UNREPORTED.
See 210 Pa. Code § 69.414

Legislative Updates:

Continued from page 1

HB 1213, PN 1273: This bill amends the Home Rule Charter and Optional Plans Law to allow a distressed municipality to form a government study commission directly and include a specific role for the Act 47 coordinator study and recommendation process; in addition it encourages the public's adoption of the charter by clarifying the power of a charter to contain taxpayer protection provisions. This bill passed the House unanimously and was re-referred to Senate Appropriations Committee after second consideration on June 14, 2022.

SB 477. PN 1783: Amends the Consolidated County Assessment Law to more precisely define changes to real property that could occur without authorizing the assessment office to adjust an assessment, and to increase the value of other improvements that may occur before the assessment office is required to be notified. The bill also requires forwarding of demolition permit information to the county assessment office, provides greater accountability for existing requirements that permit information be submitted to the assessment office, and authorizes counties to enact reporting ordinances. This bill was amended in House Local Government Committee to incorporate the language of HB 1877. The new language establishes the Municipal Boundary Change Act by consolidating the existing legal process for contesting a municipal boundary in court, providing statutory procedures for changes in boundaries between municipalities by agreement or referendum, adopting consistent information reporting standards and addressing practical and legal matters between impacted municipalities following a change. The bill has passed both chambers and is awaiting concurrence by Senate on the House amendment.