

IN THE COURT OF COMMON PLEAS OF POTTER COUNTY, PENNSYLVANIA
ORPHAN'S COURT DIVISION

THE BOROUGH OF COUDERSPORT,)
POTTER COUNTY, PENNSYLVANIA) NO: 53 of 2018
v.)
THE FRIENDS OF THE COUDERSPORT)
ARBORETUM INC. a Pennsylvania)
Corporation)

OPINION AND DECREE

The Borough of Coudersport seeks to sell certain property acquired by it in 1975, to a developer for expansion of an adjacent Sheetz Convenience Store. A group of concerned citizens, The Friends of the Coudersport Arboretum, Inc., oppose the sale contending it is prohibited by the Donated or Dedicated Property Act (DDPA) or by the common law "Public Trust Doctrine." Before us is a Petition for Declaratory Judgment filed by Borough seeking a determination that the DDPA is inapplicable or, if it is applicable, that the subject parcel is "no longer practicable or possible and has ceased to serve the public interest as a park or arboretum."

An analysis of the DDPA by our Supreme Court is found in the recent cases of In Re: Borough of Downingtown, 639 Pa. 673 (2017) and In Re: Erie Golf Course, 605 Pa. 484 (2010). After a thorough consideration of the pleadings and exhibits and a site view we find that the Borough has failed to establish by a preponderance of evidence that the property is no longer practicable or possible and has ceased to serve the public interest.

As noted by our Supreme Court in Downingtown, *Supra*, the DDPA incorporates the salient common law principles of the Public Trust Doctrine as articulated in prior case law. The statute provides that all lands or buildings "dedicated to the public use or offered for dedication to such use" shall be held in trust for the benefit of the public. Property is

I. MICHAEL WILLIAMSON
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“dedicated” to public use by a municipality whenever the municipality has both committed the property to public use and the public has accepted it for such use.” Downingtown, Supra.

Borough suggests the subject parcel was never “dedicated” to public use because no affirmative action was ever taken by Borough Council with respect to any “dedication”. Friends, while acknowledging there was no formal “dedication,” contends Borough has by implication or acquiescence consented to a dedication and that clearly the public has accepted such dedication.

The subject premises is an attractive fully developed park which has been clearly used and enjoyed by the general public over the past fifteen years or more. While the parcel proposed to be conveyed does not include a large war memorial and an old railroad passenger car, it does contain an old caboose, light fixtures, attractive trees, pathways and shrubbery. While no specific figures were presented, our observation is that the parcel proposed to be conveyed is approximately forty percent (40%) of the total area which one would consider to be the “park.”

While minutes of Borough Council meetings contain numerous references to the park, the evidence is somewhat vague as to the extent to which the Borough has expended public funds to maintain the park. Our impression is that the Friends and others have performed much of the work in creating the beautiful facility. Evidence has been presented that several public ceremonies have been held which might be considered a “dedication ceremony” with respect to the park.

Evidence suggests that in 2004, council was approached by the Friends requesting a formal dedication. The response of council was that the issue would be discussed with the

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solicitor and a response given. The parties agree no affirmative response was ever given. On the other hand, considering the activities in the park and because the park is located immediately adjacent to the Borough building, we have no difficulty finding that there was a de facto dedication of the park by Borough, that Borough committed the property to the public use and that the public has accepted it and continues to use it.

Notwithstanding that the DDPA retains the common law prohibition against conveyance of public lands to an entity or person for private use, the statute modifies that common law principle to permit a municipality to seek judicial approval for a fundamental change in purpose. Specifically the statute states that when the continuation of the original use of the particular property held in trust as a public facility is no longer practicable or possible and has ceased to serve the public interest, the Borough may apply to the Orphans' Court for appropriate relief including the substitution of other lands or the use of public funds for a different public purpose. Here, Borough suggests that a comparable parcel exists across a public street and that Borough will, at its expense, transfer the existing park to the new location.

As we understand the evidence, the only argument Borough makes that the use of the existing park is no longer practicable or possible, is that when the caboose is relocated it will no longer provide a buffer between the park and a public street, allowing children to run onto the street from the park. While such argument is speculative and weak at best, it should be noted that if the proposed project is not approved there would be no reason for the local Chamber of Commerce, the owner of the caboose, to sell the caboose to developer and have it moved to a new location. In any event, we totally reject the

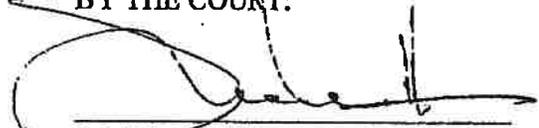
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contention of Borough that the use of the park is no longer practicable or possible and has ceased to serve the public interest.

NOW this 19th day of February, 2019, for the reasons set forth herein, the Petition for Declaratory Judgment filed by the Borough of Coudersport is DISMISSED and the requested relief DENIED.

BY THE COURT:



J. Michael Williamson, Senior Judge

cc: Daniel Glassmire, Esquire
Michael R. Plummer, Esquire
Samuel Stretton, Esquire

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