

**[J-130-2006]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

MIDDLETOWN TOWNSHIP	:	No. 64 MAP 2006
	:	
	:	
v.	:	Appeal from the Order of the
	:	Commonwealth Court entered September
THE LANDS OF JOSEF SEEGAR	:	15, 2005, at No. 2152 CD 2004, which
STONE, EXECUTOR OF THE ESTATE	:	affirmed the Order of the Court of
OF SARA SEEGAR STONE, DECEASED,	:	Common Pleas of Bucks County entered
JOSEF SEEGAR STONE AND	:	September 28, 2004, at Nos. 2000-6119-
FRANCINE LIDA STONE, EXECUTORS	:	25-6 and TPM22-005-007.
OF THE ESTATE OF EZRA C. STONE,	:	
A/K/A EZRA STONE, DECEASED, AND	:	
JOSEF S. STONE AND FRANCINE LIDA	:	882 A.2d 1066 (Pa. Cmwlth. 2005)
STONE	:	
	:	
APPEAL OF: JOSEF SEEGAR STONE	:	ARGUED: October 17, 2006

**CONCURRING OPINION**

**MR. JUSTICE BAER**

**DECIDED: December 27, 2007**

I concur with the Majority that the Commonwealth Court erred in its determination that Middletown Township had authority to take the lands of Joseph Stone by eminent domain. Rather than premising my conclusion on the factual underpinnings of the decisions reached by the courts below, my determination derives from a conflict between the Second Class Township Code,<sup>1</sup> which grants townships the power to take lands for recreational purposes, and the Open Space Lands Act,<sup>2</sup> which prohibits townships' acquisition of land through the exercise of eminent domain. After construing the relevant

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<sup>1</sup> Act of May 1, 1933, P.L. 103, No. 69, as amended, 53 P.S. § 67201

<sup>2</sup> Act of Jan. 19, 1968, P.L. (1967) 992, as amended, 32 P.S. §§ 5001, *et seq.*

provisions *in pari materia* and cognizant of the requirement that statutes granting the power of eminent domain must be construed strictly, see 1 Pa.C.S. § 1928(b)(4), I conclude that a township's power to acquire land for recreational purposes under the Second Class Township Code applies only to takings outside the ambit of the Open Space Lands Act. I therefore do not believe we need to review the factual conclusions of the courts below.

Unlike the Majority, I conclude that the relevant provisions conflict. I believe that the statutes must be read *in pari materia* because they “relate to the same persons or things or to the same class of persons or things.” 1 Pa.C.S. § 1932. The Open Space Lands Act and § 2201 of the Second Class Township Code both authorize governmental units to acquire property. The Second Class Township Code, simply and unambiguously provides, “The board of supervisors may ... acquire lands or buildings by lease, gift, devise, purchase or by the exercise of the right of eminent domain for recreational purposes and construct and equip facilities for recreational purposes.” 53 P.S. § 67201. The Open Space Lands Act is a more complex statute applicable to many types of governmental units; however, as it is relevant to this case, it empowers local governmental units to “acquire any interest in real property situate within its boundaries by purchase, contract, condemnation, gift, devise or otherwise.” 32 P.S. § 5005(c)(1). The General Assembly dictated a number of purposes for which governmental units may acquire property under the Open Space Lands Act, many of which are consistent with recreational purposes. 32 P.S. § 5005 (providing for the acquisition of property for the protection of natural or scenic resources, the protection of scenic areas for public visual enjoyment from public rights of way, and the preservation of sites of historic, geologic or botanic interest). The Open Space Lands Act however forbids local governmental units, such as second class townships, from “exercising the power of eminent domain in carrying out the provisions of this Act.” 32 P.S. § 5008.

Obviously, the statutes do not apply to the same class of persons or things in all situations. For example, the Open Space Lands Act will have little relevance to the acquisition of property for the construction of basketball and tennis courts or swimming pools, which would clearly fall under the grant of authority encompassed by the Second Class Township Code. However, there are innumerable situations where open space and recreational purposes overlap. Clearly, many large parks would serve both recreational purposes under the Second Class Township Code by way of trails, lakes, and picnic areas, and yet serve the purposes of the Open Space Lands Act through the preservation of forests, watersheds, and natural and scenic resources. Indeed, the Township's own Declaration of Taking exemplifies the overlap between the statutes: "The purpose of the condemnation is to acquire a fee simple interest to the [Farm] for recreation and open space purposes." Declaration of Taking, R.R. at 24a. Accordingly, I conclude that the two statutes are *in pari materia*, at least as applied to second class townships' exercise of the right of eminent domain, and thus must be construed as one cohesive statute, giving effect to all the provisions. 1 Pa.C.S. §§ 1921(a), 1932.

The parties have presented conflicting arguments regarding which of the two statutes controls the situation at bar. Clearly, both statutes cannot apply to this situation because the application would result in contradictory outcomes. This Court simply cannot conclude that the law both authorizes and prohibits the exercise of eminent domain in this case. 1 Pa.C.S. § 1922(1) ("[T]he General Assembly does not intend a result that is absurd, impossible of execution or unreasonable."). Accordingly, we must harmonize these provisions in a way that honors the legislative intent of both statutes.

Considering the statutes *in pari materia*, I conclude that the Second Class Township Code's provision for the use of eminent domain to acquire land for recreational purposes only applies where the Open Space Lands Act's prohibition is inapplicable. Unlike the Majority's broad interpretation of the Second Class Township Code as encompassing "any

legitimate recreational purpose,” Maj. Slip Op. at 2, I conclude that the rules of statutory construction require a narrow interpretation of the term “recreational purposes” because it is a statute granting the power of eminent domain, which must be construed narrowly under 1 Pa.C.S. § 1928(b)(4). Accordingly, “recreational purposes” under the Code’s grant of eminent domain authority must be defined in opposition to the situations where the legislature has expressly prohibited a township’s exercise of eminent domain under the Open Space Lands Act. Thus, “recreational purposes” under the Second Class Township Code are the subset of generic recreational purposes that do not overlap with open space purposes.

As the Township in this case expressed its desire to take the property for open space purposes, as well as recreational purposes, I would hold that the land falls outside the purview of the Second Class Township Code’s grant of the power of eminent domain for recreational purposes. Accordingly, I would conclude that the lower courts erred in applying the Second Class Township Code, and that the Township did not have legal authority to take the Farm.