

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

COVER SHEET - NOTICE OF FILING OF MOTION OR PETITION UNDER
LOCAL RULES OF CIVIL PROCEDURE

CASE CAPTION:
MIDDLETOWN COALITION FOR COMMUNITY SAFETY
TOWNSHIP OF MIDDLETOWN, PENNSYLVANIA

CIVIL CASE NO.

NATURE OF MATTER FILED: (please check one)

- Petition Pursuant to Rule 206.1 Response to Petition Motion for Judgment on the Pleadings Pursuant to Rule 1034(a)
 Motion Pursuant to Rule 208.1 Response to Motion Summary Judgment Pursuant to Rule 1035.2
 Family Law Petition/Motion Pursuant to Rule 206.8

**FILING PARTY IS RESPONSIBLE FOR SERVICE OF THE RULE RETURNABLE
DATE OR HEARING DATE UPON ALL PARTIES**

A motion or petition was filed in the above captioned matter on the 26th day of September, 2016, which:

Requires you, Respondent, to file an Answer within twenty (20) days of the above date to this notice, or risk the entry of an Order in favor of the Petitioner. Answers must be filed and time stamped by the Office of Judicial Support by 4:30 PM on the following date _____, _____.

Requires all parties, to appear at a hearing/conference on the 26th day of September, 2016, at _____ in Courtroom _____, Delaware County Courthouse, Media, Pennsylvania. At this hearing/conference you must be prepared to present all testimony and/or argument, and must ensure that your witnesses will be present.

Was timely answered, thus requiring the scheduling of the following hearing in the above captioned matter on: _____, _____ at 10:00 AM in Courtroom _____.

At this hearing, all parties must be prepared to present all testimony and/or argument and **must ensure that their witnesses will be present.**

Qualifies as an Uncontested Motion or Petition, and as such requires neither an answer from the Respondent nor the scheduling of a hearing in this matter.

Has been assigned to Judge _____.

FOR OFFICE USE ONLY

Mailing date: _____

Processed by: _____

MIDDLETOWN COALITION FOR COMMUNITY SAFETY, et al., Plaintiffs	:	COURT OF COMMON PLEAS
	:	DELAWARE COUNTY, PENNSYLVANIA
	:	CIVIL ACTION - EQUITY
	:	NO.
v.	:	
TOWNSHIP OF MIDDLETOWN, PENNSYLVANIA, et al., Defendants	:	

DECREE

AND NOW, this day of September, 2016, the Court, upon consideration of plaintiffs' Petition for Declaratory and Injunctive Relief, defendants' responses, and after hearing thereon, and finding that plaintiffs' claims are meritorious, now enters the following Order:

1. The Court declares that Middletown Township Council's failure to consider independent evidence of the safety of the Mariner East 2 pipeline as it is proposed to be built in Middletown Township violates the constitutional rights of Township residents and businesses and further violates provisions of the Township Zoning Ordinance.

2. The Court directs the Council to delay its vote on the proposed easements for a period of at least ninety (90) days and during that period to obtain an appropriate independent safety evaluation with respect to the risks of the project and whether or not an appropriate emergency response plan can be developed in such a densely populated area.

3. The Court will retain jurisdiction of this matter and may list the matter for further hearing upon application of plaintiffs or defendants.

4. Plaintiffs shall post a bond with the Court in the amount of \$ _____ as a condition of this Decree.

BY THE COURT:

J.

PINNOLA & BOMSTEIN, ATTORNEYS AT LAW
Michael S. Bomstein, Esq.
Attorney I.D. No. 21328
Email: mbomstein@gmail.com
100 South Broad Street, Suite 2126
Philadelphia, PA 19107
(215) 592-8383

Attorney for Plaintiffs

MIDDLETOWN COALITION FOR : COURT OF COMMON PLEAS
COMMUNITY SAFETY :
c/o Bibiana Dussling : DELAWARE COUNTY, PENNSYLVANIA
76 War Admiral Lane :
Media, PA 19063 : CIVIL ACTION - EQUITY

and : NO.

MARGARET M. deMARTELEIRE :
225 South Pennell Road :
Media, PA 19063, :
Plaintiffs :

v. :

TOWNSHIP OF MIDDLETOWN, :
PENNSYLVANIA :
27 North Pennell Road. :
Lima, PA 19037 :

and :

TOWNSHIP OF MIDDLETOWN COUNCIL :
27 North Pennell Road :
Lima, PA 19037, :
Defendants :

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

TO THE HONORABLE JUDGES OF THE SAID COURT:

Plaintiffs, Middletown Coalition for Community Safety (“MCCS”) and Margaret M. deMarteleire (“deMarteleire”), by their attorney, Michael S. Bomstein, Esquire, hereby move for

declaratory and injunctive relief in their favor and against defendants, and in support hereof aver as follows.

The Parties

1. Plaintiff MCCS is a neighborhood association opposed to construction of the proposed Sunoco Logistics Mariner East pipelines through Middletown Township, Pennsylvania. MCCS has a mailing address care of Bibianna Dussling, 76 War Admiral Lane, Media, PA 19063.

2. Plaintiff Margaret M. deMarteleire is a Middletown resident who owns and resides at 225 South Pennell Road, Media, PA 19063. Plaintiff has a 3 year old granddaughter who lives in the Riddlewood section of the Township who is expected to attend Glenwood Elementary School in Middletown.

3. Defendant Township of Middletown (“the Township”) is a political subdivision of the Commonwealth and is, upon belief, a duly constituted second class township with an address at 27 North Pennell Road, Lima, PA 19037. The Township Manager currently is Bruce Clark.

4. Defendant Township of Middletown Council (“Council”) is a duly elected governing body for the Township with an address at 27 North Pennell Road, Lima, PA 19037. Council chair currently is Mark Kirchgasser. At all pertinent times, Council has acted with the authority of the Township and its actions and lack of actions have been and are binding upon the Township.

Jurisdiction and Venue

4. This is an action for declaratory and injunctive relief against the Township.

5. This Honorable Court has plenary original jurisdiction over the instant dispute, having been conferred by Article 5, §5(b) of the Pennsylvania Constitution and by the state legislature in the jurisdictional statute, 42 Pa.C.S.A. §931.

6. The case is governed further by Pa.R.C.P. 1531 regarding injunctive relief.

7. Venue is proper in this Court pursuant to Pa.R.C.P. 2103(b), as the defendant subdivision is located in Delaware County.

8. This action is also governed by the Pennsylvania Declaratory Judgments Act, 42 Pa.C.S. §7531, *et seq.*

Factual Averments

9. Sunoco Pipeline L.P. (“SPLP”) is an interstate carrier of crude oil, gasoline, and natural gas liquids such as propane, butane, and ethane. In 2012, SPLP received approval from the Federal Energy Regulatory Commission for a new pipeline project, referred to as the Mariner East 1 pipeline (“Mariner 1”), which would repurpose an existing, former petroleum pipeline to transport natural gas liquids (“NGL’s”) from the Marcellus Shale Formation of Western Pennsylvania to a terminal situated in Marcus Hook, Pennsylvania and Claymont, Delaware for the purpose of shipping to markets outside the Commonwealth. In 2014, SPLP’s new Mariner East 2 pipeline project (“Mariner 2”) also received federal approval to install a new pipeline to perform the same function as Mariner 1 for the purpose of increasing NGL transport capacity.

10. In seeking federal approval, SPLP represented that the projects were designed to relieve an oversupply of NGL’s in the Commonwealth. After obtaining federal approval for Mariner 2, SPLP was unable to obtain the permission of property owners throughout the state to run pipelines through their yards, so it began to take properties under Pennsylvania’s eminent domain laws. Dozens of eminent domain proceedings have already begun in Delaware County and include properties owned both by individuals and businesses situate in the Township.

11. Upon information and belief, both Council and the Rosetree Media School District were approached by SPLP some time in 2014 to discuss a plan for the Township and the School

District to grant easements across their lands for construction of Mariner East 2. Negotiations continued among the parties into 2016.

12. Council, at some time during discussions with SPLP, directed its solicitor to negotiate the granting of seven easements across Township lands, including Glenwood Elementary School grounds and children's recreational areas, including Sleighton Park.

13. Upon information and belief, Council in January, 2016 notified the public that SPLP would be holding an information presentation regarding the proposed easements. SPLP did not conduct such a presentation the same month.

14. Council later notified the public in or around August, 2016 that an ordinance to approve the easements would be put up for a vote in a two-part process: first, a vote to introduce the ordinance and later a vote to approve the ordinance. Council completed part 1 of the process on September 12th, unanimously voting to introduce the ordinance. Part 2, voting to approve the ordinance, is scheduled to take place Monday evening, September 26th.

15. Plaintiffs and others have signed petitions to Council asking for a delay in the vote on safety grounds. Plaintiffs and others have appeared at Council meetings to explain the bases for their concerns and seek a delay in the approval vote to allow the safety of the project to be assessed and for an appropriate emergency protocol to be put in place.

16. Below, plaintiffs set forth their grounds for concern and contend that Council has failed in its statutory and constitutional obligations to provide for public safety and has acted in a way that could lead to unspeakable, catastrophic injuries to our population and to our businesses in addition to irreversible damage to agricultural and personal land and water supply.

17. Middletown Township is governed by a Home Rule Charter ("the Charter").

18. §102 of the Charter provides that “[t] Township shall have and may exercise any powers and perform any functions not specifically denied by or inconsistent with the Constitution of Pennsylvania, the Laws of the Commonwealth of Pennsylvania, or this Charter.”

19. §104 of the Charter states that “[t]he powers of the Township shall be liberally construed in favor of the Township in order to provide the Township with the greatest possible power of self-government.”

20. §212(H) of the Charter permits Council to adopt ordinances to convey real property.

21. §212(I) of the Charter permits Council to “establish, alter, or amend any zoning ordinance, subdivision procedure, land development, land use, or building regulation.”

22. “[T]he police power of a state embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals or the public safety.” Best v. Zoning Bd. of Adjustment of City of Pittsburgh, 393 Pa. 1061, 141 A. 2d 606, 611 (1958).

23. While the power of the Township to provide for the safety of its residents and its businesses is not set forth in the Charter, the power has not been denied by the Constitution of Pennsylvania or the Laws of the Commonwealth of Pennsylvania.

24. Plaintiffs believe and aver that the Township not only has the right but has the legal duty to provide for the safety of its inhabitants.

25. Plaintiffs believe and aver that SPLP has been the sole source of information for Council in its decision to approve SPLP’s easements.

26. One of the easements proposed to be granted to SPLP is a maintenance easement to enable the company to access Mariner 2.

27. SPLP already has an easement behind the Glenwood Elementary School from a private property owner.

28. Plaintiffs believe and aver that SPLP informed Council that the Mariner 2 pipeline would be built 4222 feet behind the school.

29. In fact, data from SPLP made available by the Department of Environmental Protection and field-verified by plaintiffs confirms that the easement for the pipeline is approximately 800 feet from the center of the school and 650 feet from the playground behind the school. See the aerial site map for Mariner 2, also known as Pennsylvania Pipeline Project, at Sheet 11 of 23, attached hereto as Exhibit "A". Glenwood Elementary is in the upper right corner of the map.

30. Plaintiffs believe and aver that the difference between an explosion 4222 feet away and one that is only 650 feet away is significant from the standpoint of risk to life and property.

31. SPLP has informed the Council that it has an excellent safety record when in fact publicly available information shows that with an average of two leaks per month on its pipelines it has *the worst safety record in the industry out of nearly 2000 pipeline operators*. (Copy of PHMSA data sheet from <https://primis.phmsa.dot.gov/comm/reports/operator/Operatorlist.html#> attached as Exhibit "B" hereto.)

32. SPLP has falsely informed Council that it has an emergency evacuation plan consistent with public safety when in fact its plan does not provide a reasonable protocol consistent with the potential blast wave from an odorless, tasteless NGL pipeline that packs so much energy at high pressure that there is simply no time for significant evacuation to prevent catastrophic loss of life.

33. In short, the damage to life and property can and will occur without any notice that they are about to occur. For a pipeline as close as 650-800 feet to an elementary school, there is no evacuation plan that will put individuals on notice that a catastrophic event is imminent. Even with such notice, the pipeline's close proximity does not allow reasonable time and opportunity for individuals to evacuate to safe distances, defined by SPLP as one half mile, or 2640 feet.

34. SPLP's supposed evacuation plan relies upon self-detection of the leaking odorless and tasteless gas, self-identification of the location of the leak, and determination of wind direction. The plan also requires that individuals be able to move on foot, up-wind to the safe evacuation distance of 2640 feet from the leak.

35. Emergency protocol further dictates that motor vehicles cannot be used in the presence of a leak. Emergency personnel are directed not to use a door bell or even door knocker to prevent a spark. Once gas has ignited, emergency personnel are directed to allow the fire to burn to completion. Putting out a gas fire can result in reignition since the gas is still present in the air, potentially multiplying the number of explosions. A copy of the plan is attached hereto and made a part hereof as Exhibit "C."

36. SPLP has falsely informed Council that it has an emergency evacuation plan consistent with public safety when in fact its plan does not account for the fact that the liquids and gas that escape from an NGL leak or rupture have no odor, are invisible to the human eye, are flammable with the smallest heat or electric source, and that the blast wave from such an explosion packs so much energy that catastrophic loss of life and property are inevitable.

37. At the time of filing of this Complaint, SPLP has been advised by the state Department of Environmental Protection ("DEP") that the company's applications for permits related to wetlands and streams are substantially deficient. Plaintiffs have attached as Exhibit

“D” one such deficiency letter for a Delaware County SPLP application. In that letter at page 20, DEP gives SPLP until November 7, 2016 to correct its permit application deficiencies, but recognizes that that deadline may be “extended by DEP.”

38. Even if the local easements were granted immediately, there is no reason to believe that SPLP will be able to obtain DEP approval to build the pipelines for many, many months. A delay in granting easements, therefore, will not cause SPLP harm. *See also, McCurdy v. Mountain Valley Pipeline, LLC, C.A. No. 1:15-03833, 2015 WL 4497407 (S.D.W.V. July 23, 2015) (“[C]ommon sense ... allows the court to recognize that a project of this magnitude cannot adhere to a rigid schedule and does not hinge on plaintiffs’ property alone. It would be improper for this court to attribute any schedule delays, incurred for any reason, solely to defendant’s inability to survey plaintiffs’ property.”).*

39. Council has been asked repeatedly to consider pipeline safety information from sources other than SPLP. By way of petition, more than 1000 Middletown residents have asked for a delay so that Council can obtain information from non-Sunoco sources. Council, however, has refused.

40. Plaintiffs have attached hereto as Exhibits “E,” “F,” and “G,” the Verified Statements of three Middletown residents: Bibianna Dussling, Seth Kovnat, and Margaret M. deMarteleire.

-- Dussling is a former naval officer and helicopter pilot. One of her duties was as Aviation Safety Officer responsible for base emergency operations and management plans. Her statement expresses alarm at the impossibility of creating an emergency response plan for Mariner 2.

-- Kovnat is Chief Structural Engineer for an aerospace contractor. He led the tubing analysis for NASA’s Orion space exploration program has expertise involving pipes and

combustible liquids and gases. Kovnat describes the risk of catastrophe from Mariner 2 both from an accident and from inability to create an emergency response plan.

-- DeMarteleire is a Middletown resident whose home is 190 feet from the proposed pipeline. Her statement describes her concern for grandchildren who regularly play in her backyard and concern for relying upon Sunoco's statements when so many of them have been false and misleading.

41. §§701-706 of the Charter provide for a procedure whereby a petition and affidavit can be used to force an ordinance to be suspended pending a referendum. The Charter, however, is explicit that the petition and affidavit are for use *after* the ordinance passes.

42. Plaintiffs believe and aver that, should Council approve the ordinance Monday evening the 26th, the 7 easement documents will be signed *post haste* and the Township will be bound by a contract with SPLP that cannot be undone by any subsequent referendum.

Legal Averments

Count I

43. ¶¶1-42 above are hereby incorporated by reference thereto.

44. The Township has a legal duty to provide for the safety of the residents and businesses of Middletown.

45. Under the Charter, the Township even has the power to ban completely the construction of NGL pipelines within the Township.

46. Plaintiffs believe and aver that Council has made a decision to ignore any information regarding NGL pipeline safety that is inconsistent with what SPLP has given to Council.

47. While Council has the authority to consider such information and then reach its own conclusion, it does not and cannot have the right to ignore such information where the result of its refusal is to place life and property in serious jeopardy.

48. Attached hereto as Exhibit “H” is a risk assessment study commissioned by MCCA relating to the effect of an NGL pipeline leak or rupture behind the Glenwood Elementary School. The study strongly suggests that a leak or rupture in Mariner 2 from a distance of only 860 feet behind the school will be catastrophic.

49. The Township has the ability to fund appropriate studies and to pay appropriate experts to advise on the risks posed by Mariner 2.

50. The Pennsylvania Constitution provides in Article 1, §1 that “[a]ll men... have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, or acquiring, possession and protecting property...”

51. Plaintiffs believe and aver that the Mariner 2 pipeline project poses a significant threat to their lives and to their property.

52. Council is the only entity in a position to safeguard those rights and its deliberate refusal to do so threatens plaintiffs as well as other residents and businesses in Middletown.

53. Council’s willful failure to consider independent safety information relative to Mariner 2 constitutes a violation of plaintiffs’ rights under Article 1, §1 of the Pennsylvania Constitution.

54. Plaintiffs also believe and aver that Council’s conduct would violate plaintiffs’ rights as guaranteed by the Fifth Amendment to the United States Constitution as incorporated via the Fourteenth Amendment.

55. The Declaratory Judgments Act (“the Act”) provides that, “[a]ny person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a ... municipal ordinance... may have determined any question of construction or validity arising under... the ordinance... and obtain a declaration of rights, status, or other legal relations thereunder.” (Emphasis added)

56. §7541 of the Act provides in pertinent part that “[t]his subchapter is declared to be remedial. Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.”

57. The passage of the easement ordinance affects the rights of all Middletown residences and businesses. Plaintiffs, therefore, will be affected adversely should the proposed ordinance be enacted.

58. The Act expressly permits injunctive relief to be granted ancillary to declaratory relief. 42 Pa.C.S. §7541.

59. Plaintiffs believe and aver that an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages. Greater injury would result from refusing an injunction than from granting it; issuance of an injunction will not substantially harm other interested parties in the proceedings. A preliminary injunction will properly restore the parties to their status as it existed immediately prior to the possible passage of the Ordinance. The conduct that plaintiffs seek to restrain is actionable, and plaintiffs’ right to relief is clear; plaintiffs are likely to prevail on the merits. The injunction plaintiffs seek is reasonably suited to abate the offending activity. Finally, a preliminary injunction will not adversely affect the public interest.

WHEREFORE, plaintiffs pray this Honorable Court enter a decree (a) declaring that Council's refusal to consider independent evidence bearing on the safety of Mariner 2 violates plaintiffs' right to life and property; (b) ordering Council to obtain and evaluate independent evidence bearing on the safety of Mariner 2 with respect to its plan in the Township; (3) directing Council to delay for 90 days any decision on whether or not to grant SPLP the proposed easements; and (4) granting such other and further relief as may be appropriate.

Count II

60. ¶¶1-59 above are hereby incorporated by reference thereto as though set forth more fully at length below.

61. The Township has enacted zoning ordinances bearing on the protection of lives and property in Middletown. Specifically, the Middletown Township Zoning Ordinance of 1986, as amended ("the Zoning Ordinance") provides in pertinent part that "no lot or premises may be used for any trade, industry or business that is hazardous to the public whether by fire, explosion or otherwise." §275-198.

62. The Ordinance also provides that "No activities which require the moving of earth or the filling or excavation of an area shall occur without a permit issued by the Township Engineer." §275-198.

63. The Mariner East pipelines both require earth moving, filling, and excavation, and are "hazardous to the public ... by fire, explosion or otherwise."

64. The Ordinance provides in pertinent part that structures may not be erected without complying with the Ordinance. §275-3.

65. The Ordinance further states that it is designed to protect public health and safety and promote emergency management preparedness and operations. §275-4.

66. The Ordinance also is designed for the preservation of usable and functional open space areas.

67. Sleighton Park is a usable and functional open space area recently developed for recreation at considerable cost to the Township.

68. Sleighton Park and the children who play there will be threatened by the operation of Mariner 2.

69. The SPLP emergency preparedness plan is hollow and a danger to the Township because it causes residents and business owners to believe that there is a safe evacuation plan when there is none in close proximity to high-pressure, high-volume NGL pipelines such as the Mariner 2 pipelines.

70. Council's refusal to obtain and consider independent safety information is a clear violation of its duties under the Ordinance.

71. Plaintiffs are entitled to (a) declaratory relief under the Act to determine whether or not Council's proposed Ordinance violates the Zoning Ordinance, and (b) injunctive relief directing counsel to delay its decision and to obtain independent evidence as to the safety of Mariner 2 with respect to its plan in the Township.

WHEREFORE, plaintiffs prays this Honorable Court enter a decree (a) declaring that Council's refusal to consider independent evidence bearing on the safety of Mariner 2 violates the Zoning Ordinance; (b) ordering Council to obtain and evaluate independent evidence bearing on the safety of Mariner 2 with respect to its plan in the Township; (3) directing Council to delay

for 90 days any decision on whether or not to grant SPLP the proposed easements; and (4) granting such other and further relief as may be appropriate.

PINNOLA & BOMSTEIN



Michael S. Bomstein, Esq.

Attorney for Plaintiffs

Dated: September 25, 2016

VERIFICATION

I, Bibianna Dussling, hereby verify that I am a member of plaintiff Middletown Coalition for Community Safety in the within action; that I am familiar with the matters set forth in the foregoing Complaint and Motion and that the averments set forth therein are true and correct to the best of my knowledge. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

/s/ Bibianna Dussling
Bibianna Dussling

Dated: September 25, 2016

VERIFICATION

I, Michael S. Bomstein, hereby verify that I am counsel for plaintiff Margaret M. deMarteleire in the within action; that she is unable to execute this Verification at this time; and that the statements made in the foregoing Complaint and Motion are true and correct to the best of my knowledge. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.


Michael S. Bomstein, Esq.

Dated: September 25, 2016