

IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY,
PENNSYLVANIA
CIVIL DIVISION – LAW

BRUCE PETRIE and GINGER PETRIE,
ANDREW G. KRASNANSKY and
TINA-LOUISE KRASNANSKY, ROBERT
DUANE BLASKO and ELIZABETH A.
BLASKO, and ROBERT McKELLIN and
CYNTHIA McKELLIN,

Plaintiffs

v.

LOWER SAUCON TOWNSHIP,
BETHLEHEM LANDFILL COMPANY,
& IESI PA BETHLEHEM LANDFILL
CORPORATION,

Defendants

and

ST. LUKE’S HOSPITAL – ANDERSON
CAMPUS, BETHLEHEM TOWNSHIP and
DELAWARE AND LEHIGH NATIONAL
HERITAGE CORRIDOR, INC.,

Intervenors

NO. C-48-CV-2023-6089

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CIVIL DIVISION
NORTHAMPTON COUNTY, PA

ORDER AND REASONS

AND NOW, this 16th day of April, 2025, upon consideration of Preliminary Objections by Defendant, Bethlehem Landfill Company (“BLC”), to the Amended Complaint filed by Plaintiffs and Intervenors, it is hereby **ORDERED** and **DECREED** as follows:

1. BLC’s Preliminary Objection pursuant to Pa.R.C.P. 1028(a)(1) and 1028(a)(7) is **GRANTED** in part and subsection (a) of the wherefore clause of Count III of the Amended Complaint is stricken. The motion to dismiss the remainder of the relief requested in Count III and Count IV of the Amended Complaint is **DENIED**.

2. BLC's Preliminary Objection pursuant to Pa.R.C.P. 1028(a)(6) is **DENIED** as moot.
3. BLC's Preliminary Objection in the nature of a demurrer pursuant to Pa.R.C.P. 1028(a)(4) and 1028(a)(5), asserting a lack standing and/or capacity to sue, is **DENIED**.
4. BLC's Preliminary Objection in the nature of a demurrer pursuant to Pa.R.C.P. 1028(a)(5), asserting a lack standing and/or capacity to sue, is **DENIED**.
5. BLC's Preliminary Objection in the nature of a demurrer pursuant to Pa.R.C.P. 1028(a)(4), asserting legal insufficiency of the Amended Complaint is **DENIED**.
6. BLC's Preliminary Objection in the nature of a motion to dismiss for factual insufficiency pursuant to Pa.R.C.P 1019(a), 1028(a)(2), and 1028(a)(3) is **DENIED**.

STATEMENT OF REASONS

1. This matter was assigned to the Honorable Abraham P. Kassis on the March 18, 2025 argument list.
2. Plaintiffs, Bruce Petrie and Ginger Petrie, Andrew Krasnansky and Tina-Louise Krasnansky, Robert Duane Blasko and Elizabeth A. Blasko, and Robert McKellin and Cynthia McKellin, and Intervenors, St. Luke's Hospital – Anderson Campus, Delaware and Lehigh National Heritage Corridor, Inc., and Bethlehem Township,¹ filed an Amended Complaint on January 18, 2024, asserting causes of action for declaratory judgment, equitable relief, and injunction against Defendants, Lower Saucon Township and Bethlehem Landfill Company. This matter arises out Lower Saucon Township's rescission of scenic and conservation easements and

¹ Intervention by St. Luke's Hospital – Anderson Campus, Delaware and Lehigh National Heritage Corridor, Inc., and Bethlehem Township was granted by Order of Court dated January 5, 2024, following stipulation by the parties.

woodland easements encumbering property now owned by Bethlehem Landfill Company.

3. Defendant, Bethlehem Landfill Company (hereinafter “BLC” or Landfill) filed Preliminary Objections to the Amended Complaint on February 23, 2024, and a brief in support thereof.² Plaintiffs and Intervenors filed a response to the Preliminary Objections on March 13, 2024.³ Following hearings held on August 15, 2024, September 13, 2024, and November 7, 2024 to create a factual record as to issues of standing, BLC filed a supplemental brief on February 18, 2025. On March 13, 2025, separate briefs were filed on behalf of Plaintiffs, Intervenor Bethlehem Township, and Intervenors, St. Luke’s Hospital – Anderson Campus (hereinafter “SLH”) and Delaware and Lehigh National Heritage Corridor, Inc. (hereinafter “D&L”). BLC filed reply briefs on March 18, 2025.

4. BLC’s first Preliminary Objection asserts that Counts III and IV of the Amended Complaint should be dismissed for lack of subject matter jurisdiction and failure to exhaust statutory remedies. Specifically, BLC asserts that Count III of the Amended Complaint, which requests the Court to order Lower Saucon Township to rescind Zoning Ordinance 2023-05, reestablish the protections of the Conservation and Woodland Easements, and enjoin expansion of landfill activities, should be stricken as the instant action is not the proper avenue for challenging a zoning ordinance.

5. With regard to the request to rescind the zoning ordinance as contained in Count III, we agree that Plaintiffs and Intervenors have an adequate statutory remedy to challenge the

² Defendant, Lower Saucon Township, has not filed a responsive pleading to the Amended Complaint.

³ Also on March 13, 2024, Plaintiffs and Intervenors had filed Preliminary Objections to BLC’s Preliminary Objections to the Amended Complaint. Following stipulation between the parties dated June 7, 2024, Plaintiffs’ and Intervenors’ Preliminary Objections were withdrawn as moot. The Stipulation dated June 7, 2024 further resolved a Petition to Intervene as Defendant, filed by BLC on March 15, 2024, with regard to Count II and Count III of the Amended Complaint.

ordinance under the Pennsylvania Municipalities Planning Code. We note that such challenges are currently pending at docket numbers C-48-CV-2023-09455 (substantive challenge to zoning ordinance); C-48-CV-2023-07174 (procedural challenge to zoning ordinance); C-48-CV-2024-00049 (appeal of preliminary land development plan by residents) and C-48-CV-2024-00093 (appeal of preliminary land development plan by SLH). However, the remainder of the relief requested in Count III is not otherwise available through the pending zoning and land use appeals. The release of the conservation easements and woodland easement were not contained within the challenged zoning ordinance, and therefore there is no basis to find that this Court lacks subject matter jurisdiction over the disputed easements, or that there is an adequate statutory remedy to address this claim. Similarly, the injunctive relief requested in Count III and IV clearly fall within the Court's equitable powers and request a remedy independent of those available through the zoning ordinance litigation. Although BLC requests that the entirety of Counts III and IV be stricken, its arguments focus only on the challenge to the underlying zoning ordinance and land development plan, and fails to establish that this Court would lack jurisdiction to address the subject easements or to issue injunctive relief. Consequently, BLC's Preliminary Objection pursuant to Pa.R.C.P. 1028(a)(1) and 1028(a)(7) is granted in part and subsection (a) of the wherefore clause of Count III of the Amended Complaint is stricken without prejudice for Plaintiffs and/or Intervenors to re-plead should they have sufficient basis to allege that the statutory remedy is inadequate. The motion to dismiss the remainder of the relief requested in Count III and Count IV of the Amended Complaint is denied.

6. BLC's second Preliminary Objection asserts that the request in Count III to void the zoning ordinance and the preliminary land development plan should be stricken pursuant to Pa.R.C.P. 1028(a)(6) for pendency of a prior action. As addressed above, subsection (a) of the

wherefore clause of Count III of the Amended Complaint is stricken, and consequently, this preliminary objection is denied as moot.

7. BLC's third and fourth Preliminary Objections assert that the Amended Complaint is legally insufficient pursuant to Pa.R.C.P. 1028(a)(4) and 1028(a)(5), on the basis that Plaintiffs and Intervenors lack both standing and capacity to bring the claims contained in the Amended Complaint. Specifically, BLC argues that Plaintiffs and Intervenors have not alleged a legally sufficient claim that they are aggrieved to satisfy the required elements of standing, and therefore the claims must be dismissed. In response, Intervenors, as joined by Plaintiffs, argue that they have established standing to challenge Lower Saucon Township's unilateral action of removing the easements at issue as they are third-party beneficiaries to the easements; that they have standing pursuant to the Donated and Dedicated Property Act, 53 P.S. § 3381, et seq., ("DDPA") as well as the public trust doctrine; and that they have met the elements of traditional standing analysis.

8. Preliminarily, we note that BLC's third preliminary objection is in the nature of a demurrer. "A demurrer admits all well-pleaded material facts set forth in the complaint, as well as all inferences reasonably deducible from those facts." Lowther v. Roxborough Memorial Hospital, 738 A.2d 480, 489 (Pa. Super. 1999). "To sustain a demurrer, it is essential that the complaint demonstrate on its face that the claim being advanced cannot be sustained as a matter of law." PennDOT v. Wilksburg Penn Joint Water Authority, 740 A.2d 322, 324 (Pa. Cmwlth. 1999). If there is any question as to whether the demurrer should be sustained, the demurrer should be overruled. Pacurariu v. Commonwealth, 744 A.2d 389, 391, n.1 (Pa. Cmwlth. 2000).

9. In the instant matter, the easements at issue were recorded in 1994, and apply to approximately 208 acres now owned by BLC. See Amended Complaint at ¶ 21-23. The

Amended Complaint avers that “[o]n August 30, 2023, the Township voted to remove the Conservation Easements and Woodland Easement from the property without seeking approval from the Orphans’ Court.” See Amended Complaint at ¶ 46. The Amended Complaint further avers that “[t]he Conservation Easement and Woodland Easement were established by the City of Bethlehem⁴ for the purposes of protecting the land subject to the easements and for ensuring that relevant portions of the property would serve as buffer to the landfill activities in perpetuity.” See Amended Complaint at ¶ 28. “The Conservation Easements were granted to the Township by the City of Bethlehem for the purposes of protecting the property and for ensuring the property serves as a buffer to landfill activities for the benefit of the public and specifically to maintain the D&L Trail.” See Amended Complaint at ¶ 76. Easement 1⁵ states, in relevant part:

That the City grants to the Township a restrictive easement for scenic and conservation purposes on the tract of approximately 66 acres

. . .

The City has granted a woodlands protection easement for approximately eight (8) acre area. The woodlands protection easement provides that the woodlands shall be preserved as undisturbed woodlands, except for the removal of dead or diseased trees, and/or except for normal removal of trees for prudent forest management to allow for proper tree growth.

. . .

The restrictions and easements shall constitute a covenant running with all of the property described herein and shall be binding upon the City and all other persons and parties claiming through the City herein, and for the benefit of and limitation upon all future owners of said land and premises, this declaration of restrictions being designed for the purposes of assuring the preservation of the Delaware and Lehigh Canal National Heritage Corridor and State Heritage Park; and during such operation of the Landfill to as great a degree as possible, to preserve the original character and scenic nature of the land.

See Amended Complaint at Exhibit A. Similarly, Easement 2⁶ applies to approximately 142

⁴ BLC’s predecessor in interest.

⁵ Recorded at Northampton County Recorder of Deeds Vol. 1994-6, Page 102081.

⁶ Recorded at Northampton County Recorder of Deeds Vol. 1994-6, Page 102074.

acres of the subject property, and states, in relevant part:

The restrictions and easements shall constitute a covenant running with all of the property described herein and shall be binding upon the City and all other persons and parties claiming through the City herein, and for the benefit of and limitation upon all future owners of said land and premises, this declaration of restrictions being designed for the purposes of assuring the preservation of the Delaware and Lehigh Canal National Heritage Corridor and State Heritage Park; and during such operation of the Landfill to as great a degree as possible, to preserve the original character and scenic nature of the land.

See Amended Complaint at Exhibit B.

10. To establish standing to pursue the claims set forth in the Amended Complaint, Plaintiffs and Intervenors must demonstrate that they have been “aggrieved” by the conduct being challenged. See Firearm Owners Against Crime v. Papenfuse, 261 A.3d 467, 481 (Pa. 2021). To determine whether the plaintiff has been aggrieved, Pennsylvania courts traditionally examine whether the plaintiff’s interest in the outcome of the lawsuit is substantial, direct, and immediate. Id.

A substantial interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law. A direct interest requires a showing that the matter complained of caused harm to the party’s interest. An immediate interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it. Yet, if that person is not adversely affected in any way by the matter he seeks to challenge, he is not aggrieved thereby and has no standing to obtain a judicial resolution of his challenge.

Houston v. Se. Pennsylvania Transp. Auth., 19 A.3d 6, 10 (Pa. Cmwlth. 2011).

11. Plaintiffs and Intervenors argue they meet these requirements. The record reflects that Plaintiffs⁷ are property owners in Lower Saucon Township who reside in close proximity to

⁷ Named Plaintiff, Bruce Petrie, testified on August 15, 2024. The parties stipulated that the remaining individual Plaintiffs would testify similarly – that they are taxpaying residents living near the subject property, and they share the same concerns and impacts as Mr. Petrie. N.T. 8/15/24 at p. 104, Exhibit Petrie 1 (tax map showing location of individual Plaintiffs’ residences). See also In re Broad Mountain Dev. Co., LLC, 17 A.3d 434, 441 (Pa. Cmwlth. 2011) (finding redundant testimony not necessary to establish standing where concerns placed on record were relevant to all objectors who lived in similar proximity to project).

the subject landfill property. N.T. 8/15/24 at 45-46, Exhibit Petrie 1. Plaintiff testified that as the landfill has continued to expand, they have been subjected to an increase in “putrid” odors emitted by the landfill, and an increase in the number of vultures attracted to the landfill. N.T. 8/15/24 at 46, 48, 51. Plaintiff testified that the subject property contains mature forest on a steep incline above Bull Run Creek, a tributary of the Lehigh River. N.T. 8/15/24 at 47, 50. Plaintiff testified as to their interest in maintaining the property for its scenic character and as a natural resource for flora and fauna. N.T. 8/15/24 at 47. Plaintiff testified that the current wooded portions of the subject property act as a windbreak for the wind bringing odor from the landfill, which would be eliminated if the property was deforested. N.T. 8/15/24 at 53-54. Plaintiff testified that the vultures attracted by the landfill impact upon the peaceful use and enjoyment of his property. N.T. 8/15/24 at 59-60. Richard Sutton, a resident located approximately half of a mile from the landfill, testified as to the photographs he took, depicting the vultures on and near his property. N.T. 8/15/24 at 107-115, Exhibit Petrie 2.

Edward Nawrocki testified on behalf of St. Luke’s Hospital – Anderson Campus. N.T. 8/15/24 at 130. The Anderson Campus covers 520 acres and is bordered on the south by the Lehigh River. N.T. 8/15/24 at 132, 134. The Anderson Campus was developed at a cost of \$750 million to be a wellness destination, including an arboretum, organic farm and walking trails for community use. N.T. 8/15/24 at 136-37. Areas of the hospital overlook the portions of the subject property addressed by the conservation easements. N.T. 8/15/24 at 142-43. The current landfill operation is approximately one mile from the Anderson Campus property, which would decrease to 0.3 mile if the conservation easements were removed. N.T. 8/15/24 at 148-49. Mr. Nawrocki testified as to the concern regarding the impact of odors from the landfill on patients’ health and the impact on the overall patient experience. N.T. 8/15/24 at 150-51. Mr. Nawrocki

further testified as to the concern of large birds interfering with medical helicopter flights, which would increase with landfill expansion closer to the hospital. N.T. 8/15/24 at 157-58, 214. St. Luke's also owns property within Lower Saucon Township, the municipality where the landfill is located. N.T. 8/15/24 at 172.

Claire Sadler, Executive Director of the Delaware and Lehigh National Heritage Corridor ("D&L"), testified that the entity is a nonprofit corporation established for charitable, scientific, recreation, conservation and educational purposes. N.T. 9/13/24 at 8-15. The Delaware and Lehigh National Heritage Corridor was designated by Congress in 1988. N.T. 9/13/24 at 96, 100, Exhibit SL/DL 13. The Corridor was originally governed by Commission, which was succeeded by the current nonprofit corporation. N.T. 9/13/24 at 95-96, 127; N.T. 11/7/24 at 100-102. The D&L Trail is currently a 140 mile trail through the Corridor that when fully connected will be the longest multi-use trail in Pennsylvania. N.T. 9/13/24 at 18, 21, Exhibit SL/DL 14. In Northampton County, the D&L Trail runs along the northern side of the Lehigh River. N.T. 9/13/24 at 28-29. A section of the D&L Trail is located across from the subject property identified in the conservation easements. N.T. 9/13/24 at 30. That area of the trail is one of the largest contiguous forested areas along the Lehigh River. N.T. 9/13/24 at 31, Exhibit SL/DL 15. Over a million users use the trail every year, with usage rates having doubled since the pandemic. N.T. 9/13/24 at 41-42. D&L and SLH partner in health and wellness initiatives, including a marathon along the trail. N.T. 9/13/24 at 42, 44. D&L has a financial incentive in maintaining the integrity of the trail and the conservation easements. N.T. 9/13/24 at 45. The buffer provided by the conservation easements is significant to protect the experience of a trail user of being in nature. N.T. 9/13/24 at 50. The easements reference the Delaware and Lehigh Canal National Heritage Corridor and State Heritage Park. N.T. 9/13/24 at 64-65, 76. The rules

and guidelines governing the Delaware and Lehigh National Heritage Corridor are contained within the management action plan for the D&L. N.T. 9/13/24 at 68-69, Exhibit SL/DL 16. Ms. Sadler testified that D&L trail users benefit from the conservation easements. N.T. 9/13/24 at 77. The D&L has concerns that development in the area of the conservation easements would be incompatible with the mission, purpose and rules of the Corridor because of the impact on natural resources including the plants and animals in the watershed area, and the scenic views from the trail. N.T. 9/13/24 at 80-82, 90-91. The D&L is concerned about the economic impacts if the experience of trail users is diminished. N.T. 9/13/24 at 90-91.

Douglas Bruce, Jr. testified as the manager of Bethlehem Township. N.T. 11/7/24 at 104-105. Bethlehem Township owns land along the Lehigh River. N.T. 11/7/24 at 106, Exhibit SL/DL 9. Bethlehem Township owns the land encompassing the D&L trail along the Lehigh River. N.T. 11/7/24 at 108. Bethlehem Township receives complaints from residents regarding odors from the landfill. N.T. 11/7/24 at 110-111. Bethlehem Township is concerned with the impact on the scenic views from its land resulting from the release of the conservation easements. N.T. 11/7/24 at 121. Bethlehem Township is concerned with the impact on its most popular recreational attraction, the D&L trail, that would result from the release of the conservation easements. N.T. 11/7/24 at 121, 147. Bethlehem Township benefits from the flora and fauna currently existing in the area of the conservation easements. N.T. 11/7/24 at 145-146.

12. In light of the foregoing, individual Plaintiffs and Intervenor, SLH, have standing to pursue their claims as set forth in the Amended Complaint as property owners and taxpayers of Lower Saucon Township. A taxpayer has standing to challenge a governmental action provided he satisfies the following requirements: (1) the governmental action would otherwise go unchallenged; (2) those directly and immediately affected by the complained of matter are

beneficially affected and not inclined to challenge the action; (3) judicial relief is appropriate; (4) redress through other channels is unavailable; and (5) no other persons are better situated to assert the claim. Highley v. Dept. of Transportation, 195 A.3d 1078, 1083 (Pa. Cmwlth. 2018). Moreover, as noted in White v. Township of Upper St. Clair, 799 A.2d 188, 197–98 (Pa. Cmwlth. 2002), “[t]heir interests as taxpayers and residents of the Township are substantial, direct and immediate thereby conferring on them standing to pursue their claim . . .” In White, plaintiffs were seeking declaratory and injunctive relief to invalidate a lease entered into by the township to erect a commercial communications tower on undeveloped land encumbered by deed restrictions limiting uses to those for recreation, conservation and historic purposes. Id. Similarly, Plaintiffs in the instant matter are seeking declaratory and injunctive relief with regard to restrictive easements granted to Lower Saucon Township for purposes of scenic preservation and conservation. The White Court continued:

The interests sought to be protected here are the preservation of [the land] to its intended recreation, conservation and historical purposes; these additional interests of Residents are specifically protected by the Pennsylvania Constitution. Article I, Section 27 of the Pennsylvania Constitution provides as follows:

The people have a right to clean air, pure water, and to the *preservation of the natural, scenic, historic and esthetic values of the environment*. Pennsylvania's public natural resources are the common property of all the people, including generations to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

PA. CONST. I, § 27.

Id. at 197-98 (emphasis in original). The Court concluded that standing to enforce the terms of the dedication of the land was vested in persons that are “part of the public” that enjoy the conservation, recreation and historic uses of the land. Id. While the land at issue in the instant case was not dedicated for general public access, the restrictive easements were granted to Lower

Saucon Township specifically for scenic preservation and conservation purposes “to preserve the original character and scenic nature of the land” which Plaintiffs and Intervenors argue is of clear benefit to the public at large. See Easements ¶ 2, 8 (Amended Complaint at Exhibit A, B).

Further, “[t]he third clause of Section 27 establishes a public trust, pursuant to which the natural resources are the corpus of the trust, the Commonwealth⁸ is the trustee, and the people are the named beneficiaries.” Pennsylvania Environmental Defense Foundation v. Commonwealth, 161 A.3d 911, 931-32 (Pa. 2017). “The plain meaning of the terms conserve and maintain implicates a duty to prevent and remedy the degradation, diminution, or depletion of our public natural resources.”⁹ Id. at 32 (citing Robinson Twp. v. Commonwealth, 83 A.3d 901, 956–57 (Pa. 2013)).¹⁰

We further note that the Environmental Rights Amendment may be invoked to provide “anticipatory and preventative protection” against degradation of natural resources. Robinson, 83 A.3d at 953. Contrary to BLC’s position, Plaintiffs and Intervenors need not establish that they have suffered conclusive harm at this stage of the proceedings to pursue their claims for declaratory and injunctive relief, it is sufficient that they allege likely or threatened harm. Moreover, the harm alleged is not speculative where Lower Saucon Township has voted to remove the conservation easements, and there does not appear to be a factual dispute that such

⁸ Including local government entities. See 161 A.3d 911 at note 23: “Trustee obligations [imposed by § 27] are not vested exclusively in any single branch of Pennsylvania’s government, and instead all agencies and entities of the Commonwealth government, both statewide and local, have a fiduciary duty to act toward the corpus with prudence, loyalty, and impartiality.”

⁹ Natural resources include ambient air, surface and ground water, wild flora, and fauna (including fish) that are outside the scope of purely private property. Robinson, 83 A.3d at 955.

¹⁰ “As trustee, the Commonwealth has a duty to refrain from permitting or encouraging the degradation, diminution, or depletion of public natural resources, whether such degradation, diminution, or depletion would occur through direct state action or indirectly, e.g., because of the state’s failure to restrain the actions of private parties. . . This Court perceives no impediment to citizen beneficiaries enforcing the constitutional prohibition in accordance with established principles of judicial review.” Robinson, 83 A.3d at 957.

action was taken to facilitate landfill expansion. Here, individual Plaintiffs, in addition to being general members of the public, have alleged that the release of the conservation easements would impair the use and enjoyment of their own properties, located in close proximity to the subject property. We find that Plaintiffs have a substantial interest in the outcome of the litigation. See id. at 922.¹¹ For the same reasons, SLH has established its standing in this case. The record reflects SLH's substantial interest in maintaining patients' overall experience and safety which they assert would be impaired by the release of the conservation easements and ultimate development of the subject property.

With regard to Bethlehem Township, we note that the Robinson Court specifically conferred standing to political subdivisions to protect natural resources on behalf of its residents.

This Court has held that a political subdivision has a substantial, direct, and immediate interest in protecting the environment and the quality of life within its borders, which interest confers upon the political subdivision standing in a legal action to enforce environmental standards. . . . The protection of environmental and esthetic interests is an essential aspect of Pennsylvanians' quality of life and a key part of local government's role. Local government, therefore, has a substantial and direct interest in the outcome of litigation premised upon changes, or serious and imminent risk of changes, which would alter the physical nature of the political subdivision and of various components of the environment. Moreover, the same interest in the environment and in the citizenry's quality of life cannot be characterized as remote: “[w]e need not wait until an ecological emergency arises in order to find that the interest of the municipality and county faced with such disaster is immediate.”

Robinson, supra, at 919-20 (internal citations omitted). Here, Bethlehem Township has sufficiently established that it is aggrieved by the release of the conservation easements in that both its residents and its land, and in particular the D&L Corridor, benefit from the natural

¹¹ “[T]hese members asserted that they are likely to suffer considerable harm with respect to the values of their existing homes and the enjoyment of their properties given the intrusion of industrial uses and the change in the character of their zoning districts These individual members have a substantial and direct interest in the outcome of the litigation premised upon the serious risk of alteration in the physical nature of their respective political subdivisions and the components of their surrounding environment. This interest is not remote.” Robinson, 83 A.3d at 922.

character of the land subject to the conservation easements. Similarly, D&L, in addition to the other bases of standing addressed more fully below, has sufficiently established its interests in maintaining the conservation easements for the environmental, financial, and aesthetic reasons placed on the record. Consequently, we find that in addition to Plaintiffs and SLH having standing as taxpayers in Lower Saucon Township, the Plaintiffs and all Intervenors have standing as public beneficiaries to challenge the release of the restrictive easements as the factual record is sufficient to establish their substantial, direct, and immediate interests which would be impaired by the release of the easements.

13. Intervenors, SLH, D&L, and Bethlehem Township, also assert that they are third-party beneficiaries to the conservation and woodlands easements pursuant to the Conservation and Preservation Easements Act, 32 P.S. § 5051, et seq. (“CPEA”).¹² The CPEA defines a “conservation easement” as:

A nonpossessory interest of a holder in real property, whether appurtenant or in gross, imposing limitations or affirmative obligations, the purposes of which include, but are not limited to, retaining or protecting for the public and economic benefit the natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; protecting, conserving or managing the use of natural resources; protecting wildlife; maintaining or enhancing land, air or water quality or preserving the historical, architectural, archaeological or cultural aspects of real property.

32 P.S. § 5053. The CPEA applies to “any interest created before the effective date of this act¹³ when the interest would have been enforceable had it been created after the effective date of this act and has been recorded.” 32 P.S. § 5057. The CPEA grants standing to a person having a

¹² Although individual Plaintiffs joined in the filings by Intervenors, there does not appear to be a specific argument advanced by Plaintiffs that they are entitled to standing pursuant to the CPEA, and therefore, we will address the application of the CPEA to Intervenors only.

¹³ June 22, 2021.

“third-party right of enforcement,” defined as “[a] right provided in a conservation easement to enforce any of its terms, granted to a governmental body, charitable corporation, charitable association or charitable trust, which, although eligible to be a holder, is not a holder.” 32 P.S. § 5055, 5053. The CPEA also grants standing to a person otherwise authorized by Federal or State law. 32 P.S. § 5055. Further, the CPEA states, “[a]ny general rule of construction to the contrary notwithstanding, conservation or preservation easements shall be liberally construed in favor of the grants contained therein to effect the purposes of those easements and the policy and purpose of this act.”¹⁴ 32 P.S. § 5055.

14. Based on the foregoing, SLH and D&L aver that they are non-profit corporations entitled to standing pursuant to the third-party right of enforcement provision of the CPEA. Bethlehem Township asserts that it is entitled to standing as a government entity on the same basis. At this stage of the proceedings, in light of the liberal construction required by the CPEA, and admitting the material facts set forth in the Amended Complaint and considering the testimony presented to the Court, Intervenor has established a legally sufficient basis for standing pursuant to the CPEA. As noted above, “Preliminary objections in the nature of a demurrer should only be sustained if the law says with certainty that no recovery is possible.” Firearm Owners Against Crime v. City of Harrisburg, 218 A.3d 497, 505 (Pa. Cmwlth. 2019), aff’d sub nom. Firearm Owners Against Crime v. Papenfuse, 261 A.3d 467 (Pa. 2021). Although we do not find that application of the CPEA is dispositive of any cause of action at this time, we find that Intervenor has established a minimally sufficient claim that they are entitled to

¹⁴ See 32 P.S. § 5052: “The General Assembly recognizes the importance and significant public and economic benefit of conservation and preservation easements in its ongoing efforts to protect, conserve or manage the use of the natural, historic, agricultural, open space and scenic resources of this Commonwealth.”

enforce the easements on this basis. To the extent that BLC believes Intervenor will be unable to prevail on this basis, BLC may renew their argument at a later stage of litigation, such as a motion for summary judgment.

15. In the alternative, Intervenor, D&L, argues that it has standing as a third-party beneficiary pursuant to traditional contract principles. “A restrictive covenant is a restriction in an instrument relating to real estate by which the parties pledge that something will not be done.” Doyletown Twp. v. Teeling, 635 A.2d 657, 661 (Pa. Cmwlth. 1993). As such “[t]he persons initially entitled to enforce the obligation of a promise respecting the use of land are the promisee and such third persons as are also beneficiaries of the promise.” Mariner v. Rohanna, 92 A.2d 219, 220 (Pa. 1952). Indeed, third parties may be made the beneficiaries of a restriction and may enjoin its breach so long as it is clearly shown that the covenant was for their benefit. Id. at 221. Here, the easements plainly state that they were granted for “scenic and conservation purposes” and preclude “landfill activities” as well as mining or extractive activities on the property. See Easements ¶ 2, 3, 5 (Amended Complaint at Exhibit A, B). Further, the easements preclude “any activity that may in any way be in contradiction to the guidelines and rules of the Delaware and Lehigh Canal National Heritage Corridor and State Heritage Park” . . . “this declaration of restrictions being designed for the purposes of assuring the preservation of the Delaware and Lehigh Canal National Heritage Corridor and State Heritage Park.” See Easements ¶ 6, 8 (Amended Complaint at Exhibit A, B). Based on the foregoing, it is apparent that the easements contemplated Intervenor D&L as a beneficiary by explicit reference. The easements not only set the guidelines and rules of the D&L as the measure of permitted activity on the subject property, but further identify the preservation of the D&L area as the intention or motivation for the entry of the easements. Under contract law, the fundamental rule of construction is determining the

intention of the parties as manifested by the language of the written instrument. Naylor v. Bd. of Supervisors of Charlestown Twp., 253 A.3d 786, 806 (Pa. Cmwlth. 2021). “Such intention [of the parties] is determined by a fair interpretation and construction of the grant and may be shown by the words employed construed with reference to the attending circumstances known to the parties at the time the grant was made.” Id. Clearly, at the time the easements were recorded, the parties intended to benefit the D&L, and as such, D&L has established third-party beneficiary status to challenge the removal of the easements.

16. Plaintiffs and Intervenors also assert that they have standing pursuant to the Donated and Dedicated Property Act and/or the public trust doctrine. The Donated or Dedicated Property Act (DDPA), 53 P.S. 3381 et. seq., commands that lands held by a political subdivision as trustee shall be used for the purposes for which they were originally dedicated or donated, except as modified by court order pursuant to the DDPA. In re Wilkinsburg Taxpayers & Residents Interest in Green Street Park Sale to a Private Developer & Other Park-Systems Conditions, 200 A.3d 634, 641 (Pa. Cmwlth. 2018). Specifically, the DDPA states:

All lands or buildings heretofore or hereafter donated to a political subdivision for use as a public facility, or dedicated to the public use or offered for dedication to such use, where no formal record appears as to acceptance by the political division, as a public facility and situate within the bounds of a political subdivision, regardless of whether such dedication occurred before or after the creation or incorporation of the political subdivision, shall be deemed to be held by such political subdivision, as trustee, for the benefit of the public with full legal title in the said trustee.

53 P.S. § 3382. Section 3 of the Act requires “[a]ll such lands and buildings held by a political subdivision, as trustee, shall be used for the purpose or purposes for which they were originally dedicated or donated, except insofar as modified by court order pursuant to this act.” 53 P.S. §3383.

Here, Plaintiffs and Intervenor assert that the conservation easements granted to Lower Saucon Township constitute a dedication to public use, which Lower Saucon Township could not unilaterally abandon without the approval of the Orphan's Court. See 53 P.S. § 3384.

Section 3384 provides:

When, in the opinion of the political subdivision which is the trustee, 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, or where the political subdivision, as trustee for the benefit of the public, is in doubt as to the effectiveness or the validity of an apparent dedication because of the lack of a record of the acceptance of the dedicated land or buildings, the trustee may apply to the orphans' court of the county in which it is located for appropriate relief. The court may permit the trustee to--

- (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. We note that in the context of restrictive deed covenants, the Commonwealth Court has held that the DDPA applies. See Petition of Borough of Westmont, 570 A.2d 1382, 1384 (Pa. Cmwlth. 1990). Further, the Commonwealth Court has held that “residents have a private right of action to enforce the mandatory duty set forth in Section 3 of the Donated or Dedicated Property Act.” White v. Twp. of Upper St. Clair, *supra* at 200. Consequently, the record before the Court establishes that Plaintiffs, and Intervenor (who have demonstrated the

same overlapping interests as Plaintiffs), have standing to challenge Lower Saucon Township's unilateral release of the conservation easements as being in violation of Section 3 of the DDPA.

17. Consequently, BLC's third and fourth Preliminary Objections in the nature of demurrers, pursuant to Pa.R.C.P. 1028(a)(4) and 1028(a)(5), asserting that Plaintiffs and Intervenor lack standing and/or capacity to sue, are denied for the reasons set forth above.

18. BLC's fifth Preliminary Objection asserts that the claims raised in the Amended Complaint are legally insufficient. Specifically, BLC argues that Plaintiffs and Intervenor have not demonstrated a "direct, substantial and present interest" sufficient to maintain the requests for declaratory relief pled in Count I and Count II of the Amended Complaint.

Declaratory judgments are judicial searchlights, switched on at the behest of a litigant to illuminate an existing legal right, status or other relation. They are governed by the provisions of the Declaratory Judgments Act, 42 Pa.C.S. §§ 7531-7541. The purpose of the Declaratory Judgments Act is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and [it] is to be liberally construed and administered. 42 Pa.C.S. § 7541. Declaratory judgment as to the rights, status or legal relationships is appropriate only where an actual controversy exists. An actual controversy exists when litigation is both imminent and inevitable and the declaration sought will practically help to end the controversy between the parties.

Krasner v. Henry, 319 A.3d 56, 72 (Pa. Cmwlth. 2024) (internal citations and quotations omitted). In the instant matter, Plaintiffs and Intervenor have identified an actual controversy in Counts I and II of the Amended Complaint with regard to the rescission of the conservation easements at issue. Further, Plaintiffs and Intervenor have a direct and substantial interest in the controversy as addressed above in the standing analysis. The demurrers to the claims for declaratory judgment are denied.

Count III of the Amended Complaint asserts a claim for equitable relief. BLC argues that this Count is also legally insufficient as Plaintiffs and Intervenor have an adequate remedy at

law. We disagree. The Amended Complaint sufficiently avers that the action to terminate the conservation easements cannot be otherwise addressed in the litigation arising from the zoning ordinance or the land development plan, thereby entitling Plaintiffs and Intervenors to seek equitable relief. Further, as addressed above, the caselaw addressing the DDPA specifically authorizes an action at equity to enforce a dedication. White, supra, at 200. The demurrer to Count III of the Amended Complaint is denied.

Count IV of the Amended Complaint seeks injunctive relief. “To justify the award of a permanent injunction, the party seeking relief must establish (1) that his right to relief is clear, (2) that an injunction is necessary to avoid an injury that cannot be compensated by damages, and (3) that greater injury will result from refusing rather than granting the relief requested.” City of Philadelphia v. Armstrong, 271 A.3d 555, 560 (Pa. Cmwlth. 2022). Here, the Amended Complaint avers: an injunction to prevent the expansion of landfill activities to the Property is necessary to preserve the intended purpose of the Conservation Easements and Woodland Easement, including the protection of the D&L Trail. See Amended Complaint at ¶ 107. The expansion of landfill activities will harm Citizens, St. Luke’s, Bethlehem Township, and DLNHC for the reasons set forth above. See Amended Complaint at ¶ 108. The legal right to relief is clear. See Amended Complaint at ¶ 109. Monetary damages are inadequate to prevent the above-cited injuries. See Amended Complaint at ¶ 110. Greater injury will occur by denying the requested relief than by granting the requested relief. See Amended Complaint at ¶ 111. Based on the foregoing, and considering the allegations of the Amended Complaint as a whole, Plaintiffs and Intervenors have adequately pled the required elements to request injunctive relief. To the extent that BLC contends that Plaintiffs and/or Intervenors are unable to support their claim for injunctive relief with sufficient evidence, BLC may file a Motion for Summary

Judgment in accordance with Pennsylvania Rule of Civil Procedure 1035.2 at the appropriate time. Consequently, Defendant's demurrer to Count IV of the Amended Complaint is denied.

19. Finally, BLC's sixth Preliminary Objection asserts that the Amended Complaint is factually insufficient. Again, a fair reading of the Amended Complaint as a whole demonstrates that Plaintiffs and Intervenors have alleged sufficient material facts to support their claims and to enable Defendants to prepare a defense. BLC's motion to strike the claims of the Amended Complaint as factually insufficient is denied.

BY THE COURT:


ABRAHAM P. KASSIS, J.