

**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE STATE BOARD OF PROPERTY**

<b>Robert W. Dunlap and Wendy J. Dunlap,</b>	:	
<b>husband and wife, Stephen W. Henning</b>	:	
<b>and Christina G. Hennig, husband and</b>	:	
<b>wife, Donald R. Miller and Stephen C.</b>	:	
<b>Wintermute,</b>	:	
<b>Petitioners</b>	:	<b>Docket No. BP 2018-0003</b>
<b>vs.</b>	:	
<b>Commonwealth of Pennsylvania, Dept. of</b>	:	
<b>Conservation and Natural Resources,</b>	:	
<b>Respondent</b>	:	

**FINAL MEMORANDUM ORDER GRANTING MOTION TO DISMISS AND  
DISMISSING PRELIMINARY OBJECTIONS AS MOOT**

AND NOW, this 26<sup>th</sup> day of July, 2019, upon consideration of Petitioners’ class action complaint filed June 21, 2018, Respondent’s August 24, 2018, motion to strike, and the parties’ briefs, and following deliberation in executive session and motion during public session at its meeting on July 18, 2019, the State Board of Property hereby GRANTS Respondent’s motion to strike and **DISMISSES the complaint without prejudice**. Petitioners may refile their class action complaint in a court of competent jurisdiction.

Petitioners are landowners along Mehoopany Creek. They aver that by its Shale Gas and Publicly-Owned Streambed policy, Respondent has wrongfully claimed that the Commonwealth holds ownership of the streambeds in trust as public highways. Petitioners “bring this action individually and on behalf of themselves and all other similarly situated, as a class action pursuant to Rule 1702 of the Pennsylvania” Rules of Civil Procedure. (Complaint ¶ 135). Petitioners

seek to represent a class of persons who own various property interests in the streambeds of Lycoming, Loyalsock and Mehoopany Creeks that are now being claimed by [Respondent]. The Class owns all property underlying the streams at issue subject only to [Respondent’s] easement.

(Complaint ¶ 50). The Class consists of:

All persons who own any interest in property, including leasehold property, underlying all streambeds of which the [Department of Conservation and Natural Resources] claims ownership based on public highway declarations but are not navigable in fact, including the Lycoming, Loyalsock and Mehoopany Creeks. Also included in the class are those who own to the low watermark of the creek.

(Complaint ¶ 135). In their prayer for relief, Petitioner first seek certification of the class.

Generally, class actions are unauthorized in the administrative setting. *Brendley v. Pennsylvania Dept. of Labor & Industry*, 926 A.2d 1276, 1282 (Pa. Cmwlth. 2007). The right to assert class standing in an administrative proceeding should not be inferred in the absence of a statute or rule specifically conferring and defining such a right. *Sullivan v. Commonwealth, Ins. Dept.*, 408 A.2d 1174, 1176 (Pa. Cmwlth. 1979). The Board generally has jurisdiction under section 1207 of the Administrative Code of 1929,<sup>1</sup> 71 P.S. § 337, to consider a matter involving a dispute of ownership of real estate involving the Commonwealth. *See, York OPA, LLC v. Commonwealth, Dept. of Transportation*, 181 A.3d 5, 13 (Pa. Cmwlth. 2018) (Board of Property has exclusive jurisdiction to determine the title to real estate or to remove a cloud on title to such real estate where private property owners and the Commonwealth claim an interest in the same real estate). As an administrative agency, the Board's proceedings are governed by the General Rules of Administrative Practice and Procedure ("GRAPP"), 1 Pa. Code Ch. 31-35. In contrast to the Rules of Civil Procedure, GRAPP makes no allowance for a class action procedure. Nor has the Board promulgated any regulations providing for class action. Without such authority, the Board cannot entertain a class action lawsuit. *See, McConnell v. Com., Dept. of Revenue*, 469

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<sup>1</sup> **Section 1207. Board of Property.**

The Board of Property shall, subject to any inconsistent provisions in this act contained, continue to exercise the powers and perform the duties by law vested in and imposed upon the said board.

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The Board of Property shall also have jurisdiction to hear and determine cases involving the title to land or interest therein brought by persons who claim an interest in the title to lands occupied or claimed by the Commonwealth.

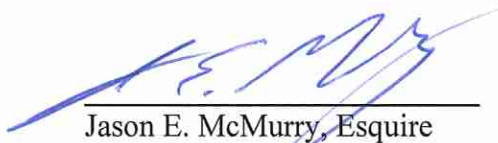
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71 P.S. § 337.

A.2d 574, 577 (Pa. 1983) (any opportunity to obtain class certification will have to come before the Commonwealth Court, since neither the statute nor rules governing actions for rent rebates before the Department of Revenue and the Board of Finance and Revenue authorizes the maintenance of a class action). As the Board does not have jurisdiction to entertain a class action, Respondent's motion to strike is granted.

Respondent's preliminary objections filed August 24, 2018, are dismissed as moot. Further the petitions to intervene filed by the Marcellus Shale Coalition on May 6, 2019, and by the Pennsylvania Oil & Gas Landowner Alliance, Inc. on May 13, 2019, are also dismissed as moot.

**BY ORDER:**



Jason E. McMurry, Esquire  
Designee of the Secretary of the Commonwealth  
Chairman, Board of Property

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Date of mailing:

July 26, 2019