

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

**CARLINO EAST BRANDYWINE, LP,
Petitioner**

vs.

**BRANDYWINE VILLAGE ASSOCIATES, LEONARD BLAIR,
RICHARD BLAIR, JOHN CROPPER,
COMMONWEALTH of PENNSYLVANIA, DEPARTMENT of TRANSPORTATION,
and EAST BRANDYWINE TOWNSHIP BOARD of SUPERVISORS,
Respondents**

DOCKET NO. BP 2022-0001

FINAL ADJUDICATION AND ORDER

**Jason E. McMurry, Esquire, designee of the
Secretary of the Commonwealth, Chairman**

**Shawn P. Kerns, Esquire, designee of the
Secretary of Community and Economic Development**

**Thomas P. Howell, Esquire,* designee of the
General Counsel**

**Department of Community and Economic Development
Commonwealth Keystone Building
400 North Street, 400 Plaza Level
Harrisburg, PA 17120**

TAB

***recused**

HISTORY

This matter comes before the State Board of Property (Board) to determine ownership of an interest in certain real estate within this Commonwealth otherwise claimed by the Commonwealth. By petition filed on February 8, 2022, Carlino East Brandywine, LP (“Petitioner”) brought an action to quiet title and for declaratory relief the Commonwealth of Pennsylvania, Department of Transportation (“PennDOT”), Brandywine Village Associates (“Respondent”), Leonard Blair, Richard Blair, and John Cropper (collectively “Partners”) and East Brandywine Township (“Township”). Petitioner asserts that PennDOT and not Respondent holds the full width of the right of way along a certain portion of Horseshoe Pike (Route 322) in East Brandywine Township, Chester County, Pennsylvania. On February 25, 2022, Respondent filed an answer with extensive new matter¹ and a motion to dismiss Petitioner’s petition.² On February 28, 2022, PennDOT filed an answer to Petitioner’s petition and on March 15, 2022, PennDOT filed a reply to the new matter of Respondent’s answer. On March 18, 2022, Petitioner filed a reply to the new matter of Respondent’s answer including a response to Respondent’s motion to dismiss along with new matter. On March 23, 2022, Respondent filed a reply to the new matter of Petitioner’s response.

On February 25, 2022, Respondent filed a separate petition for declaratory relief against PennDOT. On March 18, 2022, Petitioner filed a response and motion to dismiss Respondent’s petition. On March 23, 2022, Respondent filed an answer to the motion. In the absence of a prior response from PennDOT, on April 1, 2022, Respondent filed a motion for default judgment against

¹ On March 18, 2022, Petitioner filed a motion to strike certain paragraphs of Respondent’s new matter as immaterial, impertinent, and inappropriate. On March 23, 2022, Respondent filed an answer. By order dated April 25, 2022, the Board denied this motion.

² In accordance with the Board’s order of April 25, 2022, on May 31, 2022, Respondent filed a brief in support of its motion, and on July 1, 2022, Petitioner filed a brief in opposition, and Respondent filed a reply brief on July 13, 2022. By memorandum order dated August 11, 2022, the Board denied Respondent’s motion to dismiss.

PennDOT. On April 4, 2022, Respondent then filed a motion to deem facts admitted by PennDOT. On April 11, 2022, PennDOT filed an answer to Respondent's separate petition for declaratory judgment and a request to accept the filing *nunc pro tunc*, as well as an answer to Respondent's motion for entry of default judgment; on April 20, 2022, PennDOT filed an answer to the motion to deem facts admitted. On April 15, 2022, Respondent filed a motion to strike PennDOT's answer to the motion for default. By order dated April 25, 2022, the Board denied PennDOT's request to accept the filing *nunc pro tunc* and granted Respondent's motion to strike PennDOT's answer; the Board also granted Respondent's motion for default and motion to deem facts admitted to the extent Respondent made factual allegations against PennDOT. The order also directed the parties to brief what relief should flow from PennDOT's deemed admissions. On May 31, 2022, Respondent filed a supporting brief. PennDOT filed its opposition brief on June 29, 2022, and Petitioner filed an opposition brief on July 1, 2022. On July 13, 2022, Respondent filed briefs in reply to each opposition brief. By memorandum order dated August 11, 2022, the Board granted Petitioner's motion to dismiss Respondent's separate petition for declaratory relief as improperly brought separate from the new matter and motion to dismiss properly raised in its answer to Petitioner's underlying petition. By order dated September 29, 2022, the Board denied Respondent's application for reconsideration and denied Petitioner's motion to strike that application.

Counsel for the Board held a status conference with the counsel for the parties on February 9, 2023. As agreed by the parties, by order dated February 10, 2023, the Board set a briefing schedule for any dispositive motions. On March 3, 2023, Respondent filed a motion to dismiss Petitioner's petition to quiet title as to Partners, along with a supporting brief. On April 3, 2023, Petitioner filed an answer along with a brief in opposition to Respondent's motion. By order dated

May 2, 2023, the Board denied Respondent motion to dismiss. Also on March 3, 2023, Petitioner filed a motion for summary judgment. Similarly, on April 3, 2023, Respondent filed a response and brief in opposition to Petitioner's motion. By letter dated April 3, 2023, PennDOT noted its support of Petitioner's motion for summary judgment, and on April 17, 2023, Petitioner filed a supporting reply brief. By order dated May 2, 2023, the Board found that there are genuine issues of material fact and denied Petitioner's motion for summary judgment.

As further agreed by the parties at the status conference, by order dated March 28, 2023, the Board scheduled the hearing to begin June 7, 2023, and to resume June 9, 2023, as necessary at One Penn Center, 2601 North Third Street, Harrisburg, Pennsylvania before the Board. The order also scheduled a prehearing conference for May 10, 2023, with Board counsel and required the filing of prehearing statements.

The formal hearing in this matter was held as scheduled on June 7 and 9, 2023, before the Board.³ The Board's legal counsel Thomas A. Blackburn, Esquire presided. Pamela M. Tobin, Esquire represented Petitioner, and assistant counsel Eric W. White, Esquire represented PennDOT. Respondent and Partners were represented by Paul A. Prince, Esquire. Consistent with the April 28, 2023, letter of its solicitor, East Brandywine Township did not participate in the hearing. Petitioner presented its case through documentary evidence and the testimony of its expert Fronefield Crawford, Esquire, PennDOT assistant district executive Francis Hanney, and Petitioner's managing partner Peter Miller. Respondent presented its case through documentary evidence and the testimony of its expert William F. Kerr, Jr., Esquire. Because this hearing time

³ Board chairman Jason E. McMurry, Esquire and Board member Shawn P. Kerns, Esquire were present for all days of hearing, except the afternoon of June 9, 2023, when Mr. McMurry was called away. Board member Thomas P. Howell, Esquire and alternate Board member Jacob B. Boyer, Esquire have recused and have not participated in the hearing, deliberations or decision in this matter, including the prehearing motions. All Board members participating in the decision in this matter have read the entire record.

was not sufficient, by order June 22, 2023, the Board scheduled an extra day of hearing for June 28, 2023. Respondent presented the testimony of Mark J. Borthwick, PE and Robert G. Richardson, PE. PennDOT did not present a case in chief. Petitioner presented further testimony of Mr. Crawford in rebuttal.

The notes of testimony (“N.T.”) were filed, and by order dated August 4, 2023, the Board set a briefing schedule. In accordance with this schedule, on September 6, 2023, Petitioner filed its principal post-hearing brief, and PennDOT filed a supporting brief on October 4, 2023. Respondent filed its brief on October 5, 2023, and Petitioner filed a reply brief on October 13, 2023. The Board deliberated this matter at its meetings October 19, 2023, and January 18, 2024, and now issues this adjudication and order as a final determination of Petitioner’ petition.

FINDINGS OF FACT

1. Petitioner is a Pennsylvania limited partnership with its principal place of business at 100 Front Street, Suite 560, West Conshohocken, PA 19428. (Petition and answers of PennDOT and Respondent ¶ 1)

2. Respondent BVA is a Pennsylvania liability partnership with its principal place of business at 16 Industrial Boulevard, Suite 103, Paoli, PA 19301. (Petition and answers of PennDOT at Respondent ¶ 2)

3. Respondent PennDOT is a Commonwealth agency located at 400 North Street, 9th Floor, Harrisburg, PA 17120-0096. (Petition and answers of PennDOT and Respondent ¶ 3)

4. Respondent Township is a township of the second class in Chester County, Pennsylvania. (Petition and answers of PennDOT and Respondent ¶ 7)

5. Petitioner owns a 10.118-acre parcel of land zoned for mixed use development, located at 1279 Horseshoe Pike (Route 322) in the Township. (Petitioner and answers of PennDOT and Respondent ¶ 15)

6. Respondent owns the adjacent 11.535-acre parcel of land east of Petitioner's property, located at 1257 Horseshoe Pike, on which Respondent constructed a shopping center with a food store in 1995. (Petition and answers of PennDOT and Respondent ¶ 16)

7. In 1994 Respondent acquired an 11.535-acre parcel of land from Frank and Beatrice Watters located at 1257 Horseshoe Pike in East Brandywine Township, Chester County, as reflected in a deed recorded by the Chester County recorder of deeds. (Exhibit P-6)

8. Respondent's property was part of a larger, approximately 21-acre tract owned by Mr. and Mrs. Watters, and following Respondent's purchase the remaining 10.118 acres remained their property for possible future sale or development. (Exhibit P-15)

9. The terms of Respondent's purchase were documented in an Agreement of Sale executed by the parties in 1993. (Exhibit P-5)

10. The 1993 agreement of sale incorporated by reference future agreements and conveyances between the parties pertaining to cross easements for various facilities including, "access to U.S. Route 322 and North Guthriesville Road including all rights, privileges, access ways and other common facilities necessary for the development of the 11.535 Acre Parcel and the remaining property of the Sellers, as, when and if the 11.535 Acre Parcel is developed by Seller or Seller's successor in interest." (Exhibit P-5 ¶ 9)

11. The 1993 agreement of sale included a land description of the property that incorporated a title plan prepared in 1989 and revised in 1991 by Chester Valley Engineers, Inc. and identified the "ultimate" right of way of State Route 322, also known as Horseshoe Pike, as a boundary of the property being conveyed to Respondent. (Exhibit P-5 at 12 and 15)

12. The title plan was sealed by a professional engineer and was duly recorded by the recorder of deeds for Chester County. (N.T. 6/7/23 at 54-55, exhibit P-3)

13. The title plan shows a uniform legal right of way line and ultimate right of way line of 40 feet. (N.T. 6/7/23 at 187, exhibit P-3)

14. The term "ultimate" right of way identifies the portion of right of way that is intended to be dedicated to the Commonwealth. (N.T. 6/7/23 at 59)

15. The title plan contained two notes that dedicated the rights of way noted in the title plan to the government agencies having jurisdiction at the time of dedication. (N.T. 6/7/23 at 60-61)

16. The title plan was signed by Richard Blair, general partner of Respondent, thus indicating Respondent's agreement to what was reflected and incorporated into the title plan

becoming public record. (N.T. 6/7/23 at 61 and 64, exhibit P-3)

17. Respondent's development plans included installation of three driveways to access its property, two of which were direct access points to State Route 322. (Exhibit P-1)

18. In order to construct and maintain those access driveways to State Route 322, Respondent retained an engineering firm, Traffic Planning and Design, Inc., ("TPD") to assist with its application for a Highway Occupancy Permit ("HOP") from PennDOT. (Exhibit P-16)

19. Although the HOP was intended for Respondent's benefit and use, the proposed primary access driveway was on property that was still owned by Watters; as such, PennDOT regulations required that the HOP application be submitted and issued in Watters' name. (Exhibit P-16)

20. The HOP application process involves, among other things, the submission of plans by the applicant or its designee to PennDOT and multiple back and forth cycles of review, comment and plan revisions, and ultimately, if PennDOT is satisfied with the applicant's final plans and documents, a HOP is issued. (N.T. 6/7/23 at 269-70)

21. Through 1990 and early 1991, TPD submitted multiple roadway plans to PennDOT in support of the BVA/Watters HOP application. (N.T. 6/7/23 43-45, exhibit P-1)

22. The TPD plans identified the highway right of way along State Route 322, with notation of "legal right of way" and also noted an area as "right of way to be dedicated" indicating a new right of way to be dedicated. (N.T. 6/7/23 at 46, exhibit P-1 and P-1a)

23. The TPD plan shows a uniform legal right of way line of 40 feet. (N.T. 6/7/23 at 187, exhibits P-1 and P-1a)

24. As reflected in the TPD plans, a right of way had to be dedicated to PennDOT by BVA/Watters because both of Respondent's proposed driveways or access points to State Route

322 were designed to be installed within the right of way owned by PennDOT. (N.T. 6/7/23 at 51-52)

25. The 1991 revision of the title plan incorporated by reference the TPD plans, signaling that the design of Respondent's access points to State Route 322 had been finalized. (N.T. 6/7/23 at 101, exhibit P-3 note 18)

26. As a result of TPD's application to PennDOT on behalf of BVA/Watters and the submission of TPD's plans, HOP number 06011739 was ultimately issued to Watters on June 13, 1991. (Exhibit P-16 at 2-8)

27. The BVA/Watters HOP was issued by PennDOT on June 13, 1991 "subject to all the plans, special conditions or restrictions herein set forth or attached hereto." (Exhibit P-4 at 1)

28. Contemporaneously with the finalization of the Respondent's purchase in 1994 by filing of a deed, Watters and Respondent signed and duly recorded a cross-easement agreement. (Exhibit P-7)

29. The cross-easement agreement refers to and incorporates the TPD plans that were submitted to PennDOT and further provided that the area identified as "ultimate right of way" on the submitted TPD plans "shall be dedicated for public use for highway purposes." (Exhibit P-7 at 14)

30. The remaining 10.118 acres of the Watters tract, located immediately to the west of Respondent's property along State Route 322 was sold to Petitioner by way of an agreement of sale signed in 2010; however, due to lengthy intervening litigation, the property was not fully conveyed by recorded deed to Petitioner until 2021. (N.T. 6/9/23 at 17 and 24, exhibit P-10)

31. Petitioner obtained all required local approvals to commercially develop its property. (Exhibit P-8)

32. As part of its approval by the Township, Petitioner agreed to construct a connector road to connect State Route 322, south of Petitioner's property, to North Guthriesville Road, north of its property. (N.T. 6/9/23 at 17)

33. In 2014, the Township condemned property to facilitate construction of the connector road. (Exhibit BVA-10)

34. As part of the condemnation, the Township took 3 pieces of property: 0.96 acres from Respondent that was frontage along State Route 322, Respondent's easements to allow for construction of an access drive and detention basin on Petitioner's property; and a 1.9 acre parcel of land north of Respondent's property owned by an affiliate of Respondent. (Exhibit BVA-10)

35. On June 6, 2019, the Township's Board of Supervisors conditionally approved Petitioner's plan to develop its property with the shopping center and connector road. (Petition and answers of PennDOT at Respondent ¶ 23)

36. On July 20, 2021, Commonwealth Court affirmed the Township's approval of Petitioner's development plan; the Supreme Court denied Respondent's petition for allowance of appeal on March 29, 2022. (Petition and answers of PennDOT and Respondent ¶ 25)

37. On December 23, 2019, the Township conveyed to PennDOT a 0.069-acre parcel along Respondent's frontage to construct a turning lane for the connector road. (Petition and answers of PennDOT and Respondent ¶ 24, exhibit BVA-11)

38. On June 25, 2020, PennDOT through District 6 issued Highway Occupancy Permit no. 06102731 authorizing Petitioner to make improvements to Routes 322 and 4013 to construct the connector road. (Petition and answers of PennDOT and Respondent ¶ 29)

39. PennDOT required that Petitioner build a right turn lane from State Route 322 onto the connector road. (N.T. 6/9/23 at 22, exhibit P-8)

40. When Petitioner undertook to develop its property in 2021, Respondent claimed to exclusively own the “Gore,” a 344 square-foot piece of land located between the condemned 0.69 acre piece of land and right of way owned by PennDOT. (Exhibits P-12, P-14, P-17 at 130-31)

41. The expanse of property designated on the 1990-1991 TPD plans as “legal right of way” encompasses the Gore. (N.T. 6/7/232 at 47-48, exhibits P-1 and P-14)

42. The Gore is located along State Route 322 heading west where the right turn lane into the connector road is to be constructed. (N.T. 6/9/23 at 23)

43. By letter to PennDOT and the Township dated April 2, 2021, Leonard Blair on behalf of Respondent purported to revoke “any and all offers of any right of way on our shopping center property beyond the physical limits of the existing recorded PennDOT legal right of way line for Rout 322 (Horseshoe Pike), as it currently exists in front of our center.” (Exhibit P-12)

44. By letters dated May 4, 2021, and May 25, 2021, PennDOT notified Respondent that it rejected Respondent’s attempt to revoke its prior binding dedication and reclaim ownership of PennDOT’s rights of way. (Exhibit P-13)

45. Petitioner has not been able to develop its property as planned due to the ongoing litigation and questions raised concerning ownership of the Gore, as a result of which it cannot construct the right turn lane required by PennDOT for the connector road required by the Township. (See, e.g., N.T. 6/9/23 at 19-25)

46. Petitioner filed its petition on February 8, 2022. (Docket entries)

47. Respondent received service of Petitioner’s petition, as shown by its filing of an answer with new matter and motion to dismiss on February 28, 2022. (Docket entries)

48. Petitioner received service of Respondent’s answer with new matter, as shown by

its filing of a reply on March 18, 2022. (Docket entries)

49. PennDOT received service of Petitioner's petition, as shown by its filing of an answer thereto on February 28, 2022. (Docket entries)

50. PennDOT received service of Respondent's answer with new matter, as shown by its filing of a reply on March 15, 2022. (Docket entries)

51. Petitioner, PennDOT, and Respondent received notice of the hearing scheduled for June 7 and 9, 2023, and for June 28, 2023, as shown by the attendance of their respective legal counsel at the hearing. (N.T. I 8-9, N.T. II 9, N.T. III 8-9)

52. The parties received all pleadings and notices and other documents filed in this matter. (Docket entries)

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter under section 1207 of the Administrative Code of 1929, 71 P.S. § 337.
2. The parties received notice and were afforded an opportunity to be heard in accordance section 4 of the Administrative Agency Law, 2 Pa.C.S. § 504. (Findings of Fact 46-52)
3. Petitioner has standing to pursue this matter. (Findings of Fact Nos. 1-4, 30-45)
4. Through the recording of the Chester Valley Engineers plans showing a uniform band of 40 foot right of way as depicted on the plans, Respondent offered as a dedication to public use to PennDOT this entire right of way with no gap. (Findings of Fact Nos. 1-42)
5. Through submission of the Highway Occupancy Permit application showing a uniform band of 40 foot right of way as depicted on the plans, Respondent offered as a dedication to public use to PennDOT this entire right of way with no gap. (Findings of Fact Nos. 1-42)
6. PennDOT accepted Respondent's offer of dedication by issuing the Highway Occupancy Permit based upon Respondent's application which also referenced the recorded plans. (Findings of Fact Nos. 1-42)
7. Respondent's attempted revocation of its prior dedication after acceptance was a legal nullity. (Findings of Fact Nos. 1-44)
8. PennDOT, and not Respondent nor its Partners, owns the entire width of the right of way without any gore or gap. (Findings of Fact Nos. 1-44)

DISCUSSION

Petitioner⁴ brought this action against Respondent and its Partners and the Township as well as PennDOT, a Commonwealth agency. With PennDOT's agreement, Petitioner seeks to quiet title in PennDOT to a wider right of way along a state highway abutting real estate owned by Respondent. The Board has jurisdiction under section 1207 of the Administrative Code of 1929,⁵ 71 P.S. § 337, to consider a matter involving a dispute of ownership of real estate involving the Commonwealth. *See, Beishline v. Dept. of Environmental Protection*, 234 A.3d 878, 885 (Pa. Cmwlth. 2020) (Board of Property has jurisdiction to hear and determine cases involving title to land or interest therein brought by persons who claim an interest in the title to lands occupied or claimed by the Commonwealth). Based upon the legislative intent to expand the jurisdiction of the Board by granting it power to hear cases involving title or interest in all lands held by the Commonwealth, Commonwealth Court has consistently held that section 1207 vests in the Board exclusive original jurisdiction of any claims involving title to land occupied or claimed by the Commonwealth. *Krulac v. Pa. Game Comm'n*, 702 A.2d 621, 623 (Pa. Cmwlth. 1997). The Board has the power to grant declaratory relief when a petition for declaratory judgment is filed within

⁴ Petitioner has standing to bring this action, as its attempts to develop its property are being thwarted by Respondent's assertion that there is a Gore and that Respondent owns it. *See, Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 280 (Pa. 1975) (to have standing, one must have a direct interest in the particular question litigated that is immediate, pecuniary and substantial and not a remote consequence of the judgment); *Office of Governor v. Donahue*, 98 A.3d 1223, 1229 (Pa. 2014) (party's interest is substantial when it surpasses the interest of all citizens in procuring obedience to the law, is direct when the asserted violation shares a causal connection with the alleged harm, and is immediate when the causal connection with the alleged harm is neither remote nor speculative).

⁵ **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.

* * *

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.

* * *

71 P.S. § 337.

the scope of this jurisdiction. *Beishline*, 234 A.3d at 885. The burden is on Petitioner to establish a *prima facie* case by showing title sufficient to base a right to recovery; Petitioner must recover on the strength of its own title and not on any weakness of another's title. *Kaiser Energy, Inc. v. Commonwealth, Dept. of Envtl. Resources*, 535 A.2d 1255, 57 (Pa. Cmwlth. 1988).

The interest in question is a Gore – an area created where property lines of ownership do not exactly match, leaving a gap. Here, Respondent suggests that tapered rights of way along State Route 322 (Horseshoe Pike) fronting property previously held by the Watters family created a Gore owned by Respondent as a result of its prior acquisition of the property. The question to be resolved by the Board is whether Respondent dedicated to PennDOT the full right of way that encompasses the Gore and, if so, whether PennDOT accepted that dedication prior to the attempted rescission by Respondent's general partner. Petitioner presented the expert testimony of Fronefield Crawford, Jr., Esquire to explain its position.⁶ (N.T. 6/7/23 at 25-187, exhibit P-9) Streets or highways may be created by an express or implied dedication of land. *Borough of Milford v. Burnett*, 136 A. 669, 671 (Pa. 1927). Recordation of a final plan constitutes an offer to dedicate the interest shown thereon. *Burger v. Rockhill Builders, Inc.*, 420 A.2d 616, 618 (Pa. Super. 1980).

The Chester Valley Engineers plans and the TPD plans show a "legal right of way" of a single unbroken 40-foot-deep line along Respondent's property fronting State Route 322 (Horseshoe Pike). There is no taper on these plans that would create a Gore. The plans also contained a note that the legal right of way was to be dedicated. The Chester Valley Engineer plans were recorded with the sale of the property from Watters to Respondent. The TPD plans were included with submission to PennDOT of behalf of Watters and Respondent of the application for

⁶ The Board finds Mr. Crawford to be credible and persuasive and agrees with his opinions. Respondent presented the expert testimony of William F. Kerr, Jr., Esquire. (N.T. 6/9/23 at 66-259, exhibit BVA-22). The Board does not accept Mr. Kerr's opinions.

a highway occupancy permit. These plans created an offer of implied dedication. As the road itself is a state highway, such offer was to PennDOT and not the Township.

Acceptance may be by conduct as well as by ordinance or formal act. *Tri-City Broadcasting Co. v. Howell*, 240 A.2d 556, 558 (Pa. 1968). Because any exercise of authority is sufficient to evidence acceptance of an offer of dedication, governmental authorities are not required to secure formal deeds of dedication to effect acceptance of an offer of dedication as shown on a plan. *City of Pittsburg v. Epping-Carpenter Co.*, 45 A. 129 (Pa. 1900). By issuing the HOP in reliance of these plans along this right of way, PennDOT accepted this offer of dedication in 1993. Following PennDOT's acceptance, Respondent could not unilaterally rescind its offer of dedication years later. *See, Epping-Carpenter Co.* (when a public highway has been acquired, it cannot be lost by nonuse or by municipal action not expressly authorized by law).

Petitioner has established that no Gore was created and that, to the extent a Gore may be considered, it is entirely within PennDOT's dedicated right of way not rescinded and thus owned by PennDOT and not by Respondent or its Partners.

Respondent argues that, pursuant to the State Highway Act, a 1957 PennDOT plan with a taper in the right of way is binding and precludes a finding that there is no Gore or that any such gap is within PennDOT's dedicated right of way. The Board rejects this argument. Notwithstanding any such prior acquisition by PennDOT to construct State Route 322, in its development process Respondent dedicated the straight 40-foot even right of way to PennDOT.

Finally, Respondent asserts that its Partners are not proper parties to this matter. A quiet title action before the Board is not a determination of wrongdoing or even of liability. It is a determination of ownership. By being parties, the Partners have had a full and fair opportunity to assert that they or Respondent or someone else is the rightful owner of the property at issue. The

Board's decision is binding against them.

Wherefore, the Board enters the following order.


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

Carlino East Brandywine, LP,	:	
Petitioner	:	
	:	
vs.	:	Docket No. BP 2022-0001
	:	
Brandywine Village Associates, Leonard	:	
Blair, Richard Blair, John Cropper,	:	
Commonwealth of Pennsylvania, Dept. of	:	
Transportation, and East Brandywine	:	
Township Board of Supervisors,	:	
Respondents	:	

FINAL ORDER

AND NOW, this 18th day of April 2024, having duly convened and considered the entire record of the proceedings, and based upon the foregoing Findings of Fact, Conclusions of Law and Discussion, the State Board of Property hereby **GRANTS** the petition of Carlino East Brandywine, LP, in the nature of an action in trespass or ejection including in the nature of an action to quiet title or for declaratory judgment, and enters judgment in favor of the Commonwealth of Pennsylvania, Department of Transportation. Petitioner and Respondents Brandywine Village Associates, Leonard Blair, Richard Blair, John Cropper, and East Brandywine Township Board of Supervisors shall not assert any right, title or interest inconsistent with this ownership of this right of way.

BY ORDER:



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

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Date of mailing: [via email and USPS 4.18.24](#)



**COMMONWEALTH OF PENNSYLVANIA
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April 18, 2024

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Re: *Carlino East Brandywine, LP v. Pa. Dept. of Transportation, et al*,
Docket No. BP-2022-0001

Dear counsel:

Enclosed please find a final adjudication and order issued by the State Board of Property in the referenced matter.

Sincerely,

Thomas A. Blackburn, Counsel
State Board of Property

enclosure

cc: Eileen Quinn, Board administrator