

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

MONTGOMERY AREA SCHOOL
DISTRICT,

Appellant,

vs.

BOARD OF SUPERVISORS OF
CLINTON TOWNSHIP,

Appellee.

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: No. CV 24-01,031
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: CIVIL ACTION
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FILED
LYCOMING COUNTY
2025 JAN 10 PM 3:29
THOMAS D. HEAP
PROTHONOTARY

ORDER

AND NOW, this 10th day of January, 2025, upon consideration of the Motion to Dismiss filed by Appellee, Board of Supervisors of Clinton Township (the "Motion"),¹ and the arguments of the parties,² it is hereby ORDERED and DIRECTED that the Motion is DISMISSED as moot, for the reason explained below.

Appellee Montgomery Area School District commenced this action by complaint filed September 25, 2024 (the "Complaint").³ The Complaint arises out of Appellee's August 12, 2024 denial of land use plans submitted by the Appellant. The Complaint seeks a peremptory judgment reversing Appellee's decision and approving Appellant's preliminary/final land development plans and an award of damages for the delay in approval of the plans.⁴

Following a conference with counsel, the Court set a period for discovery and placed this matter on the Court's January, 2025 trial list.⁵ By subsequent Order, the Court scheduled this case for a one-day non-jury trial to be held January 22, 2025.⁶

¹ Appellee's Motion to Dismiss, filed December 16, 2024.

² The Court heard argument on the Motion on January 6, 2025. Noah F. Roux, Esq. argued for the Appellant, and Zachary M. DuGan, Esq. argued for the Appellee.

³ Notice of Land Use Appeal, filed September 25, 2024.

⁴ *Id.*

⁵ Scheduling Order, dated November 8 and entered November 12, 2024.


⁶ Scheduling Order, dated and entered December 20, 2024.

Thereafter, Appellee filed the instant Motion on December 16, 2024.

Appellee contends that Appellant's School Board did not approve the filing of this case at a public meeting prior to commencement of litigation. As such, Appellee contends that Appellant violated the Sunshine Act⁷ and that, accordingly, the Complaint should be dismissed.⁸ Appellant responds that filing the Complaint is not an official action subject to the Sunshine Act; that Appellee did not timely challenge Appellant's alleged violation; and that any violation was cured by subsequent action of Appellant's Board at a public meeting.⁹

Because "official action taken at a later, open meeting cures a prior violation of the Sunshine Act"¹⁰ and because Appellant's Board later ratified commencement of this case, any violation of the Sunshine Act that did occur has been cured. Because the alleged violation has been cured, the Court finds it unnecessary to consider whether a violation occurred in the first instance. As the alleged deficiency underlying the Motion to Dismiss has been cured, the Motion has been rendered moot and, therefore, is DENIED. **The parties are reminded that this matter remains scheduled for trial on January 22, 2025.**

IT IS SO ORDERED.

BY THE COURT,

Eric R. Linhardt, Judge

ERL/bel

cc: ✓ Thomas C. Marshall, Esq. (tmarshall@mpvhlaw.com) and Noah F. Roux, ✓
Esq. (nroux@mpvhlaw.com), *McNerney, Page, Vanderlin & Hall*
✓ Scott T. Williams, Esq. (swilliams@perciballiandwilliams.com) and Zachary
M. DuGan, Esq. (zdugan@perciballiandwilliams.com), *Perciballi and
Williams, LLC*

⁷ 65 Pa. C.S. §§ 701-716.

⁸ Motion.

⁹ Argument. Appellant's counsel sent a letter to the Court dated January 9, 2024 wherein counsel states that on January 7, 2025, at a Special Meeting of Appellant's Board of School Directors, the Board approved a motion ratifying filing of the instant land use appeal and complaint in mandamus.

¹⁰ *ACORN v. SEPTA*, 789 A.2d 811, 813 (Pa. Commw. 2002).