IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Condemnation by the Pennsylvania Turnpike Commission of Property Located in the Borough of West Mifflin, County of Allegheny, Commonwealth of Pennsylvania, for the Construction of the Mon-Fayette Expressway, PA Route 51 to I-376 Project, a Partial Take (Part of Block and Lot Nos. 239-D-20, 239-D-25 and 239-D-30)	:	
	:	No. 1357 C.D. 2024
Appeal of: IBIS Kennywood, LLC	:	Submitted: June 16, 2026

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE STELLA M. TSAI, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE COVEY FILED: November 17, 2026

IBIS Kennywood, LLC (Kennywood) appeals from the Allegheny County (County) Common Pleas Court's (trial court) September 19, 2024 order overruling its preliminary objections (Preliminary Objections) to the Pennsylvania Turnpike Commission's (Commission) condemnation notice. Essentially, Kennywood presents one issue for this Court's review: whether the trial court erred as a matter of law and abused its discretion by concluding that the Commission satisfied the notice requirements of Section 305(c)(9) of the Eminent Domain Code (Code).[1] After review, this Court affirms.

[1] 26 Pa.C.S. § 305(c)(9).

Kennywood owns land and buildings located in the County, identified as Lot and Block Nos. 239-D-20, 239-D-25, and 239-D-30 (collectively, the Property). The Property is improved by a large regional shopping center which contains a grocery store, a gas station with a convenience store, and retail shops. Kennywood has used the Property for commercial and rental purposes since Kennywood purchased it. On March 31, 2021, the Commission filed a Declaration of Taking (Declaration) which purportedly seeks to take portions of the Property, on both a temporary and permanent basis, to construct the Mon-Fayette Expressway, State Route 51 to Interstate 376 (I-376). Specifically, the Declaration seeks to take: (1) .426 acre, as a required right-of-way; (2) 1.997 acres, as a required temporary construction easement; (3) .146 acre, as a required drainage easement; (4) .834 acre, as a required slope easement; and (5) 2.859 acres, as a required substitute right-of-way for Duquesne Light Company (collectively, Condemned Parcel).

On April 30, 2021, Kennywood filed the Preliminary Objections to the Declaration, alleging therein that the specified plot plans (Plot Plans) did not comply with Section 305(c)(9) of the Code. The trial court ordered discovery and a viewing of the Property. Subsequently, Kennywood deposed Commission Engineer Thomas Lench (Lench). Kennywood attached exhibits to Lench's deposition transcript, including detailed plans regarding the proposed construction, which included the Plot Plans. Following discovery, the trial court stated it would not hold a hearing and would decide the case on the briefs, transcripts, and exhibits. On October 1, 2021, the trial court overruled the Preliminary Objections. On October 19, 2021, Kennywood appealed from the trial court's order to this Court.[2]

[2] This Court docketed that appeal at Commonwealth Court Docket No. 1167 C.D. 2021.

Thereafter, by June 16, 2022 letter, William R. Crawford, P.E. (Crawford), Vice President of T.W. Engineering,[3] conveyed a "summary of the actions taken by the . . . Commission [] in response to specific engineering concerns raised by [Kennywood] as part of the adjudication of the Preliminary Objection[s] to the [c]ondemnation of [the Property]" (Engineering Summary). Reproduced Record (R.R.) at 679a. The Engineering Summary notes that the Plot Plans "were part of a 75% submission (design progress prints) and not contract bid documents." *Id*. In the June 16, 2022 letter, Crawford stated:

> It was clear to the [Commission] and its Design Management Team that several of the engineering concerns indicated in [Kennywood's expert, Gateway Engineers, Inc.'s (Gateway) report] and [Gateway's Project Manager, Patrick T.] Cooper's deposition, had potential to impact the subject parcel based on the proposed roadway design contained in the 75% plans. The [Commission] took these concerns seriously and directed the Section Designer - EADS, Inc. [(EADS)] - to reevaluate those design elements of the project. Based on this reevaluation and the progression of the final design plans, **EADS made modifications to the design elements identified below between the 75% plans and the current** [**f**]**inal** [**p**]**lans**, Specifications and Estimates for Section 53C2 of the Southern Section of the Mon[-]Fayette Expressway.

R.R. at 679a-680a (emphasis added).

On December 29, 2022, concluding that "[t]he trial court overlooked that [Kennywood] may challenge the sufficiency of the Section 305 [of the Code] notice, which requires a plot plan where, as here, a partial taking is at issue[,]" this Court vacated the trial court's order and remanded the matter to the trial court to determine whether the Commission's Plot Plans complied with Section 305(c)(9) of

[3] T.W. Engineering is a subconsultant to the Commission's contracted engineering firm, HDR Engineering.

the Code, and to issue an order disposing of Kennywood's Preliminary Objections (Remand Order).

On February 15, 2023, the trial court issued a supplemental opinion (Supplemental Opinion), stating therein:

> Th[e] [trial c]ourt [] held a hearing asking the [] Commission for a specific plan showing the outline of the . . . [P]roperty with those areas proposed to be taken by the [] Commission. The same was supplied and these plans are attached to this Supplemental Opinion. It is obvious that **this plan shows clearly and unambiguously the area of the partial tak[ing] that the** [] **Commission is proposing**. Accordingly, with this filing, the requirement of [Section] 305(c)(9) [of the Code] has been met. Th[e] [trial c]ourt has also directed the [] Commission to make a separate filing under Affidavit that these are the applicable drawings. This filing is to be filed with the [trial] court.
>
> Accordingly, I believe this concludes the responsibility of th[e] [trial c]ourt in the above matter.

R.R. at 847a (emphasis added).

On March 15, 2023, Kennywood appealed to this Court from the Supplemental Opinion.[4] Kennywood also filed a Motion to Compel Compliance with Remand Order, requesting that this Court direct the trial court to resolve the Preliminary Objections in accordance with this Court's Remand Order. On August 24, 2023, this Court quashed Kennywood's appeal as premature because the trial court had not yet addressed Kennywood's Preliminary Objections and, thus, no appealable order existed. On September 19, 2024, the trial court overruled the Preliminary Objections and referred the matter to a Board of Viewers for an assessment of damages. On October 9, 2024, Kennywood appealed to this Court.[5]

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[4] *See* Pa. Cmwlth. No. 258 C.D. 2023.

[5] This Court's review "of a decision to condemn property and of the extent of the taking is to determine whether the trial court's decision evidences an abuse of discretion or an error of law." *In re Redevelopment Auth. of the City of Erie*, 285 A.3d 986, 990 n.2 (Pa. Cmwlth. 2022).

Initially,

"[t]he power of eminent domain is an inherent one possessed by the Commonwealth, as sovereign, which permits it to take private property for a public use if the landowner receives just compensation for the taking." *Robinson T*[*wp.*] *v. Commonwealth*, . . . 147 A.3d 536, 586 (Pa. 2016). The Code "provides a complete and exclusive procedure and law to govern all condemnations of property for public purposes and the assessment of damages." [Section 102 of the Code,] 26 Pa.C.S. § 102. [This Court has] explained that

> [p]reliminary objections in the context of eminent domain actions serve a different purpose than preliminary objections filed in other civil actions. *In re Condemnation of .036 Acres, More or Less, of Land Owned by Wexford Plaza Assoc*[*s.*], 674 A.2d 1204 (Pa. Cmwlth. 1996). Not only are the [Pennsylvania] Rules of Civil Procedure [(Civil Rules)] not applicable to eminent domain proceedings, *Gilyard v. Redevelopment Auth*[.] *of Phila*[.], 780 A.2d 793 (Pa. Cmwlth. 2001), but preliminary objections filed pursuant to [S]ection [3]06 of the [Code] serve a very different purpose than those filed under the . . . Civil [Rules] []. In eminent domain cases, preliminary objections are intended as a procedure to resolve expeditiously the factual and legal challenges to a declaration of taking before the parties proceed to determine damages. *N*[.] *Penn Water Auth*[.] *v. A Certain Parcel of Land*, . . . 650 A.2d 1197 (Pa. Cmwlth. 1994).

In re Condemnation by City of Coatesville, 898 A.2d 1186, 1189 n.7 (Pa. Cmwlth. 2006). Under the Code

> [p]reliminary objections shall be limited to and shall be the exclusive method of challenging[:]
>
> (i) The power or right of the condemnor to appropriate the condemned property unless it has been previously adjudicated.
>
> (ii) The sufficiency of the security.

> (iii) The declaration of taking[.]
>
> (iv) Any other procedures followed by the condemnor.
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> [Section 306(a)(3)(i)-(iv) of the Code,] 26 Pa.C.S. § 306(a)(3)(i)-(iv).

In re Condemnation of Premises Owned by Powell, 260 A.3d 298, 307-08 (Pa. Cmwlth. 2021).

> The . . . Code sets forth the requirements of notice that must be given by a condemnor. It states in relevant part as follows:
>
> > **(c) Contents.--**The notice to be given the condemnee shall state:
> >
> > . . . .
> >
> > (8) A statement that the condemnee's property has been condemned and a reasonable identification of the property.
> >
> > (9) In the case of a **partial taking**, **a plot plan showing the condemnee's entire property and the area taken**.
> >
> > (10) A statement of the nature of the title acquired.
> >
> > (11) A statement specifying where a plan showing the condemned property may be inspected in the county in which the property taken is located.
> >
> > . . . .
>
> [Section 305(c)(8)-(11) of the Code,] 26 Pa.C.S. § 305(c)(8)-(11).

Burns v. Dep't of Transp., 364 A.3d 461, 466-67 (Pa. Cmwlth. 2025) (italic emphasis omitted; bold emphasis added).

> The importance of an accurate plot plan has been explained by this Court as follows:

> *The plot plans and property plat filed with the declaration of taking and served upon a condemnee are part of and indeed, the heart of a declaration of taking*. It is only by reference to such plans that one can determine what property is the subject of condemnation and, **in the case of a partial taking, what part of a property has been taken**.
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> *W*[.] *Whiteland Assoc*[*s.*] *v.* [*Dep't of Transp.*], 690 A.2d 1266, 1269 (Pa. Cmwlth. 1997) (emphasis added). [The Pennsylvania] Supreme Court [(Supreme Court)] has held that where a plot plan does not "establish the extent or effect of the taking[,]" the condemnee is not bound by the 30-day deadline in Section 306(a) of the . . . Code for filing preliminary objections to a declaration of taking. *Szabo v. Commonwealth*, . . . 202 A.3d 52, 53 (Pa. 2019) (Opinion Announcing the Judgment of the Court) . . . .

Burns, 364 A.3d at 468 (bold emphasis added).[6]

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[6] In *Burns*, a condemnee appealed from the trial court's order striking an allegation in the condemnee's petition requesting appointment of viewers, which asserted that the Pennsylvania Department of Transportation's (PennDOT) declaration of taking did not include an accurate identification of the condemnee's property that was actually condemned and, thus, PennDOT also effected the *de facto* condemnation of her property. PennDOT's plot plan depicted the condemned area of the condemnee's property and included the rectangular outline of the condemnee's dwelling. The plot plan showed the dwelling as entirely excluded from the taking for the expanded right-of-way. The condemnee obtained her own survey and thereby learned that the expanded right-of-way ran through the porch and steps of her home. PennDOT argued that the condemnee had failed to timely file preliminary objections to its declaration of taking within 30 days of its service under Section 306(a) of the Code.

The *Burns* Court explained:

> [This Court] reject[s] PennDOT's argument. The [p]lot [p]lan did not show that the taking included the concrete porch, which is part of the masonry dwelling. To the contrary, the [p]lot [p]lan showed that the taking was intentionally designed to avoid the dwelling on [the c]ondemnee's property, locating the outer boundary of the new right-of-way several feet away from the masonry dwelling. The only reasonable way to read the [p]lot [p]lan is that it placed the porch within the rectangular footprint of the dwelling. Further, the only access to the dwelling is to and from that porch. The porch was not a mere "detail," and its omission from the [p]lot [p]lan

Kennywood contends that the trial court erred because the Commission's Plot Plans did not properly reflect the portions of the Property the Commission is taking and, thus, the Declaration does not satisfy the notice requirements of Section 305(c)(9) of the Code. Referencing the Commission's engineer's testimony, Kennywood identifies alleged Commission admissions regarding four Plot Plan defects. According to Kennywood, "the Plot Plans fail to depict: (i) the location of the temporary construction access; (ii) the location of temporary and permanent utility relocation easements; (iii) the design of [the Commission's] main access driveway; and (iv) the power pole relocation easement." Kennywood Br. at 25.

The Commission rejoins that the Plot Plans attached to the Declaration fully comply with the Code. The Commission emphasizes that in February 2023, it also filed Plot Plans under Affidavit, per the trial court's directive. The Commission further asserts that, contrary to Kennywood's contentions, the Plot Plans' modifications during the progression from a 75% completion stage to the final plans, did not impact the type and/or extent of the taking because the Commission made no changes to the type of and/or extent of the taking indicated on the Plot Plans attached to the Declaration.

Powell is instructive here. In *Powell*, this Court reviewed a trial court's decision overruling a property owner's preliminary objections to the Altoona/Logan Township Mobile Emergency Medical Department Authority's (AMED) declaration of taking for the purpose of installing an electric service powerline to AMED's new ambulance station. In ruling that the trial court erred by failing to sustain the

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> understated the actual contours of PennDOT's taking and was misleading.

Burns, 364 A.3d at 468 (quotation marks and citation omitted).

property owner's preliminary objection alleging the declaration of taking did not adequately describe the property sought to be taken because the plot plan outlined the entire property without showing the location of the powerline easement, this Court observed:

> Section 302(b)(5) of the Code states that the declaration of taking shall contain "a description of the property condemned, sufficient for identification . . . ." 26 Pa.C.S. § 302(b)(5). The "description may be a word description or in plan form." *Milford Trumbauersville Area Sewer Auth*[.] *v. Approximately 0.753 Acres of Land*, . . . 358 A.2d 450, 454 (Pa. Cmwlth. 1976). [The] Supreme Court's decision in *Szabo* is instructive.
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> . . . .
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> The Supreme Court [in *Szabo*] concluded that under [S]ection 305 of the Code, [26 Pa.C.S. § 305,] "written notice shall be given to the condemnee" and "in the case of a partial taking, a plot plan showing the condemnee's entire property and **the area taken**." [*Szabo*, 202 A.3d at] 63 (quoting 26 Pa.C.S. § 305(c)(9)) (emphasis added). The Supreme Court noted that the plan did not show that portions of [the property] were to be condemned and *did not identify that land as owned by the condemnees*. *Id*. at 63. Due to the inaccuracy, more of the condemnee's land[,] than was identified in the plan[,] was subject to the taking. [The] Supreme Court held that "[the condemnor] bore the burden of accurately notifying the owners of land subject to the taking so that they could protect their interests and secure just compensation." *Id*. at 64.

Powell, 260 A.3d at 311-12 (underline emphasis added).

The *Powell* Court expounded:

> The basic law involved in this matter is not at issue. . . . Where a description is sufficient so that one may determine the exact limits of the property included by reference to a plan, deed or other similar records, the law is satisfied. *Cheney v. Carver*, . . . 88 A.2d 746 [(Pa. 1952)]. Ladner on Conveyancing in Pennsylvania states in section

> 6:09 at page 152[ ]that, "no deed will be operative unless the description is sufficient for . . . identification. **While it need not be technically accurate**, **the description must be clear and sufficiently precise to enable a surveyor to locate and identify the property**."
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> *Dickson* [*v. Pa. Power & Light Co*.], 423 A.2d [711,] 712-13 [(Pa. Super. 1980)] (emphasis added). . . . The requirement that property being taken be described in a manner that is "sufficient for identification" is the same standard required in all instruments conveying real property. *See Pierro*[*v. Pierro*], 264 A.2d [692,] 694 [(Pa. 1970)] (some citations omitted) ("It is well settled that specific performance will not be granted unless the terms of the agreement are sufficiently set forth and the property to be conveyed is sufficiently identified and described. 'Adequate or ample description is that which would enable a competent surveyor to find the land in question from the agreement or from the references made in it.' *Prager v. McAdam*, [. . . 161 A.2d 39 (Pa. 1960)].").

Powell, 260 A.3d at 314-15 (underline emphasis added).

As the trial court observed, the Plot Plans attached to the trial court's February 15, 2023 Supplemental Opinion "show[] clearly and unambiguously the area of the partial take that the [] Commission is proposing." R.R. at 926a; *see also* R.R. at 927a-930a. The Plot Plans are detailed in specific measurements and easement notations, and includes the required area charts and information. *See* R.R. at 927-30. "[B]y reference to [the Plot Plans] . . . one can determine what property is the subject of condemnation and . . . what part of the [P]roperty has been taken." *W. Whiteland*, 690 A.2d at 1269. Accordingly, the trial court properly concluded that the Commission complied with Section 305(c)(9) of the Code's notice requirements.

For all of the above reasons, the trial court's order is affirmed.

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ANNE E. COVEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Condemnation by the Pennsylvania Turnpike Commission of Property Located in the Borough of West Mifflin, County of Allegheny, Commonwealth of Pennsylvania, for the Construction of the Mon-Fayette Expressway, PA Route 51 to I-376 Project, a Partial Take (Part of Block and Lot Nos. 239-D-20, 239-D-25 and 239-D-30)	:	
Appeal of: IBIS Kennywood, LLC	:	No. 1357 C.D. 2024

O R D E R

AND NOW, this 17th day of November, 2026, the Allegheny County Common Pleas Court's September 19, 2024 order is affirmed.

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ANNE E. COVEY, Judge