

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GLEN RIDDLE STATION, L.P.,

Plaintiff,

v.

MIDDLETOWN TOWNSHIP,

Defendant.

CIVIL ACTION

NO.: _____

JURY TRIAL DEMANDED

CIVIL ACTION COMPLAINT

Glen Riddle Station, L.P. (referred to as, “GRS,” unless indicated otherwise), by and through its undersigned counsel, brings this action against Middletown Township (the “Township”) under 42 U.S.C. § 1983 for violating its right to due process of law, and in mandamus seeking an order directing the Township to follow certain mandates of the International Fire Code (the “IFC”), as adopted by the Pennsylvania Department of Labor and Industry and the Township.

GRS owns a residential apartment community in the Township that houses approximately 224 Pennsylvania residents, including working families, young children, and the elderly. The Township recently declared “safe” at a public meeting a sound wall plan (the “Plan”) prepared by Sunoco Pipeline, L.P. (“Sunoco”), for Sunoco’s construction work on GRS’s property. The Township also published its “safety” declaration in its January Engineering Report, vouching for the purported safety of the Plan and claiming that emergency vehicles may “access the entire site....”

Sunoco has since confirmed the Township’s “safety” declaration and that Sunoco’s work proceeds on GRS’s property in reliance on this declaration. The “safety” declaration by the

Township came without notice to GRS or an opportunity for GRS to be heard on the issue of the Plan's actual safety.

The Plan is not safe, nor does it allow for appropriate ingress and egress to and from GRS's property for emergency vehicles. The Plan, in fact, renders the 124 residential dwelling units on GRS's property non-compliant with the minimum standards required by certain mandatory provisions of the IFC. As such, the Plan endangers the lives of the more than 200 residents at GRS's property and the GRS employees working at the Property.

The Township has no discretion here. The Township must follow the IFC provisions at issue, as compliance with these specific provisions is mandatory. The Township's failure to act - its "safety" declaration is not official Township action - and ignorance of the IFC's mandatory minimum safety standards threatens lives and unduly interferes with GRS's property rights.

GRS asks the Court to find that the clandestine process by which the Township declared the Plan "safe" violates GRS's due process rights, and to require the Township to comply with the IFC provisions identified below. To that end, the Township must not allow work to proceed on GRS's property until the Plan complies with the specific IFC provisions identified below.

PARTIES

1. GRS is a Pennsylvania limited partnership with a registered business address of One Raymond Drive, Havertown, Middletown Township, Pennsylvania 19083.

2. The Township is a local agency as defined by the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa. C.S.A. §§ 8501, *et seq.*, with offices located at 27 N. Pennell Road, P.O. Box 157, Lima, Pennsylvania 19037.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 1983 because GRS brings its claims under its right to due process pursuant to the Fourteenth Amendment to the Constitution of the United States.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because the claims asserted by GRS arose within this District. See Americananglian Environmental Technologies, L.P. v. Doherty, 461 F. Supp. 2d 359, 362 (E.D. Pa. Nov. 14, 2006)).

5. This Court may exercise supplemental jurisdiction over the state law mandamus claim pursuant to 28 U.S.C. § 1337 because the state law claim arises from the same case or controversy that give rise to jurisdiction under 28 U.S.C. § 1331. This Court has authority to exercise supplemental jurisdiction over Pennsylvania state law mandamus claims. Doherty, 461 F. Supp. 2d at 362.

FACTUAL BACKGROUND

A. Sunoco's Pipeline Project At GRS's Property

6. On or about May 13, 2020, Sunoco filed a Declaration of Taking in the Court of Common Pleas of Delaware County, Pennsylvania, captioned In Re: Condemnation By Sunoco Pipeline L.P. Of Temporary Workspace Easement And For The Transportation Of Ethane, Propane, Liquid Petroleum Gas, And Other Petroleum Products In Middletown Township, Delaware County, Pennsylvania, Over the Lands of Glen Riddle Station, L.P., No. CV-2020-003193 (the “Taking Action”).

7. The Taking Action concerns GRS’s property known as the Glen Riddle Station Apartments in Middletown Township, Delaware County, Pennsylvania, Tax Parcel ID No. 27-00-00780-00 (the “Property”).

8. The Property includes 124 residential dwelling units housing more than 200 residents (the “GRS Residents”).

9. In the Taking Action, Sunoco condemned temporary workspace easements and a temporary access road easement over the Property (collectively, the “Temporary Easement”) ostensibly for purposes of constructing a portion of Sunoco’s Mariner East 2 pipeline project (the “Pipeline Project”).

10. Sunoco also condemned a temporary access road easement across the Property that is twenty (20) feet wide and extends for approximately 223 feet.

B. The Plan

11. Sunoco has installed sound walls (the “Sound Walls”) around the perimeter of its workspace in the Temporary Easement at the Property.

12. The Plan is comprised of two renderings, one concerning the layout of Sound Walls at the Property during the day and a second rendering concerning Sunoco’s removal and/or reconfiguration of the Sound Walls at night. [A true and correct copy of the Plan is attached here as **Exhibit A.**]

C. The Township Fails To Officially Act On the Plan But Declares It “Safe”

13. After preparing the Plan, Sunoco submitted it to the Township for some unspecified “assessment.” [See Engineering Report referencing the Township’s “assessment” of the Plan, a true and correct copy of which is attached as **Exhibit B** (see p. 2 of Engineering Report, at “Glen Riddle Station Apartments.)]

14. Despite inquiries to the Township, GRS does not know whether Sunoco submitted the Plan to the Township before or after erecting the Sound Walls.

15. GRS asked the Township if it had reviewed or was reviewing any submissions by Sunoco regarding the Property and for what.

16. The Township failed to provide any meaningful response to the questions referenced in Paragraph No. 15.

17. The Plan involves the installation, re-configuration, and/or removal of Sound Walls on GRS's Property and, as such, GRS was entitled to an opportunity to be heard by the Township regarding any "safety" declarations or findings impacting GRS's Property rights and concerning the safety of the GRS Residents who live at the Property and GRS employees who work at the Property.

18. GRS demanded that the Township provide it with a right to be heard prior to the Township rendering any safety findings concerning the Property. [See December 15, 2020 Letter from Samuel Cortes, Esquire, to James Flandreau, Esquire, a true and correct copy of which is attached as **Exhibit C.**]

19. At some point in the "process" (the timing and actual process utilized by the Township is currently unknown by GRS as it did not occur in public), the Township reviewed, assessed, and ultimately, through its governing Township Council¹, declared the Plan "safe" both to Sunoco and publicly at a Township meeting on January 11, 2021, without any prior notice to GRS or providing GRS with an opportunity to be heard.

20. The Township published a "safety declaration" regarding the Plan in its January engineering report (the "Engineering Report"), stating "[Sound] Wall installation has been assessed by the Township so that emergency vehicles can access the entire site and all buildings

¹ The Township operates under a Home Rule Charter that provides that "all powers of the [Township] shall be vested in the Township Council of Council Members, except as otherwise provided by law or this Chapter, and the Council shall provide for exercise thereof and for the performance of all duties and obligations imposed on the Township by law." Middletown Township Home Rule Charter, Article II, Section 201.

for fire fighting and other emergency services capability, as would normally occur, absent construction activity.” [See Engineering Report, **Exhibit B.**]

21. The Township did not provide GRS notice of, or an opportunity to be heard regarding, whatever clandestine process it undertook to “assess” the Plan.

22. In fact, when GRS learned of the Plan’s existence and terms, the Township had already declared it to be “safe.”

23. The Sound Walls are presently operational at the Property.

24. The Township has not formally acted on the Plan, choosing instead to declare it “safe” at the January 11, 2021 public meeting and in its publication of the Engineering Report.

D. The Township Must Reject The Plan

25. The Township has adopted the IFC, including its appendices. [See Township’s Notice Adopting the IFC, a true and correct copy of which is attached here as **Exhibit D** (adopting the Pennsylvania Uniform Construction Code as well as, among others, the IFC, including its Appendix D)].

26. Each of the IFC’s appendices provide as follows: “The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance or legislation of the jurisdiction.” [See e.g., IFC, at its Appendix D.]

27. Therefore, once the Township adopted the IFC’s appendices, compliance with the IFC’s appendices (the “Mandatory IFC Provisions”) became mandatory and was no longer subject to the discretion of the Township or any of its officials. [Id.]

28. This includes the Township’s compliance with the Mandatory IFC Provisions with respect to its review of Sunoco’s work on the Property. Pennsylvania Construction Code, 35 P.S. § 7210.301(d) (providing “[t]he regulations adopted by the department implementing

these codes shall supersede and preempt all local building codes regulating any aspect of the construction, alteration and repair of buildings, adopted or enforced by any municipality or authority or pursuant to any deed restriction, rule, regulation, ordinance, resolution, tariff or order of any public utility or any State or local board, agency, commission or homeowners' association").

29. The Plan violates at least three of the Mandatory IFC Provisions. See IFC, at Part VII – Appendices, at Appendix D, Fire Apparatus Access Roads, at §§ D103.4 (relating to dead-end fire apparatus access roads and incorporating the diagram at D103.1 relating to turnarounds), D103.5 (relating to fire apparatus access road gates), and D106 (relating to multiple-family residential development).

30. First, Section D106 of the IFC applies to properties having more than 100 dwelling units and requires those properties to “be equipped throughout with two separate and ***approved*** fire apparatus access roads.” IFC, at § D106 (emphasis added).

31. The residential buildings at the Property contain over 100 dwelling units.

32. The Plan violates Section D106 because it deprives the GRS Property and those who access it of two separate and ***approved*** fire apparatus access roads in violation of Section D106 of IFC. Id., at § D106.

33. The failure of the Plan to allow for two separate fire apparatus roads with access roads is evident from the attached diagram of the access roads and Sound Walls at the Property (the “Diagram”). [A copy of the diagram is attached as **Exhibit E.**]

34. Second, Section D103.5 of the IFC provides the following:

Gates securing fire apparatus access roads shall comply with all of the following criteria:

...

2. Gates shall be of the swinging or sliding type.
3. Construction of gates shall be of materials that allow manual operation by one person.
4. Gate components shall be maintained in an operative condition at all times and replaced or repaired when defective.

...

IFC, at § D103.5.

35. Here, the “movable” sections of the Sound Walls violate Section D103.5 of the IFC pertaining to fire apparatus access road gates. Id.

36. The “movable” sections of the Sound Walls identified in the Plan are not “gates.”

37. Instead, the “movable” sections of the Sound Walls identified in the Plan can be moved only manually and only by multiple people. [True and correct copies of photographs of a portion of the Sound Walls including the “movable” section are attached as **Exhibit F**, with markup indicating where the “movable” section is located.]

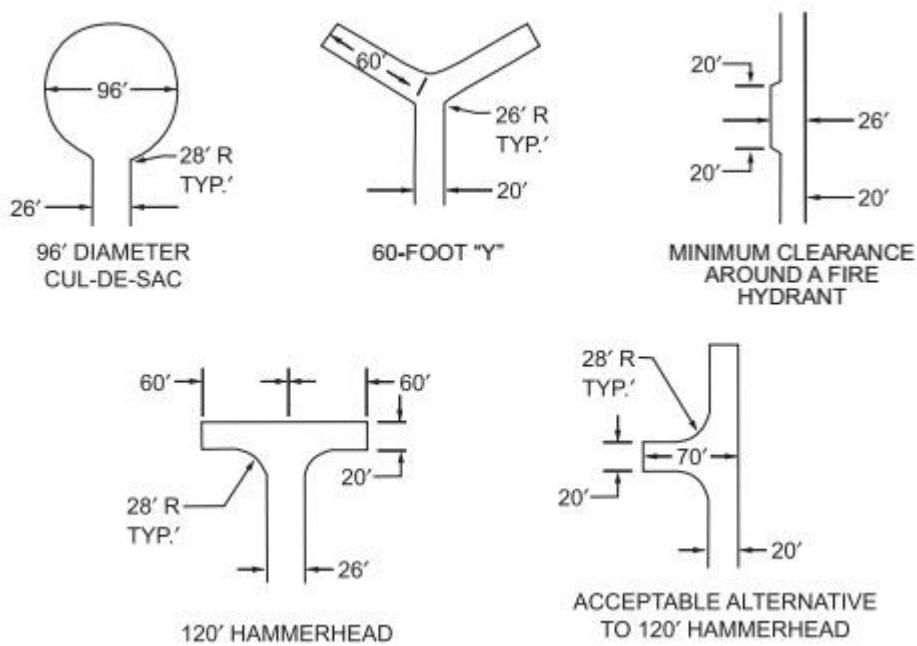
38. In any event, on the other side of these “movable” sections of the Sound Walls are trenches that require some type of bridging or covering for emergency vehicles to access the Property.

39. Further, these “movable” sections of the Sound Walls exist only on the eastern side of the property – the western side lacks even a “movable” section to allow for emergency vehicle access. [See Diagram, Exhibit E.]

40. Finally, Section D103.4 of the IFC requires that “[d]ead-end fire apparatus access roads in excess of 150 feet shall be provided with width and turnaround provisions in accordance with [the following:]”

LENGTH(feet)	WIDTH(feet)	TURNAROUNDS REQUIRED
0-150	20	None required
151-500	20	120-foot Hammerhead, 60-foot “Y” or 96-foot diameter cul-de-sac in accordance with Figure D103.1
501-750	26	120-foot Hammerhead, 60-foot “Y” or 96-foot diameter cul-de-sac in accordance with Figure D103.1
Over 750		Special approval required

41. Figure D103.1 of the IFC, referred to within Section D103.4 above, requires the following:



42. The western side of the property does not have the turnaround space required by Section D103.4 (figure 103.1) of the IFC.

43. In failing to officially act on the Plan while declaring it “safe” publicly, the Township failed to perform its nondiscretionary duty of enforcing the foregoing Mandatory IFC Provisions, which were adopted and must be enforced, ultimately, by the Township Council.

44. Compliance with the above-referenced Mandatory IFC Provisions is particularly important at GRS because it is an older apartment community built almost fifty years ago without a fire sprinkler system and before a sprinkler system was required.

45. Accordingly, GRS is particularly sensitive to and vigilant about fire safety and compliance with the IFC, including, without limitation, the Mandatory IFC Provisions.

46. GRS engaged security personnel as Sunoco’s work proceeded on the Property in an effort to help to improve fire safety at the Property, among other things, as it became apparent that neither Sunoco nor the Township shared GRS’s fire safety concerns.

COUNT I
Violation Of The United States Constitution
Procedural Due Process – 42 U.S.C. § 1983

47. GRS incorporates the foregoing paragraphs as if the same were set forth fully herein.

48. The Township’s clandestine process that resulted in its declaration that the Plan is “safe” and failure to follow the Mandatory IFC Provisions jeopardizes lives and GRS’s Property rights.

49. States may not “deprive any person of life, liberty, or property without due process of law.” U.S. Const. Amend. XIV, 1.

50. The Fourteenth Amendment's Due Process protections apply to limited partnerships, including, without limitation, GRS.

51. 42 U.S.C. § 1983 provides that “[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State … subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....” Id.

52. “To establish a cause of action for violation of procedural due process, a plaintiff in addition to proving that a person acting under color of state law deprived it of a protected property interest, must establish that the state procedure for challenging the deprivation does not satisfy the requirements of procedural due process.” Highway Materials, Inc. v. Whitemarsh Twp., No. 02-3212, 2004 WL 2220974, at *9 (E.D. Pa. Oct. 4, 2004).

53. Here, the Township, acting under color of state law and through its governing body (i.e., its Council), has, in violation of 42 U.S.C. § 1983, deprived GRS of its rights, privileges, and immunities secured by law, by failing to provide GRS with an opportunity to be heard on the Plan prior to issuing the Township’s “safety” declaration on which Sunoco now relies to create fire hazards on GRS’s Property.

54. In reliance on the Township’s “safety” declaration, Sunoco is proceeding with its Plan, violating Sections D103.4 (incorporating the diagram at D103.1), D103.5, and D106, of the IFC and posing an immediate danger to GRS’s Residents and the Property itself in the event of an emergency requiring emergency vehicle access to the Property. See IFC, at Part VII – Appendices, at Appendix D, Fire Apparatus Access Roads, at §§ D103.4 (relating to dead-end apparatus access roads and incorporating the diagram at D103.1 relating to access road design and width), D103.5

(relating to fire apparatus access road gates), and D106 (relating to multiple-family residential development).

55. GRS has suffered and will continue to suffer damages as a direct and proximate result of the Township's actions in its attempts to help to make the Property safer and to be readily available in the event of an emergency.

56. Each moment that passes with work proceeding on GRS's Property in these circumstances poses an immediate and unacceptable threat to lives and the Property itself.

WHEREFORE, Plaintiff, Glen Riddle Station, L.P., respectfully requests that the Court:

- a. Enter judgment in favor of Glen Riddle Station, L.P., and against Defendant, Middletown Township;
- b. Declare that Middletown Township's actions were unconstitutional;
- c. Declare that Middletown Township denied Glen Riddle Station, L.P., of its right to due process under the Constitution of the United States;
- d. Award Glen Riddle Station, L.P., its reasonable attorneys' fees and costs;
- e. Award Glen Riddle Station, L.P., actual, compensatory, and punitive damages; and
- f. Award all further relief that the Court deems proper and necessary.

COUNT II – MANDAMUS
TOWNSHIP COMPLIANCE WITH THE MANDATORY IFC PROVISIONS

57. GRS incorporates the foregoing paragraphs as if the same were set forth fully herein.

58. GRS seeks an order requiring the Township to follow the Mandatory IFC Provisions. [See Ex. E (Township's Notice Adopting the IFC).]

59. As set forth above, the Township adopted the Mandatory IFC Provisions, and thereby has a non-discretionary duty to enforce them. This includes the Township's non-discretionary duty to ensure that the Plan complies with the Mandatory IFC Provisions, including, without limitation, Section D103.4 incorporating the diagram at D103.1 relating to dead-end fire apparatus access roads, Section D103.5 relating to fire apparatus access road gates, and Section D106 relating to emergency access roads for multiple-family residential developments.

60. The Township ignored the Mandatory IFC Provisions when it failed to act officially on the Plan and informally declared the Plan "safe." Id.

61. The Township's failure to perform its non-discretionary duties with respect to the above-identified Mandatory IFC Provisions has rendered GRS's Property non-compliant with the Mandatory IFC Provisions. Id.

62. Absent immediate relief in mandamus, the Property will remain in state of non-compliance and lives and the Property itself remain in jeopardy.

63. Compliance with the Mandatory IFC Provisions is particularly important at GRS because fire sprinkler systems are not present on the Property and, therefore, this non-compliance creates a particularized, grave risk of danger.

WHEREFORE, Plaintiff, Glen Riddle Station, L.P., respectfully requests that the Court enter an Order as follows:

- a. Finding that Defendant, Middletown Township, must comply with Sections D106, D103.4, and D103.5 of the International Fire Code;
- b. Directing Middletown Township to stop anyone from any work on the Glen Riddle Station, L.P. Property until compliance with the International Fire Code is achieved;

- c. Awarding damages resulting from the Township's failure to enforce the International Fire Code pursuant to 42 Pa.C.S.A. § 8303, including, without limitation, the monies Glen Riddle Station, L.P., has incurred to pay for security staff resulting from the Township's failures; and
- d. Awarding such other relief as the Court deems appropriate.

FOX ROTHSCHILD LLP

Date: January 21, 2021

By: /s/ Samuel W. Cortes

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