

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

UPPER SAUCON TOWNSHIP, et al, : CIVIL ACTION NO. 70-2651

Plaintiffs

vs.

JACOB KASSAB,
Secretary of Transportation
Commonwealth of Pennsylvania,

and

All persons acting in concert
with him,

Defendants

AMENDED COMPLAINT - CLASS ACTION

CLASS ACTION ALLEGATIONS

The Plaintiff, Upper Saucon Township, Lehigh County, Pennsylvania, brings this suit as a class action on behalf of itself, a property owner, and all other property owners in Upper Saucon Township who are similarly aggrieved pursuant to F.R.Civ.P. 23(b)(2) and complains as follows:

1. The Plaintiff is a municipal corporation of the Commonwealth of Pennsylvania, and the citizens of the Plaintiff township are citizens of the United States of America and of the Commonwealth of Pennsylvania.
2. The Defendants are Jacob Kassab, Secretary of the Department of Transportation of the Commonwealth of Pennsylvania, and all other persons acting in concert with him as employees of that Department, all of whom are citizens and residents of the Commonwealth of Pennsylvania.

3. Plaintiff brings this action on behalf of itself and on behalf of all other persons similarly situated who are residents or real property owners in the Township of Upper Saucon, County of Lehigh, Pennsylvania; such persons are about Five (500) Hundred in number and located in several parts of eastern Pennsylvania and even of the United States, and therefore are so numerous as to make it impracticable to bring them all before the court; the right which is the subject of this action is common to all the residents and real property owners of the Township; there are questions of law and fact common to such residents and real property owners to wit: whether they were consulted and whether a hearing as required was afforded them; the claims of the Plaintiff are typical of the claims of such residents and real property owners and Plaintiff will fairly and adequately protect the interests of such residents and real property owners.

4. This suit is properly maintainable as a class action pursuant to F.R.Civ.P. 23(b)(2) since the parties opposing the class have acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole.

5. This action arises under the United States Constitution particularly under the provisions of the Fourteenth Amendment, and under Federal law, more particularly the Civil Rights Act, Title 42 of the United States Code, Section 1983, and the Federal-Aid Highways Act, Title 23 of the United States Code, Sections 101 et seq.

6. This court has jurisdiction of this matter under and by virtue of Title 28 of the United States Code, Section 1343.

7. Each and all of the acts of the principal Defendant and other Defendants acting in concert with him, which are alleged herein were done by them and each of them, not as individuals, but under the color and pretense of the statutes, regulations, customs and usages of the Commonwealth of Pennsylvania, and under the authority of their office as planners and builders of public highways in the Commonwealth of Pennsylvania.

8. The Defendant, Jacob Kassab, or his predecessor in office, and persons acting in concert with him, are engaged in planning the location and construction of a project which is part of the Interstate Highway System which is being financed almost entirely by the United States under the provisions of the Federal-Aid Highways Act, Title 23 of the United States Code, Section 101 et seq., which project is popularly known as I-78, and the Defendants plan to locate a part of the same in the Upper Saucon Township.

FIRST COUNT

9. The Defendants, or their predecessors in office, engaged a consulting engineering firm, Clarke and Rapuano, Inc., as their agent to perform some of the Defendants' duties in connection with planning the location of I-78; Clarke and Rapuano, Inc. are also consulting engineers for Bethlehem Steel Company.

10. The Defendants, or their predecessors in office, and Clarke and Rapuano, Inc. by its officers and employees, did consult with one private property owner in Upper Saucon Township, to wit, Bethlehem Steel Company, concerning the location of I-78 in Upper Saucon Township, at various times prior to May, 1968.

11. The Defendants or their predecessors in office, and Clarke and Rapuano, Inc. by its officers and employees, failed to consult with the Plaintiff, a property owner, as well as other private property owners in Upper Saucon Township, about the location of I-78 prior to May, 1968.

12. By May 1968, the Defendants and their predecessors in office, and Clarke and Rapuano, Inc. by its officers and employees acting as agents for the Defendants, had determined the general location of I-78 in Upper Saucon Township.

13. The Defendants and their predecessors in office have refused to consult with the Plaintiff and other private property owners in Upper Saucon Township concerning the general location of I-78, but have permitted them to examine maps and drawings showing the location that the defendants had determined upon at least partly in consultation with officers and employees of Bethlehem Steel Company.

14. Robert Bartlett, formerly the Secretary of Highways of the Commonwealth of Pennsylvania, and the predecessor in office of Jacob Kassab, one of the Defendants, and other persons

employed by the Commonwealth of Pennsylvania, met with officers and employees of Bethlehem Steel Company in the offices of the latter sometime in October 1967, at which time they determined the general location of I-78 in Upper Saucon Township.

15. The Defendants have refused and persist in their refusal to accord to the Plaintiff and to all other persons for whom this action is brought by the Plaintiff, the same right and privilege of participating in the planning of the general location of I-78 in Upper Saucon Township as the Defendants granted to Bethlehem Steel Company, and therefore are denying to the Plaintiff and the other persons for whom this class action is brought the equal protection of the laws as guaranteed to them by the Fourteenth Amendment to the United States Constitution.

SECOND COUNT

16. Under the provisions of the Federal-Aid Highways Act, Title 23 of the United States Code, Section 128, the Defendants are obligated to hold public hearings for the purpose of enabling the Plaintiff and other persons for whom this class action is brought"...to express any objections they may have to the proposed location..." of I-78.

17. The Defendants have not held any public hearings as required by Federal law, although the Defendants did on two occasions invite the public to admire the handiwork of its cartographers in showing the proposed location of I-78 and to listen to the Defendants' spokesman as to the alleged merits of such general location; however, the defendants and their predecessors

in office refused to permit any witnesses to be examined or cross-examined about the statements they were making or about their interest in the matter, and as a consequence it cannot be said that the Defendants held "hearings" as required by statute, and thus the Plaintiffs and all persons for whom this class action is being brought are being denied due process of law as provided in the Fourteenth Amendment to the Constitution of the United States.

WHEREFORE, the Plaintiffs pray:

1. That the Defendants be enjoined from proceeding with the planning and construction of I-78 in Upper Saucon Township until they have consulted, in good faith, with the Plaintiff and other persons interested in the location of I-78; and
2. That the Defendants be enjoined from proceeding with the planning and construction of I-78 until they hold public hearings as required by Federal law.



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