

IN THE COURT OF COMMON PLEAS  
OF CRAWFORD COUNTY, PENNSYLVANIA

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CRAWFORD COUNTY, MEADVILLE, PA 16660

PATRICIA B. GENUNG,  
Plaintiff

v.

WEST MEAD TOWNSHIP,  
Defendant

CIVIL DIVISION

A D 2020 6 0 9

DOCKET NO.

Type of Pleading: **COMPLAINT**


Filed on behalf of: Plaintiff

Counsel of Record for this party:

Andrew M. Schmidt, Esq. (Pa. ID #89448)  
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SHERIFF OF CRAWFORD CO., PA

IN THE COURT OF COMMON PLEAS  
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PATRICIA B. GENUNG,

Plaintiff

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Defendant

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AD 2020

609

**NOTICE TO DEFEND**

TO: WEST MEAD TOWNSHIP

YOU ARE BEING SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Court Administrator  
Crawford County Courthouse  
Meadville, PA 16335  
(814) 333-7398



Andrew M. Schmidt  
Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc.  
Attorneys for Plaintiff

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**COMPLAINT**

**AND NOW**, comes the Plaintiff, Patricia B. Genung, by and through her attorneys, Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., and files the within Complaint against West Mead Township, and in support thereof avers as follows:

1. Plaintiff, Patricia B. Genung, is an adult individual residing at 12245 Leslie Road, West Mead Township, Crawford County, Pennsylvania 16335.
2. Defendant, West Mead Township, is a Second-Class Township located in Pennsylvania with a principal address of 1150 Morgan Village Road, Meadville, Pennsylvania 16335.
3. By Deed dated May 3, 2017 and recorded in the in the Office of the Recorder of Deeds of Crawford County, Pennsylvania at Instrument No. 201704721, Plaintiff purchased the real property and improvements thereon commonly known as 12245 Leslie Road, West Mead Township, Crawford County, Pennsylvania 16335 ("Subject Property").

4. The Subject Property borders Leslie Road to the west.
5. Defendant has in the past and continues to the present time to maintain Leslie Road.
6. In the location of the Subject Property, Leslie Road is a paved, two-lane north/south public thoroughfare.
7. In the location of the Subject Property, Leslie Road slopes downhill from the north to the south and is crested such that it also slopes to the east and west.
8. On the east side of Leslie Road across from and upgradient of the Subject Property are eleven residential properties and a farm field.
9. The residential properties and a portion of the farm field are in a watershed consisting of approximately 9.35 acres ("watershed"). The watershed includes a portion of Leslie Road.
10. Surface and storm water ("water") from the watershed drains south and west towards the Subject Property.
11. In the location of the Subject Property, water from the watershed enters a ditch on the east side of Leslie Road.
12. Said ditch is in Defendant's right-of-way and is maintained and controlled by Defendant.
13. Water is conveyed through said ditch and, where the ditch intersects with properties on the east side of Leslie Road water is conveyed through HDPE pipes of varying sizes.

14. There is not a ditch on the west side of Leslie Road in the location of the Subject Property.

15. Prior to Plaintiff acquiring the Subject Property, Defendant made alterations to Leslie Road including its elevation, surface, crown, grade, and drainage adjacent to and under Leslie Road.

16. Upon information and belief, Plaintiff avers that until approximately 2010, drainage on the east side of Leslie Road passed by the Subject Property through the aforementioned ditch on the east side of Leslie Road to State Route 27, located to the south and downgradient of the Subject Property.

17. In or about 2010, Defendant installed an 18" HDPE pipe ("culvert") underneath Leslie Road from the east side of Leslie Road to the west side of Leslie Road.

18. Upon information and belief, Plaintiff avers that until sometime in 2013, water in the culvert would flow uncontrollably onto the Subject Property.

19. In 2013, Defendant, where the culvert outlets, installed an 18" HDPE pipe on the west side and parallel with Leslie Road and on the Subject Property.

20. The 18" HDPE pipe terminates at a headwall constructed of concrete blocks on the Subject Property.

21. At the headwall, water is redirected to a ditch along the south edge of the Subject Property.

22. As a consequence of the culvert and 18" HDPE pipe installed along the west side of Leslie Road, water from the watershed that historically flowed through the ditch on the east side of Leslie Road to State Route 27 is channeled and diverted to the Subject Property.

23. Defendant did not approve the installation of the culvert during a public meeting.

24. Defendant did not approve the installation of the 18" HDPE pipe along the west side of Leslie Road during a public meeting.

25. No easement was recorded to provide notice that the culvert under Leslie Road and 18" HDPE pipe along the west side of Leslie Road on the Subject Property had been installed.

26. Defendant did not develop an erosion and sedimentation plan to address sedimentation within the water encroaching upon the Subject Property through the culvert, which generates from the watershed.

27. Defendant failed to properly stabilize the Subject Property at the discharge point at the headwall to handle the increase in flow and volume of water conveyed through the culvert and, ultimately, onto the Subject Property.

28. In addition, water flows onto the Subject Property at further upgradient point(s) or points on the west side of Leslie Road that causes ponding of water and wet conditions near Plaintiff's residence and detached building and area surrounding same, which Defendant is not managing.

29. During certain storm events, water overflows the ditch on the east side of Leslie Road, and onto Leslie Road.

30. Defendant's failure to increase the capacity of the ditch on the east side of Leslie Road causes water to encroach upon the Subject Property.

31. Defendant's installation of the culvert and subsequent 18" HDPE pipe channels and diverts water, which encroaches upon the Subject Property.

32. The individual and collective effects of Defendant's actions as set forth herein cause water to encroach upon the Subject Property.

33. Defendant has channeled, collected, and diverted water onto the Subject Property, causing erosion, flooding, and possible killing of vegetation.

34. Defendant's channeling, collecting, and diverting of water has reduced the usable property available to Plaintiff and encroaches close to her home's foundation.

35. The channeled, collected, and diverted water on the Subject Property poses a health and safety hazard to Plaintiff, her guests, and trespassers.

36. The condition of the Subject Property resulting from the channeled, collected, and diverted water has impaired its market.

37. Defendant's activities as described in this Complaint were without proper planning and without Plaintiff's consent.

COUNT I - VIOLATION OF THE PENNSYLVANIA STORMWATER  
MANAGEMENT ACT AS ADOPTED BY WEST MEAD  
TOWNSHIP'S STORMWATER MANAGEMENT ORDINANCE.

38. Paragraphs 1 through 37 inclusive are incorporated herein as if fully set forth.

39. Pennsylvania has enacted the Stormwater Management Act, codified at 32 P. S. 680.1, et seq.

40. Among the requirements of the Act are that municipalities are to plan and implement programs and take actions, including enacting ordinances, to minimize the impact of surface and storm water upon its citizens. 32 P.S. § 680.11.

41. On May 10, 2011, Defendant did enact a Stormwater Management Ordinance ("Ordinance"), which requires, *inter alia*, that any regulated activity and stormwater management facility must comply with the Ordinance.

42. Defendant is a "person" as that term is defined under the Ordinance.

43. It is believed and therefore averred that Defendant conducted regulated activity and/or constructed stormwater management facilities within the upgradient watershed of the Subject Property that were not authorized under the Ordinance, including maintenance of surface water ditches, road maintenance, installation of the culvert, installation of the 18" HDPE pipe along the west side of Leslie Road and altering the discharge point area where water enters the Subject Property.

44. The Ordinance requires the culvert to be designed to accommodate a 50-year design storm. See, Ordinance Section 601 G (3).

45. The ditches and enclosed pipe on the east side of Leslie Road are undersized for the conveyance of water runoff along the east side of Leslie Road thereby causing increased flow of water into the culvert and, ultimately, onto the Subject Property.

46. A violation of the Ordinance is a violation of the Pennsylvania Stormwater Management Act. 32 P.S. §§ 680.15, 16.



47. Defendant's activities in channeling and diverting water are a public nuisance and, therefore, should be abated and prevented.

48. Plaintiff has been damaged as set forth above.

**WHEREFORE**, Plaintiff requests that the Defendant be ordered to refrain from violating the Pennsylvania Storm Water Management Act and West Mead Stormwater Management Ordinance and to develop and implement a plan to properly manage storm and surface water such that it does not enter the Subject Property.

#### COUNT II – NEGLIGENCE

49. Paragraphs 1 through 48 inclusive are incorporated herein as if fully set forth.

50. Defendant has channeled, directed and deposited water onto the Subject Property without performing any hydrological studies to determine whether the culvert and subsequent drainage on the Subject Property could accommodate and handle the increased flows and volume of water..

51. Defendant owes Plaintiff a duty to design and construct a water system on Leslie Road in the watershed that satisfies its storm water ordinance.

52. Defendant owes Plaintiff a duty to not discharge water from the watershed onto the Subject Property.

53. As a taxpayer, Plaintiff is entitled to the full use of the Subject Property without unpermitted water encroachments perpetuated and facilitated by the individual

and collective effects of the culvert under Leslie Road and 18" HDPE pipe and shallow ditch on the east side of Leslie Road.

54. Defendant has breached these duties thereby causing Plaintiff to suffer the damages set forth above.

**WHEREFORE**, Plaintiff requests this Court to direct the Defendant to develop a plan to properly manage water such that it does not encroach upon the Subject Property and award Plaintiff damages in excess of the arbitration limits of Crawford County.

#### COUNT III – TRESPASS

55. Paragraphs 1 through 54 inclusive are incorporated herein as if fully set forth.

56. Without Plaintiff's permission or consent, Defendant has and continues to trespass onto the Subject Property by channeling, collecting and diverting water onto the Subject Property.

57. As a result of the trespass, Plaintiff has been damaged as set forth above.

**WHEREFORE**, Plaintiff requests judgment in her favor and against Defendant in an amount greater than the arbitration limits of Crawford County, plus costs.

#### COUNT IV - CONTINUING TRESPASS

58. Paragraphs 1 through 57 inclusive are incorporated herein as if fully set forth.

59. Defendants' maintenance of the upgradient conditions as outlined herein causes water to enter the Subject Property, which has and will continue to create a continuing trespass.

60. The continuing trespass has and will continue to damage the Subject Property as set forth above.

61. Plaintiff requests this court to order as follows:

- a. Grant a preliminary injunction enjoining Defendant from further encroaching upon the Subject Property.
- b. Grant a permanent injunction enjoining Defendant from further encroaching upon the Subject Property.
- c. Award Plaintiff those damages set forth above.
- d. Grant Plaintiff any other relief this Court deems necessary and appropriate.

**WHEREFORE**, Plaintiff respectfully requests this Honorable Court to declare Defendant's actions in violation of Plaintiff's right to use and enjoy her property and grant Plaintiff the relief requested herein.

#### COUNT V - NUISANCE

62. Paragraphs 1 through 61 inclusive are incorporated herein by reference as if fully set forth herein.

63. Following significant storms, the Subject Property is flooded and standing water remains.

64. The flow of water is continuous in nature.

65. The water entering and standing upon the Subject Property is a nuisance.

66. Consequently, Plaintiff is subjected to a continuing nuisance.
67. Plaintiff is subjected to damage each time said nuisance occurs.
68. Plaintiff is entitled to have such nuisance abated and enjoined.
69. Plaintiff is entitled to those damages set forth above.

**WHEREFORE**, Plaintiff respectfully requests this Honorable Court to declare Defendants' actions in violation of Plaintiff's right to use and enjoy her property and grant Plaintiff a preliminary and permanent injunction to have Defendant remove the nuisance immediately and in an amount greater than the arbitration limits of Crawford County, plus costs.

#### COUNT VI – PENNSYLVANIA CLEAN STREAMS LAW

70. Paragraphs 1 through 69 inclusive are incorporated herein by reference as if fully set forth herein.

71. Defendant's failure to prepare and utilize an erosion and sedimentation plan and failure to stabilize the disturbed Subject Property constitute violations of 25 Pa. Code Chapter 92a and/or 102 and 35 P.S. § 691.1, et seq. of the Clean Stream Law.

72. Defendant's failures as outlined above cause "pollution," as that term is defined under the Clean Streams Law, to waters of the Commonwealth that are located on the Subject Property.

73. Plaintiff is entitled to have the pollution abated.

74. Plaintiff is entitled to costs of the litigation, including reasonable attorney's fees and expert witness fees.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to declare Defendant's actions in violation of Plaintiff's right to use and enjoy her property and grant Plaintiff a preliminary and permanent injunction to have Defendant remove and abate the pollution immediately and award Plaintiff any sustained damages, costs and attorneys and expert witness fees.

Respectfully submitted,

QUINN, BUSECK, LEEMHUIS, TOOHEY &  
KROTO, INC.

Date: 12/7/20

By 

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PATRICIA B. GENUNG,

Plaintiff

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WEST MEAD TOWNSHIP,

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**VERIFICATION**

I, Patricia B. Genung, Plaintiff in the above matter, depose and say that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief. This statement is made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities and is given pursuant to the provisions for verification of pleadings as defined and provided for in Rule 1024 of the Pennsylvania Rules of Civil Procedure.

Date Dec. 1, 2020

  
Patricia B. Genung