

Plaintiffs' proposal for subdivision of Plaintiffs' land.¹ This suit is brought by the developers against the Township, neighbors and groups of individual citizens. The facts against the Private Defendants are that they petitioned their local government, including members of the Board of Supervisors and the Planning Commission, and made representations to these members in both public and private meetings. The governing body, it is alleged, took action against the Plaintiffs, in part relying on reasons provided by the Private Defendants. As a result, the Plaintiffs allege deprivations of their constitutional rights to develop their property and other ancillary constitutional rights.

Presently before the Court are the motions to dismiss (1) by the Private Defendants for dismissal of all claims against them; and (2) by the Township Defendants for all claims except Count I, the civil rights claim under 42 U.S.C. section 1983. The Plaintiffs' Complaint asserts claims for violations of 42 U.S.C.

¹The Township Defendants include West Pikeland Township, George Irwin, Andrew McCreight and J. Chris Petry, the Supervisors of West Pikeland Township, and Peter Hughes, Michael Craven, Franklin Best, John Henssler, Thomas Dinan and David Dunwoodie, the members of the Planning Commission of West Pikeland Township. These Defendants will be collectively referred to as the Township Defendants and individually referred to as the Township, the Board of Supervisors or Supervisors, and the Planning Commission.

The Private Defendants are Citizens for West Pikeland's Future, Inc., and its directors or officers, including Terri Cullen, Tom Grant, Ernie Holling, Barbara Hurt-Simmons, Howard Imhof, Suzanne Kaplan, Maurice Kring, Steve Loving and Tom Nolan. They will be collectively referred to as the Private Defendants.

sections 1983 and 1985, and state law claims for conspiracy, intentional interference with actual contractual and business relationships, intentional interference with prospective contractual relationships, and violations of the Pennsylvania Constitution, Article 1, section 26. The Defendants filed the present Motions to Dismiss on August 24, 2000 and September 15, 2000.² For the reasons that follow, the Private Defendants' Motion is granted and the Township Defendants' Motion is granted in part and denied in part.

I. BACKGROUND.

On January 2, 1999, Plaintiff, Chantilly Farms, Inc. ("Chantilly Farms"), pursuant to an Agreement of Sale with Plaintiff, Barbara L. Neilson ("Neilson"), became the equitable owner of a 76 acre parcel of land known as Chantilly Farms located on Horseshoe Trail in West Pikeland Township, Chester County, Pennsylvania. (Compl., ¶¶ 1, 13, 14.) Chantilly Farms is located in a Conservation Residence zoning district. (Id. at ¶ 15.) On June 2, 1999, the Plaintiffs filed a Sketch Plan Application with West Pikeland Township ("the Township") for subdivision of 34 acres of Chantilly Farms into 34 one-acre single family lots in the rear portion of the property ("Lot Averaging Plan"). (Id. at ¶ 16.) The Lot Averaging Plan also

² This case was transferred to this Court from the calendar of the Honorable Thomas N. O'Neill, Jr. on September 28, 2000.

provided for one 26-acre lot with deed-restricted open space which would contain and preserve the existing residence, the horse farm with stables and barn, the pond and associated wetlands which already exist on Chantilly Farms. (Id. at ¶ 17.) In addition, the Plaintiffs proposed a 3700 foot single access road from Horseshoe Trail to the home sites in the rear of the property. (Id. at ¶ 19.) The single access road required a waiver of Township Ordinance section 610(8), which the Plaintiffs also requested. (Id. at ¶ 20.)³

The Plaintiffs also presented a comparison Sketch Plan proposing subdivision of all 76 acres of Chantilly Farms into 38 two-acre lots ("Two Acre Plan"). (Id. at ¶ 21.) In addition, at a Planning Commission meeting in June of 1999, in its review of the Lot Averaging Plan, the Planning Commission asked the Plaintiffs to submit a Sketch Plan utilizing the Township's Cluster Overlay Ordinance even though the property was not zoned for cluster housing and the road would still require a waiver ("Cluster Sketch Plan"). (Id. at ¶ 22.) The Planning Commission conducted an informal sketch plan review of the Lot Averaging Sketch Plan and the Cluster Sketch Plan from June 2, 1999 through September 13, 1999, which included the input of the Township Engineer, the Brandywine Conservancy and the Chester County

³Plaintiffs allege that waivers of this Ordinance were routinely granted to other subdivisions in the Township. (Compl., ¶ 20.)

Planning Commission. (Id. at ¶ 25.) The Plaintiffs allege that the Planning Commission "failed and/or refused to 'recommend such changes and modifications as it shall deem necessary or advisable in the public interest.'" (Id. at ¶ 26.) Plaintiffs further allege that the Planning Commission "failed and/or refused to send Written Notice of the action of the Planning Commission to the Supervisors or Plaintiffs within ten (10) days after its scheduled meeting review." (Id. at ¶ 27.) As a result, the Plaintiffs submitted a Preliminary Plan Application for the Lot Averaging Plan which was accepted by the Planning Commission as a complete submission at its October 13, 1999 meeting. (Id. at ¶¶ 23, 28.)

The Plaintiffs also submitted the Two Acre Plan to the Township Planning Commission, the County Planning Commission and the Township Engineer. (Id. at ¶¶ 30, 31.) Plaintiffs eventually withdrew the Lot Averaging Plan. After numerous meetings, the Planning Commission recommended non-approval of the Two Acre Plan to the Board of Supervisors. (Id. at 37.) Based upon the opposition of the Private Defendants, the Plaintiffs submitted an alternative preliminary subdivision plan entitled the "By-Right Two Acre Plan" ("By-Right Plan"), which application was accepted as a complete submission by the Township on November 10, 1999. Over a period of 4 months, the Planning Commission, the Township Engineer and the Township Solicitor reviewed the By-

Right Plan for compliance with the objective standards of the Township Subdivision and Zoning Ordinances, and Plaintiffs made numerous revisions in response thereto.

At the March 8, 2000 Planning Commission meeting, both the Township Solicitor and the Township Engineer informed the Planning Commission that the Plaintiffs had satisfactorily addressed all review comments and the By-Right Plan was in full compliance with all objective standards of the Township Ordinances. (Id. at ¶ 36.) However, the Planning Commission, despite the opinion of the Township Solicitor and the Township Engineer, voted to recommend denial of the By-Right Plan to the Board of Supervisors. (Id. at ¶ 37.) The Supervisors requested, and the Plaintiffs agreed, to grant an additional 30 days for review of the By-Right Plan. (Id. at ¶ 39.) Additional hearings were held before the Board of Supervisors. (Id. at ¶¶ 39, 40.) At the April 17, 2000 meeting of the Board of Supervisors, evidence was presented that the By-Right Plan complied with the Township Ordinances and those facts were confirmed to the Supervisors by the Township Solicitor and the Township Engineer. (Id. at 40.) The Supervisors requested that the Plaintiffs agree that a condition for approval of the By-Right Plan would be Plaintiff's re-submission of the previously filed Lot Averaging Plan, and Plaintiffs agreed. (Id. at 41.)

On April 24, 2000, the Township Supervisors voted 3-0

to deny the Plaintiffs' subdivision application. By letter dated May 8, 2000, the Township Supervisors provided Plaintiffs with written notice setting forth the following reasons for the April 24, 2000 denial: (1) road access conditions; (2) potential environmental hazards safety issues; (3) storm water runoff; (4) structures in the set backs; and (5) wetlands issues. (Id. at ¶ 43.) The Township Supervisors made references in this notice to "new information" as a basis for concern regarding environmental issues. (Id. at ¶ 44.) The Plaintiffs thus aver that this "new information" was received and discussed by the Township Supervisors on occasions outside of the public meetings in violation of the Pennsylvania Sunshine Act. (Id. at ¶ 38.)⁴

At the regular meeting of the Board of Supervisors on May 1, 2000, the Township Supervisors discussed the opinion of the Township Solicitor that the April 24, 2000 decision had no legally sufficient basis and could not be defended. (Id. at ¶ 47.) The Township Supervisors thus resolved, according to the Plaintiffs, to postpone a Special Meeting of the Board of Supervisors called to further consider Plaintiffs' Preliminary

⁴According to the Plaintiffs, the reasons for the denial were supplied to the Township Defendants by the Private Defendants at private meetings in furtherance of their ongoing effort and conspiracy to illegally and improperly impede and obstruct the subdivision application process and to deprive the Plaintiffs of their property and equal protection rights. These meetings, it is alleged, violated the Pennsylvania Sunshine Act. 65 Pa. C.S.A. § 701, et seq. (Compl., ¶ 38.)

Plan Application, and to hire new legal counsel to write the decision reached by the Supervisors. (Id. at ¶ 48.) The Board of Supervisors subsequently fired the Township Solicitor. (Id.)

Meanwhile, neighborhood opposition to Plaintiffs' development of Chantilly Farms, led by Defendant, Maurice Kring ("Kring"), incorporated as Citizens for West Pikeland's Future, Inc. and retained counsel.⁵ During the subdivision application process, the Plaintiff alleges that these Private Defendants, acting through and in concert with Kring,

contacted Plaintiffs' neighbors and through intimidation and threat, sought to prevent or hinder their cooperation with the lawful exercise of Plaintiffs' property rights and . . . contacted government and quasi-government agencies involved in the review of Plaintiffs' application, and through intimidation and threat, sought to deprive Plaintiffs, directly and indirectly of the equal protection of the laws.

(Compl., ¶¶ 87, 88.) The Plaintiffs also allege that the Defendant members of the Planning Commission and Board of Supervisors met with the Private Defendants throughout the subdivision application process and considered Plaintiffs' applications outside of the public meetings in violation of the Pennsylvania Sunshine Act. 65 Pa. C.S.A. § 701, et seq. The Defendants took these actions, according to the Plaintiffs, in

⁵The Plaintiffs allege that the organization of the Citizens Group was suggested by the Defendant members of the Board of Supervisors and Planning Commission.

furtherance of their ongoing efforts and conspiracy to deprive the Plaintiffs, directly and indirectly, of the equal protection of the law and to prevent or hinder the Township Defendants from giving or securing to the Plaintiffs the equal protection of the laws.

On May 23, 2000, the Plaintiffs appealed the Board of Supervisors' land use decision to the Court of Common Pleas of Chester County, Pennsylvania. (Township Defs.' Mem. Law in Supp. Mot. Dismiss at 3.) That matter remains outstanding. (*Id.*) On August 2, 2000, Plaintiffs filed this Complaint against all the Defendants for violations of 42 U.S.C. sections 1983 (Count I) and 1985 (Count II), conspiracy (Count IV), and intentional interference with actual contractual and business relationships (Count V). The Plaintiffs also bring a claim against the Township Defendants for violations of the Pennsylvania Constitution, Article I, section 26 (Count III). Plaintiff Chantilly Farms brings a separate claim against all the Defendants for intentional interference with prospective contractual and business relationships (Count VI). In each Count, the Plaintiffs seek damages in excess of one million dollars, punitive damages, attorneys fees, costs of litigation and pre and post judgment interest.

II. STANDARD OF REVIEW.

A motion to dismiss pursuant to Federal Rule of Civil

Procedure 12(b)(6) tests the sufficiency of the pleading. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Johnsrud v. Carter, 620 F.2d 29, 32 (3d Cir. 1980). A court must determine whether the party making the claim would be entitled to relief under any set of facts which could be established in support of the claim. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)(citing Conley, 355 U.S. at 45-46); see also Wisniewski v. Johns-Manville Corp., 759 F.2d 271, 273 (3d Cir. 1985). In considering a Motion to Dismiss, all allegations in the complaint must be accepted as true and viewed in the light most favorable to the non-moving party. Rocks v. City of Phila., 868 F.2d 644, 645 (3d Cir. 1989)(citations omitted).

III. DISCUSSION.

A. Motion to Dismiss filed by Private Defendants.

The Private Defendants move to dismiss the claims against them, claiming 1) they are immune from liability for all actions alleged in the Complaint by the First Amendment under the Noerr-Pennington doctrine; and 2) the doctrine of judicial estoppel, which precludes a party from asserting a position inconsistent with assertions made in prior proceedings prevents Plaintiffs from asserting that their actions caused Plaintiffs' damages.

The Noerr-Pennington doctrine "protects the right of citizens to petition their government." King v. Township of E.

Lampeter, 17 F. Supp.2d 394, 412 (E.D. Pa. 1998). The United States Court of Appeals for the Third Circuit ("Third Circuit") "has expressly applied this doctrine to protect citizens from liability for exercising their rights to petition state and local governmental bodies." Id. (citing Brownsville Golden Age Nursing Home, Inc. v. Wells, 839 F.2d 155, 160 (3d Cir. 1988)). The Private Defendants invoke this doctrine in order to avoid liability. In opposition to this Motion, the Plaintiffs first argue that "[e]ven though the acts were toward or in association with the government, it is inappropriate to characterize these actions as petitioning the government," and therefore the acts are not protected. (Pls.' Mem. Law in Supp. Resp. to Mot. Dismiss at 7.) On the other hand, the Private Defendants contend that "[s]o long as private defendants' actions constitute petitioning their representatives to rule favorably to their interests they are protected from liability." (Private Defs.' Mem. Law in Supp. Mot. Dismiss at 7.) They further contend that case law recognizes that this immunity may be invoked and determined in the context of a motion to dismiss. (Id. at 7-8)(citing King, 17 F. Supp.2d at 412-413).

Under the Noerr-Pennington doctrine, a defendant's motive for its conduct is irrelevant because "[a]s long as there is petitioning activity, the motivation behind the activity is unimportant." King, 17 F. Supp.2d at 412-413 (citing Barnes

Found. v. Township of Lower Merion, 927 F.Supp. 874, 877 (E.D. Pa. 1996) and E. R.R. Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127, 139 (1961)(stating "[t]he right of the people to inform their representatives in government of their desires with respect to the passage or enforcement of laws cannot properly be made to depend upon their intent in doing so.")).

The sole restriction on the Noerr-Pennington doctrine is the "sham exception," under which "a defendant is not protected if he or she is simply using the petition process as a means of harassment." Id. at 413. The Defendants claim that the sham exception has no application here because the acting governmental body, the Board of Supervisors, accepted some of their positions. The result was the Board's acceptance and adoption of the Defendants' position in a written report. Conversely, the Plaintiffs state that, accepting all the facts in the Complaint as true, the Defendants' actions were (1) calculated to interfere with the subdivision process and harass the Plaintiffs, (2) intended to impede and obstruct the subdivision process, and (3) calculated to prevent or hinder the Township Defendants from giving or securing to the Plaintiffs the equal protection of the laws. Thus, the Plaintiffs argue that the Defendants sought to bar them from meaningful access to the subdivision application process through harassment and intimidation, conduct which is not afforded First Amendment

protection, according to the Plaintiffs.

A defendant's motive, however, is irrelevant under the Noerr-Pennington doctrine. King, 17 F. Supp.2d at 412. Here, the Private Defendants petitioned their local government in order to influence policy and obtain favorable government action. Similarly, in Barnes, the plaintiff, a non-profit foundation operating an art museum, filed a civil rights action alleging that a Township, its Commissioners and neighbors acted in concert to discriminate against and harass the foundation, thereby infringing its constitutional rights. Barnes, 927 F.Supp. 874, 875 (E.D. Pa. 1996). The Barnes plaintiff's allegations included infringement of fundamental liberty and property interests, violations of the right to equal protection under the Fourteenth Amendment through selective enforcement of local laws and differential treatment of the plaintiff from other similarly situated foundations; and violations of substantive due process rights through the irrational deprivation of the plaintiff's property interest. Id. at 875. The Barnes court found the sham exception inapplicable because "[t]he Neighbors petitioned their local government in order to influence policy and obtain favorable governmental action, thus satisfying the requirements for Noerr-Pennington immunity." Id. at 877. This Court finds no appreciable difference between the Plaintiffs' instant claims and the Barnes plaintiff's claims. Thus, the sham exception is

inapplicable.

Further, the Plaintiffs' conspiracy allegations do not serve as an exception to the Private Defendants' immunity since "the Supreme Court has expressly stated that there is no conspiracy exception to the Noerr-Pennington doctrine." King, 17 F. Supp.2d at 413(citing City of Columbia v. Omni Outdoor Adver., Inc., 499 U.S. 365, 383 (1991)). Here, as in Barnes, the Plaintiffs' conspiracy theory rests on the notion that the neighbors petitioned the Township Defendants in order to influence the government's actions toward the Plaintiffs. See Barnes, 927 F. Supp. at 877. In addition, the Plaintiffs aver that "[d]uring the application process, the Defendant members of the Citizens Group acting through and in concert with Defendant Maurice Kring, contacted plaintiffs' neighbors and through intimidation and threat sought to prevent or hinder their cooperation with the lawful exercise of plaintiffs' property rights." (Compl., ¶ 87.) The Private Defendants do not respond to this argument. Rather, they claim that this is not a short and plain statement of this claim that will give each defendant fair notice of Plaintiffs' claims and the grounds upon which each claim rests as required by Federal Rule of Civil Procedure 9. Conley v. Gibson, 355 U.S. 41, 47 (1957). Although this argument may be valid, liability for any alleged conspiracy is precluded under the Noerr-Pennington doctrine, and this Court will not

address the sufficiency of Plaintiffs' pleading. King, 17 F. Supp.2d at 413. Thus, the distinction between a conspiracy with the Township Defendants and a conspiracy with other "private citizens or neighbors" is meritless because there is no conspiracy exception to the Noerr-Pennington doctrine.

Noerr-Pennington immunity further extends to the Plaintiffs' allegations that the Private Defendants violated the Pennsylvania Sunshine Act.⁶ According to the Private Defendants, Plaintiffs' Sunshine Act claim must be dismissed because private parties cannot be held liable for alleged violations of the Act, and no reported decisions hold a private party liable for such conduct. The Plaintiffs, in response, contend that because the alleged meetings were held in the confines of a private process, not in an open political arena, "[e]ven though the acts were toward or in association with the government, it is inappropriate to characterize these actions as petitioning the government." (Pls.' Resp. at 7.) The Plaintiffs cite the United States Supreme Court case Allied Tube & Conduit Corp. v. Indian Head, Inc., 486 U.S. 492 (1988), wherein the Court held that the Noerr-Pennington doctrine did not apply when "the activity . . . did

⁶The Pennsylvania Sunshine Act, codified at 65 Pa. C.S.A. section 701, et seq., states, in pertinent part, that it is "the public policy of this Commonwealth to insure the right of its citizens to have notice of and the right to attend all meetings of agencies at which any agency business is discussed or acted upon." 65 Pa. C.S.A. § 702(b).

not take place in the open political arena, where partisanship is the hallmark of decisionmaking, but within the confines of a private standard-setting process." Id. at 506. The Private Defendants correctly distinguish Allied Tube because the Allied Tube Court found the defendant's efforts in attempting to influence a private association's product standards did not qualify for Noerr immunity, even if those standards were routinely adopted by state and local governments. Id. at 504.

Moreover, the private meeting distinction drawn by the Plaintiffs was rejected in Barnes, when the court opined that "it does not matter that some of the alleged meetings were semi-private, rather than full township meetings, since the private meetings still involved the citizens' participating and airing grievances to local government." Barnes, 927 F.Supp. 874, 876 n.4 (E.D. Pa. 1996). Thus, Plaintiffs' claims against the Private Defendants for violations of the Pennsylvania Sunshine Act fail. Because this Court has determined that the Private Defendants are immune from liability under the Noerr-Pennington doctrine, the Private Defendants' arguments regarding judicial estoppel are not addressed.

B. Individual Township Defendants' Motion for Dismissal of all Claims except Count I, the Section 1983 Claim.

The Plaintiffs have also sued West Pikeland Township, three members of the Board of Supervisors both individually and in their official capacity, and six members of the Planning

Commission, individually and in their official capacity. These parties, which this Court will respectively refer to as the Township and the Township Defendants, filed a separate Motion to Dismiss in which they first argue that this Court should abstain from exercising jurisdiction.

1. Whether the Plaintiffs' Complaint Should Be Dismissed Under Younger Abstention, or Alternatively Stayed Pending an Outcome of the Ongoing State Court Action Under Colorado River Abstention.

a. Younger Abstention.

Abstention under Younger is appropriate only where (1) there are ongoing state proceedings that are judicial in nature; (2) the state proceedings implicate state interests; and (3) the state proceedings afford an inadequate opportunity to raise claims. Younger v. Harris, 401 U.S. 37 (1971). Abstention is not appropriate, however, if the state proceedings are being undertaken in bad faith or if extraordinary circumstances exist, such as the state proceedings are based on a thoroughly unconstitutional statute. Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 435 (1982).

In this case, the Township Defendants ask this Court to take judicial notice that the Plaintiffs appealed the land use decision to the Court of Common Pleas of Chester County, Pennsylvania and that appeal remains outstanding. The Plaintiffs argue that Younger abstention is inappropriate, although they do

not contest that the first Younger prong is satisfied since they filed a statutory appeal on May 25, 2000. The Plaintiffs do not agree, however, that the state proceeding implicates an important state interest, the second Younger requirement. They distinguish the state court action as involving the applicability of local land use ordinances and claim that they neither seek to enjoin any state proceedings nor challenge the legality of any township or municipal ordinance. In addition, only the Board of Supervisors in their official capacities are defendants in the state court proceedings. Thus, the Plaintiffs contend that this case does not interfere with the state court action. They liken this case to Gwynedd Properties, Inc. v. Lower Gwynedd Township, 970 F.2d 1195, 1200-1201 (3d Cir. 1992), in which the Third Circuit stated that:

[a]bstention under Younger presumes that the federal action would interfere with the ongoing state proceedings since, typically, the federal plaintiff's object in filing the federal action is either to seek an injunction against the state proceedings themselves or to challenge the law being applied in those proceedings. Thus, where abstention is appropriate, there is often a nexus between the claims asserted in the federal action and the defenses or claims asserted or available in the state action.

. . . .

By contrast, where federal proceedings parallel but do not interfere with the state proceedings, the principles of comity underlying Younger abstention are not implicated. Thus, Younger abstention may not

be appropriate where, for example, the federal plaintiff seeks only prospective relief without seeking to annul either previous state court judgments or the effect of the judgments.

(Mem. Law in Supp. Resp. Mot. Dismiss at 7-8)(citing Gwynedd Props., Inc., 970 F.2d at 1200-01 (citations omitted)). Nonetheless, the Plaintiffs state that the present federal court action "may well interfere with the ongoing state proceedings, thus raising concerns for state-federal comity addressed by Younger abstention." (Id. at 7.)

The third Younger prong requires that the state proceeding affords the parties an opportunity to raise federal or constitutional claims. The Defendants contend that this prong is met because the Plaintiffs have a full and adequate opportunity to raise their federal claims in state court proceedings, and state courts are as competent as federal courts in deciding federal constitutional issues. The Defendants also contend that none of the recognized Younger exceptions apply and there is no reason for this Court to believe that the Pennsylvania state courts will not fairly and adequately address the Plaintiffs' claims.

The Plaintiffs, on the other hand, argue that the proceedings in this Court parallel the state court proceedings. They filed their state court statutory appeal, and two months later filed their Complaint in this Court based upon the

Defendants' alleged unlawful actions. However, the state court action only involves a request for that court to order the Supervisors to approve the By-Right Plan, and the parties in that action are the Plaintiffs and the Supervisors in their official capacities. In contrast, the present action involves the Township, the Supervisors, and the Planning Commission, both individually and in their official capacities, as well as the Private Defendants.

The Plaintiffs in the present action seek damages from these Defendants, whereas the Plaintiffs in the state court action merely seek approval of their By-Right Plan. Thus, the Plaintiffs allege that the state court proceedings do not afford them an opportunity to raise their federal or constitutional claims. The Plaintiffs further distinguish this proceeding from the state proceedings by concluding generally that in remedial state court proceedings, plaintiffs attempt to vindicate a wrong inflicted by the state, whereas in coercive state proceedings, the federal plaintiff is the state court defendant and the state proceedings were initiated to enforce a state law. O'Neill v. City of Phila., 32 F.3d 785, 791 n.13 (3d Cir. 1994), cert. denied, 514 U.S. 1015 (1995); Tinson v. Commonwealth, No. CIV.A.93-3985, 1995 WL 581978, at *4 (E.D. Pa. Oct. 2, 1995). In contrast, according to the Plaintiffs, when the plaintiff in the subsequent federal action has initiated the state court remedial

proceeding, the federal proceeding parallels but does not interfere with the state court proceedings and "the principles of comity which underlie the Younger abstention doctrine are not implicated." Marks v. Stinson, 19 F.3d 873, 882 (3d Cir. 1994), cert. denied sub nom., 513 U.S. 1111 (1995)(citing Gwynedd Props., Inc., 970 F.2d at 1201). However, Younger abstention is appropriate when the state proceedings are coercive and the federal plaintiff "seek[s] to avoid an administrative proceeding into which it [was] unwillingly embroiled." Independence Pub. Media of Phila., Inc. v. Pa. Pub. Television Network Com'n., 813 F. Supp. 335, 342 (E.D. Pa. 1993). The Plaintiffs opine that the state court action is remedial and abstention by this Court is not warranted.

In Barnes, the court did not abstain because the third Younger prong was not met and the court recognized that "a local zoning proceeding is an insufficient forum to raise federal civil rights claims such as § 1983 and § 1985(3) claims." Barnes, 927 F. Supp. at 879 (citing Pennsylvania Municipalities Planning Code, 53 Pa. C.S.A. § 10909.1 (Supp. 1995) for the proposition that Zoning Hearing Board jurisdiction is limited to substantive and procedural challenges to validity of land use ordinance; appeals of decisions made by zoning officers, municipal engineers and officers in charge of developmental rights and applications for variances and special exceptions). Thus, the Barnes court

followed Third Circuit precedent that Younger abstention is inappropriate if the federal matter involves issues that will never be adjudicated in the state matter. Id. at 880(citing Heritage Farms v. Solebury Township, 671 F.2d 743, 747 (3d Cir.), cert. denied, 456 U.S. 990 (1982)). The Third Circuit advised in Heritage Farms that the court should abstain if a state matter is a criminal or quasicriminal matter, or if the pending state proceeding involves the precise claims or issues before the court in the federal case. Heritage Farms, 671 F.2d at 747. Because the state court appeal is an inadequate forum to adjudicate the Plaintiffs' specific constitutional claims, the third Younger prong is not satisfied and Younger abstention is inappropriate.⁷

⁷Similarly, in Heritage Farms, Inc. v. Solebury Township, the court found the federal complaint neither involved nor implicated important state policies and stated:

[t]he policies embodied in the Municipalities Planning Code are not being attacked--it is rather the application of those policies by a single township that is at issue. . . . Perhaps most importantly, this case is not simply a land use case. Rather the plaintiffs have alleged that members of the Board have used their governmental offices to further an illegal conspiracy to destroy plaintiffs' constitutional rights to conduct a legitimate business.

Heritage Farms, Inc. v. Solebury Township, 671 F.2d 743, 748 (3d Cir. 1982). The court further noted that district courts have been advised not to hastily dismiss claims merely because they may involve land use issues and must "examine the facts carefully to determine what the essence of the claim is. If it is an unlawful conspiracy like the one alleged here, the mere presence of land use issues should not trigger a mechanical decision to

b. Colorado River Abstention.

Alternatively, the Defendants claim that this Court should abstain from this case under Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976), a case involving a dispute over water rights in Colorado rivers and their tributaries. The Colorado River case established permission for district courts, in exceptional circumstances, "to dismiss a federal action because of parallel state-court litigation." Bryant v. N.J. Dep't of Transp., 1 F. Supp.2d 426, 436 (D.N.J. 1998)(citing Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 16 (1983)). Although the Supreme Court in Colorado River rejected abstention under Younger and other doctrines, the Court held that abstention was appropriate based upon "principles that rest on considerations of wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." Colo. River, 424 U.S. at 813, 817. The Court set forth the following six part test for courts to examine in determining whether to abstain, including: (1) which court first assumed jurisdiction over a relevant res, if any; (2) whether the federal court is inconvenient; (3) whether abstention would aid in avoiding piecemeal litigation; (4) which court first obtained jurisdiction; (5) whether state or federal law applies; and (6)

abstain." Id.

whether the state proceedings will sufficiently protect the rights of the federal plaintiffs. Rycoline Prods., Inc. v. C & W Unlimited, 109 F.3d 883, 890-891 (3d Cir. 1997)(citing Trent v. Dial Med. of Fla., Inc., 33 F.3d 217, 223 (3d Cir. 1994)(citing Colo. River, 424 U.S. at 817)).

The Township Defendants contend that the first and fourth Colorado River abstention requirements are satisfied and abstention is appropriate because the state court action was filed first, therefore the common pleas court was the first to assume jurisdiction. Next, these Defendants state that the third factor, whether abstention would aid in avoidance of piecemeal litigation, weighs heavily in favor of abstention because the federal suit may be resolved before the state court has an opportunity to determine the question of the validity of the land use decision. The danger, according to the Defendants, is that conflicting outcomes are possible in claims that arise from one set of facts.

The Defendants also contend that the fifth factor, whether state or federal law applies, is met since the Plaintiffs' federal Complaint contains more claims under Pennsylvania law rather than federal law. Thus, the Defendants contend that state law, not federal law, is heavily implicated in this federal lawsuit. Finally, the Defendants contend that the sixth Colorado River condition, whether the state proceedings

will sufficiently protect the rights of the federal plaintiffs, has been satisfied. The Defendants argue that the state court proceedings will sufficiently protect the Plaintiffs' rights since the state court is a court of general jurisdiction and is fully capable of hearing the Plaintiffs' civil rights claims. The Township Defendants also attempt to distinguish this case from cases where abstention was inappropriate because here, the state and federal litigation is not contemporaneously occurring.

The Plaintiffs correctly contend, on the other hand, that abstention is inappropriate because, in the state action, the court's review is limited to determining whether the Supervisors committed an error of law or abused their discretion in applying the county ordinances. As a result, the federal claims are not part of the state court action where only the Plaintiffs and the Supervisors in their official capacity are parties. Applying the Colorado River factors to this case, the Plaintiffs contend that elements one, two and four are not met because their claims for violations of 42 U.S.C. section 1983 and 42 U.S.C. section 1985 are the primary and dominant claims. According to the Plaintiffs, therefore, only the third factor, the desire to avoid piecemeal litigation, favors abstention.

This Court agrees with Plaintiffs' analysis that the state court's review is limited, and although the state court case is being litigated simultaneously, the cases are not

parallel due to the differences in the relief sought and the claims alleged by Plaintiffs. Here, Plaintiffs' Federal Constitutional rights and state law interests are implicated. Thus, abstention under Colorado River is inappropriate. Since abstention is inappropriate, the Township Defendants' Motion to Dismiss is hereafter examined on its merits.

2. Count II - 42 U.S.C. section 1985.

Plaintiffs do not specify which provision of 42 U.S.C. section 1985 provides the basis for Count II of their Complaint. It is clear that section 1985(1) has no application to the facts of this case because "[a]n action under section 1985(1) applies only to conspiracies to interfere with officers of the United States or those about to take office." Boyer v. Pottstown Borough, No. CIV.A.94-1716, 1994 WL 385009, at *5 n.3 (E.D. Pa. July 19, 1994)(citing 42 U.S.C. § 1985(1) and Armstrong v. Sch. Dist. of Phila., 597 F. Supp, 1309, 1314 (E.D. Pa. 1984)). In order to state a cause of action for violations of 42 U.S.C. section 1985(3), the Plaintiffs must allege:

(1) a conspiracy by the defendants; (2) designed to deprive plaintiff of the equal protection of the laws; (3) the commission of an overt act in furtherance of that conspiracy; (4) a resultant injury to person or property or a deprivation of any right or privilege of citizens; and (5) defendants' actions were motivated by a racial or otherwise class-based invidiously discriminatory animus.

Litz v. City of Allentown, 896 F.Supp. 1401, 1413-1414 (E.D. Pa.

1995)(citing Griffin v. Breckenridge, 403 U.S. 88, 102-103 (1971); Robison v. Canterbury Vill., Inc., 848 F.2d 424, 430 (3d Cir. 1988); Pratt v. Thornburgh, 807 F.2d 355, 357 (3d Cir. 1986)). Plaintiffs fail to plead in their Complaint the fifth required element for this claim, motivation by a racial or otherwise class-based invidiously discriminatory animus. Therefore, to the extent that Plaintiffs' Complaint contains a claim under 1985(3), it is dismissed.

To the extent that Plaintiffs claim a violation of 42 U.S.C. section 1985(2), however, the Defendants' Motion to Dismiss must be denied. Section 1985(2) "pertains to conspiracies to intimidate witnesses or otherwise obstruct justice." Boyer, 1994 WL 385009, at *5 n.3. The Plaintiffs allege that the Township Defendants with the Private Defendants and "others presently unknown to Plaintiffs, herein conspired to impede and obstruct the subdivision application process . . . with the intent to deny Plaintiffs their right to equal protection of the laws, including their right to due process, for the purpose of preventing Plaintiffs from exercising their property rights as hereinbefore alleged." (Compl., ¶ 100.) These allegations are sufficient to permit Plaintiffs' claim under section 1985(2) to withstand the current Motion to Dismiss. Accordingly, the Defendants' Motion is denied with respect to Count II of the Complaint.

3. Count III - State Constitutional Violation.

Count III of Plaintiffs' Complaint contains a claim for violation of Plaintiffs' rights conferred under the Pennsylvania Constitution, Article I, section 26.⁸ The Defendants move for dismissal of this claim on the basis that only injunctive relief is available for any alleged violations of this state constitutional provision. Under federal law, 42 U.S.C. section 1983 allows recovery of monetary damages by victims claiming civil rights violations under the Federal Constitution. However, there is no counterpart to section 1983 under Pennsylvania law. In this case, because the Plaintiffs seek only compensatory and punitive damages, not injunctive relief, the Township Defendants seek dismissal of Count III of the Complaint.

The Plaintiffs, in response, state that in Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), the United States Supreme Court recognized an action for damages under the Fourth Amendment. The Plaintiffs also cite Coffman v. Wilson Police Dep't, 739 F.Supp. 257 (E.D. Pa. 1990), in which the court held that the PSTCA did not bar the plaintiff's state constitutional claims. Id. at 266. The

⁸Article I, section 26 is entitled "No Discrimination by the Commonwealth and Its Political Subdivisions" and states: "[n]either the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right."

Plaintiffs here state that “[e]ven though it is unknown from the [Coffman] Court’s opinion as to whether the plaintiff was seeking damages, the Pennsylvania Political Subdivision Tort Claims Act provides immunity for damages only.” (Pl.’s Mem. Law in Supp. Resp. Mot. Dismiss at 15-16)(citing Pa. C.S.A. § 8541.) Thus, “[r]elying on Supreme Court precedent and the non-existence of Pennsylvania case law to the contrary, Plaintiffs request an opportunity to move forward with Count III.” (Id. at 16.)

In McMillan v. Philadelphia Newspapers, Inc., No. CIV.A.99-2949, 1999 WL 570859 (E.D. Pa. Aug. 4, 1999), a former bus driver in Pennsylvania sought compensatory and punitive damages for various claims including violation of his rights under the state constitution, Article I, sections 1, 26 and 28. Id. at *2. The City moved to dismiss the claims against it on the grounds that recovery was barred by the Political Subdivision Tort Claims Act (“PSTCA”). 42 Pa. C.S.A. § 8541, et seq. Id. at *3. The court recognized that the case raised several interesting and difficult questions as to whether violations of the state constitution could support private damages actions in Pennsylvania and/or whether a state constitutional claim could be barred by the Tort Claims Act. Id. The court declined to reach these issues, however, since it found, as a threshold issue, that the plaintiff failed to state a claim for violation of his rights under the state constitution. Id.

As Defendants note, the Plaintiffs here fail to properly state a claim under the Pennsylvania Constitution. In order to properly state such a claim,

litigants [must] brief and analyze at least the following four factors: (1) the text of the Pennsylvania constitutional provision; (2) the history of the provision, including Pennsylvania case law; (3) related case law from other states; [and] (4) policy considerations, including unique issues of state and local concern, and applicability within modern Pennsylvania jurisprudence.

(Township Def.'s Mem. Law in Supp. Mot. Dismiss at 13 n.2)(quoting Blum v. Merrill Dow Pharm., Inc., 626 A.2d 537, 541 (Pa. 1993) and citing United Artists' Theater Circuit v. City of Phila., 635 A.2d 612, 615 (Pa. 1993)); see also Commonwealth v. Edmunds, 586 A.2d 887 (Pa. 1991). Because the Plaintiffs fail to fulfill the necessary requirements to bring a claim under the Pennsylvania Constitution, this Court declines to reach the issue of whether violations of the Pennsylvania Constitution can support a private damages action.⁹ Accordingly, Count III of the

⁹Although the Pennsylvania Supreme Court has stated, in dicta, that "[t]he failure of a litigant to present his state constitutional arguments in the form set forth in Edmunds does not constitute a fatal defect," the court strongly encourages adherence to that four-part format. Commonwealth v. Swinehart, 664 A.2d 957, 961 n.6 (Pa. 1995); but see Commonwealth v. White, 669 A.2d 896, 899 (Pa. 1995)(reaffirming the importance of the Edmunds analysis regarding state constitutional claims, but nonetheless addressing such a claim where the litigant merely raised a constitutional claim, cited cases in support of the claim and related the cited cases to the claim), disapproved on other grounds, Pennsylvania v. Labron, 518 U.S. 938 (1996)). Plaintiffs' instant Complaint and responsive pleading fail to

Plaintiffs' Complaint is dismissed.

3. Count IV - Civil Conspiracy.

In Count IV of their Complaint, the Plaintiffs allege that all Defendants engaged in a civil conspiracy to injure and harm Plaintiffs without cause. Conspiracy requires "(1) a combination of two or more persons acting with a common purpose to do an unlawful act or to do a lawful act by unlawful means or for an unlawful purpose; (2) an overt act done in pursuance of the common purpose; and (3) actual legal damage." Smith v. Wagner, 588 A.2d 1308, 1311-12 (Pa. Super. 1991)(citations omitted). In addition, proof of malice or an intent to injure is required. Skipworth by Williams v. Lead Indus. Assoc., Inc., 690 A.2d 169, 174 (Pa. 1997)(citation omitted).

The Defendants contend that the Plaintiffs' statements that "an illegal and illicit agreement" existed among the Planning Commission, the Board of Supervisors, the Citizens Group, "and other persons, as yet unknown to Plaintiffs" are insufficient conspiracy pleadings. Defendants further note that in order to state a section 1983 conspiracy claim, the Plaintiffs need to state (1) the period of the conspiracy; (2) the object of the conspiracy; and (3) certain actions of the alleged conspirators taken to achieve that purpose. The Defendants argue

meet the Edmunds requirements necessary for this Court to properly address the claim. Thus, Plaintiffs' state constitutional claim will be dismissed on these grounds.

that the Plaintiffs have not fulfilled any of these requirements, therefore Count IV of the Complaint should be dismissed.

In response, the Plaintiffs re-list the allegations in their Complaint, alleging that these paragraphs adequately set forth their conspiracy claim with sufficient specificity.¹⁰ From a review of the cases cited by the Plaintiffs, it appears that the Plaintiffs have crafted their conspiracy averments in a similar fashion to those averred in Pierce v. Montgomery County Opportunity Board, Inc., 884 F.Supp. 965 (E.D. Pa. 1995). In Pierce, the court denied the defendant's motion to dismiss because the plaintiff "pleaded that nine individuals conspired with the intent of depriving her of certain rights and inflicting injury on her." Id. at 974. According to the Plaintiffs, their averments also fulfill the conspiracy pleading requirements. This Court agrees that the Motion to Dismiss must be denied since, at this stage of the litigation, the Plaintiffs have met the pleading requirements for a conspiracy claim. Accordingly, Defendants' Motion is denied with respect to Count IV of the Complaint.

4. Counts V and VI - State Law Tort Claims.

The Plaintiffs aver state law claims for intentional interference with actual and prospective contractual relations in

¹⁰These allegations, according to the Plaintiffs, are found at paragraphs 38, 52, 58, 71, 78, 85, 86, 87, 88, 89, 112 and 113 of the Complaint.

Counts V and VI of their Complaint against the Individual Township Defendants since the Plaintiffs have voluntarily withdrawn Counts V and VI against West Pikeland Township. The Defendants argue that these tort claims are barred against the Individual Township Defendants under the PSTCA. However, the Plaintiffs claim that the municipal immunity exception is not applicable here and the Individual Township Defendants are not immune from their intentional tort claims, including intentional interference with actual and prospective contractual relations.

Pennsylvania law provides that municipal officials are not immune from liability if they cause injury through "a crime, actual fraud, actual malice or willful misconduct." 42 Pa. C.S.A. § 8550. The Plaintiffs claim that the Individual Township Defendants engaged in willful misconduct, therefore they are not immune under the PSTCA. Further, the Plaintiffs note that, for purposes of the PSTCA, "willful misconduct" has the same meaning as the term "intentional tort." Delate v. Kolle, 667 A.2d 1218, 1221 (Pa. Commw. 1995)(citation omitted). In Delate, the court applied the PSTCA to a zoning dispute and stated that "the mere failure to reach the correct legal conclusion in a zoning case does not constitute the type of purposeful conduct which is necessary for a finding of willful misconduct [within the meaning of § 8550]." Id. However, individual zoning board members may be held liable if they "intentionally reach the wrong decision

knowing that it was wrong, acted from corrupt motives, or engaged in any type of conduct which would demonstrate willful misconduct." Thornbury Noble, Ltd. v. Thornbury Township Bd. of Supervisors, No. CIV.A.99-6460, 2000 WL 1358483, at *4 (E.D. Pa. Sept. 20, 2000)(quoting Delate, 667 A.2d at 1221). According to the Defendants, in order for the Plaintiffs to prove willful misconduct, they must show a desire on the Defendants' part to bring about a certain result or at least an awareness that it is substantially certain to happen. Owens v. City of Phila., 6 F. Supp.2d 373 (E.D. Pa. 1998).

The Plaintiffs counter by stressing that they allege acts by the Defendants "which do not involve the application of the Township Ordinances as the Supervisors believed appropriate." (Pls.' Mem. Law in Supp. Resp. Mot. to Dismiss at 22)(citing Compl., ¶¶ 38, 52, 58, 71, 85-89; Township Defs.' Mem. Law in Supp. Mot. Dismiss at 16.) This allegation, according to the Plaintiffs, enables them to proceed with their claims. Because, at this stage of the litigation, it is unclear whether the Plaintiffs can show that the remaining Defendants had a desire to bring about a certain result or at least an awareness that the result was substantially certain to occur, the motion to dismiss Counts V and VI must be denied.

5. Whether Plaintiffs' Complaint Should be Dismissed as against all Township Defendants.

The Township Defendants contend that all adverse action

alleged by the Plaintiffs is against the Board of Supervisors or Planning Commission, and because Plaintiffs have not named these agencies, their claims against the individual members of those bodies must be dismissed. The Plaintiffs counter that they have alleged conduct by the Township Defendants both individually and in their official capacities, including conducting illegal meetings with the Private Defendants as part of the conspiracy to deprive them of their constitutional rights. These allegations are sufficient to survive the present Motion to Dismiss.

The allegations against the Planning Commission members and the named Supervisors must be dismissed, according to the Defendants, because there are no express or implied provisions in the West Pikeland Township Subdivision Ordinance which grant authority to individual Planning Commissioners or individual Supervisors. Rather, the power to review subdivision plans is given to the Planning Committee as a whole.¹¹ The Defendants argue, therefore, that because the individual Planning Commission members can take no official action in the review of subdivision plans by themselves, and the individual Supervisors can take no official action to approve or disapprove of the recommendations

¹¹Section 500 of the West Pikeland Township Subdivision Ordinance expressly provides that: "tentative subdivision or land development plans shall be reviewed by the Township Planning Commission and shall be approved or disapproved by the Board of Supervisors." (Township Defs.' Mem. Law in Supp. Mot. Dismiss, Ex. A.)

of the Planning Commission, the claims against them for conduct as individuals must be dismissed.

The Plaintiffs, in response, again remind the Court that they allege actions taken by the Township Defendants, including conspiracy, and the Township Defendants were government officials performing discretionary functions. In Woodwind Estates, Ltd. v. Gretkowski, 205 F.3d 118 (3d Cir. 2000), the Third Circuit concluded the supervisor defendants could not have reasonably believed their conduct in denying the plaintiff's plan did not violate the plaintiff's rights. Id. at 125-126. Thus, the court held that the defendant supervisors were not shielded by qualified immunity and the planning commissioners also were not entitled to qualified immunity for similar reasons. Id. Here, the Plaintiffs allege that the By-Right Plan should have been approved since it satisfied the Township Ordinances (Compl., ¶¶ 36, 40), but the Plan was wrongfully denied by the Township Defendants in their individual capacities. As such, the claims against the Individual Township Defendants remain.

Additionally, the Defendants argue that the claims against the Planning Commission members must be dismissed because the Planning Commission does not have the power to deny approval of the Plaintiffs' land development plans.¹² Under the

¹²The West Pikeland Township Subdivision Ordinance provides that the Planning Commission "shall review the Sketch Plan and shall recommend such changes and modifications as it shall deem

Pennsylvania Municipalities Planning Code, the Planning Commission Members have no binding power to render decisions - their role is only advisory. The decisional power rests with the Board of Supervisors. Although the Plaintiffs failed to sue the Planning Commission, they sued the individual Planning Commission members who advised the Board of Supervisors that Plaintiffs' plan did not meet all Township Ordinance requirements. The Plaintiffs did not sue anyone who recommended approval, according to the Defendants. The Plaintiffs respond that they have alleged conduct by the various Township Defendants, including the Planning Commission, in furtherance of their conspiracy, therefore they have adequately pled averments of actions taken by the Planning Commission and the claims against the Planning Commission should remain. Again, at this stage of the litigation, the Plaintiffs may be able to prove that the Planning Commission members acted in their official and also in their individual capacities, therefore the Defendants' Motion is denied and the Individual Planning Commission members remain in this action.

6. Whether the Ad Damnum Clauses in the Complaint Comply with Local Rules of Civil Procedure.

Finally, the Defendants contend that the ad damnum clauses in the Plaintiffs' Complaint do not comply with our Local

necessary and advisable in the public interest." (Township Defs.' Mem. Law in Supp. Mot. Dismiss, Ex. A.)

Rule of Civil Procedure 5.1.1, which provides that:

No pleading asserting a claim for unliquidated damages shall contain any allegation as to the specific dollar amount claimed, but such pleadings shall contain allegations sufficient to establish the jurisdiction of the Court, to reveal whether the case is or is not subject to arbitration under Local Civil Rule 53.2, and to specify the nature of the damages claimed (e.g. "compensatory," "punitive," or both.

(Local Rule Civ. P. 5.1.1.) According to the Defendants, the Plaintiffs' demand for relief in the form of damages "in an amount in excess of one million dollars (\$1,000,000.00)" in each Count of their Complaint is improper. (Compl., ¶¶ 17, 18, 20, 21, 22, 23-24.) The Defendants further claim that these repeated demands amount to "inappropriate hyperbole," which is not permitted in this district. See Green v. Cooper Med. Hosp., 968 F. Supp. 249, 251 n.2 (E.D. Pa. 1997)(admonishing counsel claiming damages on client's behalf for anxiety, humiliation, and lost wages in the amount of fifty million dollars (\$50,000,000.00)).

The Plaintiffs respond that, although Federal Rule of Civil Procedure 12(f) provides this Court with the ability to order any "redundant, immaterial, impertinent or scandalous matter" deleted from any pleading, their requested relief "in an amount in excess of one million dollars" provides the Defendants with notice of the damages sought by Plaintiffs and the Defendants cannot show that they are prejudiced by this demand.

This Court agrees that the Plaintiffs' ad damnum clauses provide Defendants with notice of the large damage figure Plaintiffs seek. Accordingly, this Court will not, at this time, strike the Plaintiffs' prayer for relief contained in the Complaint.

IV. CONCLUSION.

The Plaintiffs concede their claims in Counts V and VI against West Pikeland Township. Abstention is inappropriate in this case, and the Private Defendants are immune from liability under the Noerr-Pennington doctrine. Therefore, their Motion to Dismiss is granted and they are dismissed from this action. Because the Plaintiffs fail to meet the pleading requirements to state a cause of action under the Pennsylvania Constitution, Count III of the Complaint is dismissed.

The remaining claims, therefore, are Counts I (42 U.S.C. section 1983), II (42 U.S.C. section 1985(2)), and IV (Conspiracy) against West Pikeland Township and the Township Defendants, and Counts V and VI (Intentional Interference with Actual and Prospective Contractual Relations) against the Township Defendants.

An Order follows.

Defendants (Dkt. No. 19) is GRANTED; and

2. the Motion to Dismiss filed by the Township Defendants (Dkt. No. 24) is GRANTED in part and DENIED in part;

3. Count III of Plaintiffs' Complaint is DISMISSED in its entirety; and

4. Counts V and VI are voluntarily DISMISSED against West Pikeland Township.

BY THE COURT:

Robert F. Kelly,

J.