

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

LEE TALIAFERRO, SAMUEL C.	:	CIVIL ACTION
ALEXANDER, BEATRICE MOORE,	:	
AND BERNICE WILLIAMS	:	
	:	
	:	
v.	:	
	:	
	:	
DARBY TOWNSHIP ZONING	:	
BOARD, ET AL.	:	No. 03-3554

MEMORANDUM AND ORDER

March 23, 2005

PRATTER, DISTRICT JUDGE

Defendants Darby Township Zoning Board (the “Zoning Board”), various members of the Darby Township Zoning Board,¹ Darby Township (the “Township”), the Delaware County Redevelopment Authority (“DCRA”), and Maureen Healy have filed motions to dismiss this complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Ms. Healy has also filed a motion to strike portions of the complaint. Because the Court concludes that the Plaintiffs lack standing to bring the claims against these defendants, the motions to dismiss will be granted and the additional Healy motion to strike will be denied as moot.

FACTUAL BACKGROUND

This case arises from a decades old dispute related to the use of property located in Darby

¹ The following Board members were named as defendants, both individually and as members of the zoning board: John Dougherty, Jesse Byrd-Estes, Lamont Jacobs, John J. O’Neill, and William Ryan.

Township, Pennsylvania (the “Property”). The Plaintiffs assert that the Property, which is located in a section of Darby in which, Plaintiffs contend, primarily African-American residents lived, was identified and acquired by condemnation by the Delaware County Redevelopment Authority in 1960, to be part of a proposed urban renewal project. Designated as “Project Area Number 2,” the Property was to become part of a local project which is alleged to have been intended to lead to renewal by residential reuse.

There are four plaintiffs in this action – Lee Taliaferro and Samuel C. Alexander,² who own properties abutting the Property, and Beatrice Moore and Bernice Wilson, former owners of property condemned that became part of the parcel where the urban renewal project was planned.³ Ms. Wilson also alleges that she presently owns two properties which abut the Property. The Plaintiffs allege that, in order to accommodate the land needs for the project, the African-American residents whose properties were condemned moved out of Darby Township, a sacrifice that the Plaintiffs allege was made in order for the Township to have the benefit of renewed residential use of the Property.

The renewal project was described in an agreement between DCRA, the County of Delaware and RUPACA, Inc. RUPACA was designated as the developer. The agreement appears to have been executed in March of 1967, and a copy of a document titled “Urban

² The Amended Complaint states that in addition to Mr. Alexander owning adjacent property, Mr. Alexander’s parents also owned a home on the property that was condemned. Amended Complaint at ¶ 15.

³ The Court notes that the Amended Complaint is unclear with respect to the relationship of Ms. Moore to the Property. While the Amended Complaint states that Ms. Moore was “an owner of property which was condemned,” it alternatively alleged elsewhere in the Amended Complaint that Ms. Moore’s parents owned a home within the parcel of land that became the Property. Complaint at ¶¶ 6,15.

Renewal Plan” was appended to the agreement. The Urban Renewal Plan, which was approved by the Township in August of 1960, required residential construction and prohibited speculation in land holding or resale of the Property at a profit prior to completion of construction of the residential units. These restrictions with respect to the use of the land were to remain in effect “for a period of not less than twenty (20) years following the date of approval of the Plan by the Board of Commissioners of the Township of Darby.” RUPACA made no headway to develop the Property, and DCRA subsequently sold the Property to First Urban Development Company (“First Urban”).⁴

Like RUPACA, First Urban did not undertake any steps to construct the units and later sold the Property to Charles Rappa. The Plaintiffs assert in their Amended Complaint that the Township, “in order to perpetuate the white majority in the Township,” continuously discouraged First Urban and Mr. Rappa from constructing the units as designated in the Urban Renewal Plan. No suit was ever filed by HUD, the DCRA or any Township citizens or interested parties to compel the Township to construct the designated units or otherwise develop the Property. Mr. Rappa subsequently sold the Property to Defendant Maureen Healy. Ms. Healy eventually applied to the Zoning Board for a zoning variance to use the Property to build a self-storage facility.

The Plaintiffs allege that to further the Defendants’ plan to prevent the Property from

⁴ The Indenture entered into between DCRA and First Urban adopted several covenants of the Urban Renewal Plan, including one requiring that First Urban use the Property only in “accordance with the uses specified in” the Urban Renewal Plan. Pursuant to the express terms of the Indenture, this covenant expired on April 6, 1980. Because the Amended Complaint makes mention of the deed and the Urban Renewal Plan, the Court has included review of those documents as part of the consideration of the pending Motions.

being used to construct low- to moderate-income residential housing for African-Americans, the Defendants improperly advertised a hearing with respect to the requested zoning variance by failing to post the hearing notice conspicuously on the Property. Despite this alleged attempt to divert attention away from the hearing, the Plaintiffs admit that they attended the hearing and protested against the proposed variance request. Although according to the Plaintiffs there were deficiencies of supporting evidence that were to be provided by Ms. Healy, the Zoning Board approved the variance for the Property on May 30, 2002.⁵

Plaintiffs Taliaferro and Alexander allege that they filed a timely land use appeal from the decision on July 1, 2002 in the Delaware County Court of Common Pleas, and moved that court for an order directing the Zoning Board to receive additional evidence in the matter. By order dated November 22, 2002, the Delaware County Court of Common Pleas granted the motion and remanded the case, directing the Board to receive additional evidence and render a new decision. In May 2003, after a new hearing, the Board again voted to grant the variance. The Zoning Board's decision was appealed to the Commonwealth Court of Pennsylvania where the matter is now pending.⁶

⁵ In the Amended Complaint, Plaintiffs also allege that an ordinance prohibited the construction of self-storage units on the Property. Plaintiffs do not cite to any particular municipal ordinance to that effect. The Court presumes that such an ordinance does exist, inasmuch as a zoning variance, which is the subject of the present dispute, was granted by the Board. The Court notes that the propriety of granting a zoning variance is a matter of state land use law, *see. e.g., Altemose v. Charlestown Township*, No. 98-2862, 1999 WL 179759 (E.D. Pa. March 23, 1999) (state court decided issue with respect to zoning ordinance), and is, in fact, the subject of a pending action in Commonwealth Court. *See Taliaferro, et al. v. Darby Township Zoning Hearing Board*, No. 1570 CD 2004.

⁶ The timing of the filing of the appeal to the Commonwealth Court is not clear from the papers submitted. Moreover, at oral argument, the parties seemed to be in disagreement as to the schedule for oral argument of the appeal before the Commonwealth Court. However, all parties

The Plaintiffs contend that they⁷ have been injured by the failure of the DCRA, Darby Township, the Zoning Board and its members, HUD, and Ms. Healy to develop the property for residential use as designated in the Urban Renewal Plan. The Plaintiffs filed their original complaint on June 9, 2003, and an amended complaint (the “Amended Complaint”) on September 5, 2003, naming the Zoning Board, various members of the Zoning Board, Darby Township, DCRA, the United States Department of Housing and Urban Development (“HUD”), Maureen Healy (current owner of the Property), John Ryan (as manager of Darby Township),⁸ former HUD Secretary Mel Martinez, and Milton R. Pratt, Jr. (individually and as Regional Director of HUD).⁹

The Amended Complaint contained six counts, including: (1) Enforcement of

agree that the appeal from the granting and judicial upholding of the variance is awaiting resolution in Commonwealth Court.

⁷ The Plaintiffs argue that they have a direct right to bring this suit. They also claim status as third party beneficiaries.

⁸ The docket in this case reflects that John Ryan is not represented by counsel, and has not answered or otherwise filed papers with respect to the Amended Complaint. The Court also observes that although John Ryan is listed as a defendant in the caption, he is not identified as a defendant in the body of the Amended Complaint. The fact that there is another defendant with the same surname adds to the Court’s inability to ascertain “John Ryan”’s alleged role in the action, as Plaintiffs sometimes make reference simply to “Ryan” in stating their allegations. See Amended Complaint at ¶ 23. Nonetheless, the docket raises the question of whether John Ryan was ever properly served. In view of the Court’s decision, if “John Ryan” has been served, the claims against him suffer from the same deficiencies as those addressed here. If Mr. Ryan has not been served, it would be futile for Plaintiffs to try to do so now.

⁹ The Plaintiffs have withdrawn the claims against Mr. Pratt and Mr. Martinez, and all counts against HUD have been dismissed. Thus, these defendants are no longer in the case.

Redevelopment and the Redevelopment Contract; (2) Section 1983 claims;¹⁰ (3) Section 1981 claims; (4) Section 1985(3); (5) Violation of the Fair Housing Act, 42 U.S.C. §§ 3601-19; and (6) a Land Use Appeal.¹¹ The Plaintiffs seek an equitable remedy for each of their claims, in that they ask the Court to issue a permanent injunction preventing the use of the property for purposes other than specified in the Urban Renewal Plan.

With the exception of John Ryan, each of the Defendants filed a motion to dismiss the Amended Complaint, either pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), or both. In addition, Ms. Healy has also moved to strike portions of the complaint pursuant to Federal Rule of Civil Procedure 12(f).¹² The motions to dismiss therefore include the motion of Ms. Healy, the Darby Township Zoning Hearing Board, John Dougherty, Jesse Byrd-Estes, Lamont Jacobs, John O'Neill, William Ryan and Darby Township, and the motion of Delaware County Redevelopment Authority. The motions raise a host of arguments, the principal ones being that: (1) none of the Plaintiffs have standing to bring the claims asserted, (2) the Court should abstain from hearing this matter because a challenge to the validity of the zoning variance granted with respect to the Property remains pending in the Pennsylvania courts, (3) the Court lacks jurisdiction over the matter pursuant to the Rooker-Feldman doctrine, (4) the allegations in

¹⁰ The Plaintiffs assert constitutional violations of their rights to equal protection under the law, and substantive and procedural due process. Amended Complaint at ¶ 57.

¹¹ The sixth count of the Amended Complaint was styled as an appeal from the remand decision of the Zoning Board, which remains pending in the Pennsylvania Commonwealth Court. Prior to the reassignment of the case to this Court's docket, Count Six was dismissed without prejudice as to all Defendants.

¹² On December 30, 2004, the Court denied without prejudice the Motion to Dismiss filed by Ms. Healy, but, with the Court's permission, counsel for Ms. Healy renewed her motion during the oral argument held in this matter on January 10, 2005.

the Amended Complaint fail to state a claim upon which relief can be granted, and (5) the statute of limitations has run on all of the claims. Ms. Healy also argues that as to a portion of the Amended Complaint she is entitled to immunity pursuant to the Noerr-Pennington doctrine.

DISCUSSION

I. Standard of Review

A. Federal Rule of Civil Procedure 12(b)(1)

A district court can grant a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) (“Rule 12(b)(1)”) based on the legal insufficiency of the claim. Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1408 (3d Cir. 1991). In moving to dismiss a claim pursuant to Rule 12(b)(1), a party may challenge a court’s jurisdiction either facially (based on the legal sufficiency of the claim) or factually (based on the sufficiency of jurisdictional fact). Medtronic Vascular, Inc. v. Boston Scientific Corp., No. 98-478, 2004 WL 2914922 (D. Del. Dec. 14, 2004). Dismissal under a facial challenge is proper “only when the claim ‘clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction . . . or is wholly insubstantial and frivolous.’” Id. at *3. In this circumstance, a court must accept as true all of the allegations contained in the complaint. Id.

Where subject matter jurisdiction “in fact” is challenged, the trial court’s very power to hear the case is at issue, and the court is therefore “free to weigh the evidence and satisfy itself as to the power to hear the case.” Mortensen v. First Federal Savings and Loan Assoc., 549 F.2d 884, 891 (3d Cir. 1977). In such an attack pursuant to Rule 12(b)(1), “no presumptive truthfulness attaches to plaintiff’s allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims.” Carpet

Group Int'l v. Oriental Rug Importers Ass'n, Inc., 227 F.3d 62, 69 (3d Cir. 2000). Where a defendant attacks a court's factual basis for exercising subject matter jurisdiction, the plaintiff must meet the burden of proving that jurisdiction is appropriate. Id.

B. Federal Rule of Civil Procedure 12(b)(6)

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court may look only to the facts alleged in the complaint and its attachments. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1251, 1261 (3d Cir. 1994). The Court must accept as true all well-pleaded allegations in the complaint and view them in the light most favorable to the plaintiff. Warth v. Seldin, 422 U.S. 490, 501 (1975); Angelastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir. 1985). A Rule 12(b)(6) motion will be granted only when it is certain that no relief could be granted under any set of facts that could be proved by the plaintiff. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

II. Standing of the Plaintiffs

In its Motion to Dismiss, the Zoning Board¹³ argues that all of the claims against it should be dismissed because the Plaintiffs do not have standing to file this suit. The Zoning Board specifically asserts that none of the Plaintiffs have alleged actual or threatened injury as a result of the Defendants' alleged conduct and, therefore, have no action upon which to sue. In reply,

¹³ Although DCRA included Federal Rule of Civil Procedure 12(b)(1) as a ground in its motion to dismiss, it presented no specific argument with respect to standing in its supporting memorandum of law. However, at oral argument on January 10, 2005, DCRA did argue that the Plaintiffs do not have standing to bring or pursue the Amended Complaint. Of course, even when the issue of standing has not been raised by the parties, a federal court is obligated to consider the issue of whether the plaintiffs in a case have standing under Article III of the Constitution to bring the claims presented. Chong v. Immigration & Naturalization Service, 264 F.3d 378, 383 (3d Cir. 2001). Thus, an analysis of the Plaintiffs' standing is appropriate in this case.

the Plaintiffs argue that the Defendants' failure to implement the Plan, combined with the Defendants' deliberate actions, as characterized by Plaintiffs, to discourage construction in compliance with the Plan, constitutes discriminatory conduct which denied each of them equal treatment under the law.

The concept of standing involves both constitutional limitations on the jurisdiction of federal courts and prudential limitations on the exercise of federal jurisdiction. Warth v. Seldin, 422 U.S. 490, 498 (1975). Under the prudential rules of standing, a court must consider whether a plaintiff is the proper party to invoke judicial resolution of a particular dispute. Mariana v. Fisher, 338 F.3d 189, 204 (3d Cir. 2003). In considering whether a party has prudential standing, a court must: (1) ensure that the plaintiff is asserting his or her own legal interests rather than those of a third party; (2) refrain from adjudicating abstract questions of wide public significance amounting to generalized grievances; and (3) determine whether a plaintiff's interests are arguably within the "zone of interests" that are intended to be protected by the statute, rule or constitutional provision on which the claim is based. Mariana, 338 F.3d at 204-05.

The Court notes that while prudential standing is also implicated, constitutional standing is the more relevant issue in this case. In the constitutional context, standing involves a consideration of whether a plaintiff has "made out a case or controversy between himself and the defendant." Warth, 422 U.S. at 498. Although a particular judgment may confer a collateral benefit on a party, that party may only pursue a claim in federal court if he or she can demonstrate a "threatened or actual injury" as a result of a defendant's alleged actionable conduct. Id. at 499. A plaintiff may have standing for harm suffered as an indirect result of a defendant's act; however, the existence of actual harm is a threshold matter in determining

whether a claim can be pursued. Warth, 422 U.S. at 504-05 (emphasis added). In other words, there must be an actual harm at the root of the controversy.

In Storino v. Borough of Point Pleasant Beach, 322 F.3d 293, 296 (3d Cir. 2003), the Court of Appeals for the Third Circuit summarized the following constitutional requirements to establish standing: (1) a plaintiff must have suffered an injury in fact, which is “an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) there must be a causal connection between the injury and the conduct complained of; and (3) it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” The touchstone for constitutional standing is one of actual injury – a litigant who shares attributes that are similar to persons who may have been harmed by a defendant’s alleged discriminatory behavior *does not have standing unless* the litigant can demonstrate that he or she has *personally* been injured by the conduct. Warth, 422 U.S. at 502. (emphasis added).

Courts have found that plaintiffs pursuing legal remedies that plaintiffs hope will either preclude or compel the implementation of urban renewal programs have standing *as long as* each of the plaintiffs asserts an actual, concrete injury. See e.g., Resident Advisory Board v. Rizzo, 564 F.2d 126, 130 (3d Cir. 1977) (finding that injury suffered by potential tenants of low-income housing project was sufficiently specific to confer standing to assert claim against public officials);¹⁴ Park View Heights Corp. v. City of Black Jack, 467 F.2d 1208, 1210 (8th Cir. 1972)

¹⁴ At oral argument, counsel for the Plaintiffs more than once made reference to Resident Advisory Board v. Rizzo, 564 F.2d 126 (3d Cir. 1977) to support Plaintiffs’ arguments. After careful review of Rizzo, the Court concludes that this case is distinct in several ways. First, the Rizzo plaintiffs were found to have standing because they either were, or counted among their membership, public housing tenants who would have suffered a particular injury if the

(finding that organizations donating seed money to low-income housing project had standing to assert claim that zoning ordinance was discriminatory); Kennedy Park Homes Assoc., Inc. v. City of Lackawanna, New York, 436 F.2d 108, 112 (2d Cir. 1971) (finding that plaintiffs had personal stake in litigation where each had interest in proposed housing development that was defeated by zoning ordinances); Crow v. Brown, 332 F. Supp. 382, 384 (N.D. Ga. 1971), aff'd., 457 F.2d 788 (5th Cir. 1972) (owners of property on which proposed low income apartments were to be built had standing to assert claim of discrimination against municipal authorities). By the same token, plaintiffs who have not shown actual and specific injuries with a causal connection to a defendant's alleged conduct have been precluded from pursuing such claims. See Warth v. Seldin, 422 U.S. 490, 493 (1975).¹⁵

development was not built. Moreover, the residential board plaintiff was active in facilitating urban renewal activities designed to benefit residents in the area. In the instant Darby Township case, none of the Plaintiffs allege that they are tenants or owners awaiting to move into the homes anticipated by the 1960's urban renewal plan. Second, Rizzo was a class action suit, including a class of minority persons who would be eligible to live in the housing development and two organizational plaintiffs. In this case, however, there has been no class of individuals suffering an injury as a result of Darby Township's granting the zoning variance to Ms. Healy. Finally, the plaintiffs in Rizzo brought their case before the district court to enforce an urban renewal program which began in 1959 twelve years later, in 1971. In this case, *more than 40 years have passed* since the initial condemnation of properties took place, and the property has been vacant for this entire span of time. Although the Plaintiffs now argue vaguely that they were "led to believe" that developers were working on the development, they certainly would have known that such development was not underway at the time that the urban renewal plan expired more than 20 years ago, in 1980. No legal action was taken then, or at all, until June of 2003.

¹⁵ In Warth, several residents of Rochester, New York sued the zoning board of a neighboring town, Penfield, alleging that the actions of the zoning board, as well as the zoning regulations, discouraged the construction of low- to moderate-income housing in Penfield. The Rochester residents claimed that this behavior was motivated by the zoning board's desire to prevent lower income residents from living in Penfield. Because the facts alleged did not support an actionable causal relationship between the defendants' actions and the plaintiffs' alleged injury, the court found that the plaintiffs did not have standing to bring the action, and held that "a plaintiff who seeks to challenge exclusionary zoning practices must allege specific, concrete

Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977), is a case that is instructive with respect to determining whether a plaintiff has asserted an injury sufficient to confer standing . In Arlington Heights, a nonprofit real estate developer and three African-American individuals filed suit against the Village of Arlington Heights, asserting that the city’s refusal to re-zone property purchased by the developer so that low-income housing could be constructed was discriminatory. Arlington Heights, 429 U.S. at 258. At trial, the plaintiffs prevailed and declaratory and injunctive relief was granted, and the defendants appealed. The plaintiffs’ standing was not addressed until the case was appealed to the Supreme Court. In considering the issue, the Court reasoned that because the proposed project contained sufficient detail such that the Court did not need to engage in “undue speculation” to assess whether the plaintiff had a personal stake in the matter, an actionable injury was alleged. Id. at 261-62. Moreover, because one of the individual plaintiffs sought and would qualify to live in the planned housing, the Court did not need to consider whether the developer could assert the constitutional rights of its prospective tenants. Id. at 264 (emphasis added).

In the present case, these Plaintiffs sue, in their words, “as citizens and beneficiaries of the Urban Renewal Plan and Title I Project Agreement.” In support of this allegation, the Plaintiffs sought and received the Court’s permission to provide supplemental materials to give more context to their allegations, and presented the Court¹⁶ with a copy of an Indenture that was recorded between the DCRA and First Urban in which the following covenants appear:

facts demonstrating that the challenged practices harm him, and that he personally would benefit in a tangible way from the court’s intervention.” Warth, 422 U.S. at 508.

¹⁶ See note 4, supra.

(1) That First Urban and its successors and assigns shall “[d]evote the Property to, and only to and in accordance with the uses specified in . . . the Urban Renewal Plan”;

(2) That First Urban and its successors and assigns “[n]ot effect or execute any agreement, lease, conveyance or other instrument which the Property . . . is restricted upon the basis of race, religion, color, or national origin in the sale, lease or occupancy thereof”;

(3) That First Urban and its successors and assigns effect “[n]o discrimination in the use, sale or lease of any or all of the Property or buildings or structures thereon against any person because of race, creed, color, religion or national origin; nor shall any person be deprived of the right to live on the Property or use any of the facilities therein by reason of race, creed, color religion or national origin.

Indenture at Book 2348, Page 191. The Indenture also stated that the provision requiring compliance with the Urban Renewal Plan and that the Property be devoted to uses specified in that Plan would be in effect “until April 6, 1980,” but that the remaining two provisions concerning non-discrimination would run with the land. Id. Relying on these provisions, combined with the argument that the Urban Renewal Plan was designed to benefit the neighborhood and community, the Plaintiffs argue that they have direct rights and also (or alternatively) are third party beneficiaries of the Urban Renewal Plan who have standing to assert a claim seeking enforcement of it.

Setting aside the fact that the Urban Renewal Plan appears to have expired more than twenty years before Plaintiffs initiated this suit,¹⁷ the Court finds that the Plaintiffs have not

¹⁷ A copy of the redevelopment agreement was submitted by Plaintiffs to support their assertions. At an oral argument held in this case in November, 2003, before the Honorable Norma L. Shapiro, counsel for Plaintiffs repeatedly indicated that a copy of the agreement had been filed with the Complaint. After reviewing the docket and permanent file for this case, the Court notes that a copy of the agreement was not attached to either the original or the amended complaint. Furthermore, neither the original nor the amended complaint makes reference to such

asserted an actual injury that would confer constitutional standing sufficient to pursue these claims. The difficulty for Plaintiffs on the issue of standing is that, even if they are alternatively considered third party beneficiaries of the Urban Renewal Plan, none of the Plaintiffs have alleged, much less demonstrated, how any of them would benefit if a court directed the DCRA and the Zoning Board to implement the Urban Renewal Plan.

Neither Ms. Moore nor Ms. Wilson, who transferred their property via the condemnation in 1960 when the Urban Renewal Plan was initiated, has alleged that they desire, or would be eligible, to live in the homes that would have been built on the Property pursuant to the terms of the Urban Renewal Plan if the Plan had been or would ever be implemented.¹⁸ Likewise, neither

an attachment. However, based upon their repeated assertions, it is clear that Plaintiffs intended that the document be reviewed in the context of the Amended Complaint, and no defendant objected. Moreover, the covenants contained in the Indenture submitted by Plaintiffs refer to the agreement, thereby causing the agreement to become an integral part of the Court's review of the arguments posed in the motions to dismiss. Thus, the Court notes that the covenant incorporating the terms of the Urban Renewal Plan into the Indenture expressly expired on April 6, 1980.

¹⁸ At oral argument, the Plaintiffs referred the Court to Gratz v. Bollinger, 539 U.S. 244, 262 (2003), for the proposition that "injury in fact is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit." However, the Gratz Court also stated "to establish standing, a party challenging [an allegedly discriminatory program] . . . need only demonstrate that it is able and ready to [participate in the program] and that a discriminatory policy prevents it from doing so on an equal basis." Gratz, 539 U.S. at 262. Thus, to have standing, Ms. Moore and Ms. Wilson would have had to allege that they intended to move back to the Property after it was developed. Although once this issue was raised during the argument counsel for Ms. Moore and Ms. Wilson asserted generally at oral argument that they had such intent, no such allegation was included in the Amended Complaint.

Counsel for Ms. Moore and Ms. Wilson also asserted during oral argument that part of the consideration for selling their property was the promise that they could return once the Property was developed, and that this "promise" was made in exchange for their not challenging the condemnation proceeding. However, upon further probing by the Court, counsel for Ms. Moore and Ms. Wilson admitted that they are not alleging that they were promised, as part of the condemnation proceedings, that they would or could be returning to live on the Property.

The Court notes that to the extent that Ms. Moore and Ms. Wilson allege that the basis of

Mr. Taliaferro nor Mr. Alexander have alleged what, if any, benefit they would receive were the Urban Renewal Plan to be implemented.¹⁹ Thus, even if, as the Plaintiffs allege, the Zoning Board and DCRA acted in concert with malice to ensure that the Property would not be utilized for low to moderate-income residential housing, this case must be dismissed because none of the Plaintiffs have demonstrated that they, as individuals, have suffered a concrete injury as a result of these alleged actions.

At oral argument, counsel for the Plaintiffs argued that even if there is no direct standing, the Plaintiffs have third party standing to assert their claims. In support of this argument, counsel cited to Barrows v. Jackson, 346 U.S. 249 (1953). In Barrows, the Court held that a Caucasian seller of real property had standing to challenge the enforcement of a restrictive covenant against the sale of the property to non-Caucasian buyers. Barrows, 346 U.S. at 257. In doing so, the Court stated that while, in general, parties do not have standing to assert the rights of other third

their injury is that they were improperly displaced from their homes, their redress would arise from the Federal Housing Act, 42 U.S.C. § 3601 *et seq.* Actions grounded on the intentional refusal of a government agency to implement urban renewal projects that would provide housing for minorities have been found to be viable under the FHA. See Resident Advisory Board v. Rizzo, 564 F.2d 126, 130 (3d Cir. 1977) (finding that city agencies that cleared site for public housing project that was later abandoned could be held liable under 42 U.S.C. § 3604(a) for making unavailable or denying a dwelling to . . . person(s) because of race”). However, the time within which such a complaint should have been filed has long passed, as the statute provides that an “aggrieved person may commence a civil action . . . not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice.” 42 U.S.C. § 3613(a)(1)(A) (West 2004).

¹⁹ Mr. Taliaferro and Mr. Alexander, whose properties apparently abut the Property, do not allege that their property values have specifically decreased, nor do they allege that their property values would have increased had the Urban Renewal Plan been implemented. However, in the Amended Complaint and at oral argument, these Plaintiffs argue generally that their property values will necessarily decrease if the proposed use of the Property pursuant to the variance authorized by the Zoning Board is permitted.

parties who are injured by an action, standing may be granted to such parties in circumstances where it would be difficult or impossible for the injured person to present their grievance before any court. Id. Thus, the Plaintiffs here argue that because the would-be residents who would have benefitted from the urban renewal project cannot bring suit, the Plaintiffs should be permitted to represent their interests.

In Storino v. Borough of Point Pleasant Beach, supra, the court acknowledged the existence of a right of litigants to bring actions on behalf of third parties. As in Barrows, the court stated that this right should be applied in unusual circumstances, and is limited to conditions where: (1) the litigant has suffered an injury in fact that gives him or her a sufficiently concrete interest in the outcome of the issue; (2) the litigant has a close relation to the third party; and (3) there is a hindrance to the third party's ability to protect his or her own interests. Storino, 322 F.3d at 299. The Court does not believe that such unusual circumstances are present in the instant case. Certainly the Amended Complaint suggests none. Although it is true that would-be residents might now be prevented from filing suit to enforce the terms of the Urban Renewal Plan, Rizzo and the other cases, cited supra, demonstrate that these parties could have filed a suit in the past alleging that the parties who are defendants in this case were conspiring to thwart implementation of the project. Instead, the Property remained vacant for 40 years and would-be plaintiffs remained silent for the same period, until Ms. Healy purchased it and proposed to use it for commercial purposes.

When considered in the aggregate, including the options that potential plaintiffs could have pursued, the facts suggest that the present dispute is not about pursuing rights on behalf of injured third parties who have been displaced and have been forced to move. Rather, the facts of

this case suggest that it is a land use and/or local political dispute. Although the Plaintiffs are sure to argue otherwise, one need go no further than the relief sought in the Amended Complaint to underscore this conclusion. The ad damnum clause in each count of the pleading sets forth that Plaintiffs seek a permanent injunction which would enjoin the Township from using the Property for any purpose other than that stated in the Urban Renewal Plan. Taking into consideration that the Urban Renewal Plan has expired, that no action was instituted by these or any plaintiffs prior to its expiration, and that this action was brought only after the Zoning Board granted the variance to Ms. Healy, it is readily apparent to the Court that the Plaintiffs are not seeking to assert the rights of others, but are simply trying every judicial mechanism they can identify to resolve a long-brewing land use dispute.

The relief requested by the Plaintiffs would not confer a benefit to any of the parties, as granting an injunction against commercial use of the Property in light of the expired urban renewal plan would not necessarily lead to anything other than maintaining the Property in its present fallow condition. Although this remedy would likely provide the Plaintiffs a battle victory, the war would remain unwon, as this case does not present the means through which the now defunct Urban Renewal Program can be brought to life.

It is understandable that each of the Plaintiffs could well be disheartened or frustrated that the Urban Renewal Plan was never acted upon.²⁰ However, other than their frustration and

²⁰ At oral argument, when the Court raised the fact that for some 40 years the urban renewal has not proceeded, the Plaintiffs argued that until 2002, when the Zoning Board approved the variance to allow for the commercial use of the property, they had assumed the project would proceed, and therefore took no legal actions against the prior owners of the Property for fear that the controversy was not ripe for adjudication. However, given the Plaintiffs' passionate allegations that Darby Township has a history of obstructing projects that would increase the diversity of the community, this assumption is, to say the least, surprising

disappointment at activities taken by the Zoning Board, the Plaintiffs have presented no actual injury which can be redressed here. To have standing, the Plaintiffs must demonstrate what benefit they would receive were the Court to grant the requested equitable remedy. Because none of the Plaintiffs have alleged an injury that would be redressed by the relief sought in this action, the Defendants' motions to dismiss will be granted.

III. Abstention

Even if the Plaintiffs were to have standing, the Court finds that its abstention from adjudicating this matter would be appropriate. In general, a federal court does not have authority to abstain from the exercise of jurisdiction that has been properly conferred by the legislature. Gwynedd Properties, Inc. v. Lower Gwynedd Township, 970 F.2d 1195, 1199 (3d Cir. 1992). However, where adjudicating a case would interfere with complex state administrative processes or interfere with important state interests, a federal court may abstain. See New Orleans Public Service, Inc. v. Council of the City of New Orleans, 491 U.S. 350, 365 (3d Cir. 1989). Where such circumstances are present, a district court must be mindful that abstention is “an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it.” Id. The Defendants argue that abstention is appropriate in this case under the

and, from the Plaintiffs' perspective, decidedly unwarranted. The case law demonstrates that causes of action seeking to preclude a city or township from obstructing the completion of low income housing would have made such an action possible. See e.g., Resident Advisory Board v. Rizzo, 564 F.2d 126, 129 (3d Cir. 1977) (individuals eligible for low-income public housing sued city, redevelopment authority and other entities for failing to carry out construction of housing units); Kennedy Park Homes Assoc. v. City of Lackawanna, New York, 436 F.2d 108, 112 (2d Cir. 1970) (concluding that association had standing to compel city to take steps to allow development of low income housing project). Both of these cases were decided prior to the time that the Urban Renewal Plan in this case was set to expire, yet the Plaintiffs took no action to try and ensure its implementation, or to force the prior owners of the property to comply with the terms of the covenants contained in the Urban Renewal Plan and the Indenture.

doctrines set forth in either Burford v. Sun Oil Co., 319 U.S. 315, 334 (1943), or Younger v. Harris, 401 U.S. 37 (1971).

A. Burford Abstention

In Burford v. Sun Oil Co., 319 U.S. 315, 334 (1943), the Supreme Court concluded that where complicated issues of state administrative law are presented, a federal court may “stay its hand” and exercise its discretion to abstain from hearing a case. Burford abstention will apply “[w]here timely and adequate state-court review is available, a federal court sitting in equity must decline to interfere with the proceedings or orders of state administrative agencies: (1) when there are ‘difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar’; or (2) where the ‘exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.’” New Orleans Public Service, Inc. v. Council of the City of New Orleans, 491 U.S. 350, 361 (1989) (quoting Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 814 (1976)).

The purpose of Burford abstention is to avoid interfering with a state’s efforts to “establish coherent policy with respect to a matter of substantial public concern.” Heritage Farms, Inc. v. Solebury Township, 671 F.2d 742, 746 (3d Cir.), cert. denied 465 U.S. 990 (1982). Where the basis for jurisdiction over a matter is federal, the level of justification needed for abstention is higher. Izzo v. Borough of River Edge, 843 F.2d 765, 768 (3d Cir. 1988). Thus, in determining whether it should abstain, a district court should consider the nature of the issues to determine whether the “essence of the claim” actually bears on state policy such that a decision might affect the state’s administrative scheme of regulations. Heritage Farms, Inc. v. Solebury

Township, 671 F.2d at 748.

The Court of Appeals for the Third Circuit has concluded that Pennsylvania’s municipal land regulations do not involve uniform and elaborate statewide regulation that would justify abstention under Burford. Heritage Farms, Inc., 671 F.2d at 748. In Heritage Farms, the court considered whether the district court had properly abstained from hearing a plaintiff’s claim alleging that several members of a township board had conspired to destroy the plaintiff’s business by illegally denying governmental approval for development projects proposed by the plaintiff, who was the owner of the property to be developed. The plaintiff sought declaratory, injunctive and monetary relief. Noting that land use decisions were “traditionally local,” the district court declined to exercise jurisdiction pursuant to the Burford doctrine.

In reversing this holding, the Heritage Farms court first looked to the Pennsylvania Municipalities Planning Code and observed that there was no uniform state policy for land use in place. Id. at 747. Although it acknowledged that a district court may not function as a “state-wide Board of Zoning Appeals,” the court found that the allegations that local officials had, under color of law, acted in a fraudulent manner for their own personal gain, distinguished Heritage Farms from a typical land use case. Id. at 748. Finding that a decision in the case would not disrupt Pennsylvania’s land use policies and would not impair efforts to implement state policy, the court concluded that Burford abstention was not applicable to the case.

Although there are some significant distinctions,²¹ it is undeniable that the facts of the present case bear some resemblance to Heritage Farms. Here, although admittedly with much

²¹ The fact that none of the Plaintiffs own or have any interest in the Property, as discussed in the discussion regarding standing, supra, is an important distinction, in that the plaintiff in Heritage Farms was a property owner seeking permits to develop his own property.

less detail, the allegations are that the Defendants engaged in a conspiracy in implementing township zoning ordinances, in violation of federal law. Thus, the Plaintiffs present a federal claim that is intertwined with local land use law. Rendering a decision with respect to whether the defendants engaged in the alleged conspiracy would not necessarily disrupt the Township's land use policy, and would not impair the efforts in implementing its policies. Thus, Burford abstention is not appropriate in this case. The abstention inquiry does not, however, end here.

B. Younger Abstention

In Younger v. Harris, 401 U.S. 37 (1971), the Supreme Court set forth a limited set of circumstances under which a federal district court may choose to abstain from deciding a matter.²² Under Younger, a court may decide to abstain from deciding a matter where: (1) there are ongoing state proceedings that are judicial in nature; (2) the state proceedings implicate important state interests; and (3) the state proceedings afford an adequate opportunity to raise federal claims. Gwynedd Properties, Inc., v. Lower Gwynedd Township, 970 F.2d 1195, 1200 (3d Cir. 1992). The principles underlying Younger abstention are comity and federalism, ensuring respect of state courts. Id.

The Supreme Court has instructed that in determining whether important state interests are implicated in a case, a court must look to the importance of the proceedings, and not the importance of their outcome, to the state. New Orleans Public Service, Inc. v. Council of the City of New Orleans, 491 U.S. 350, 365 (1989). The Court of Appeals for the Third Circuit has

²² Although the Younger doctrine was originally applied only to criminal proceedings, the Court later directed that the doctrine may be applied to certain civil proceedings "if the State's interests in the proceeding are so important that the exercise of the federal judicial power would disregard the comity between the States and the National Government." Pennzoil v. Texaco, Inc., 481 U.S. 1, 11 (1987).

further explained that where Younger 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.” Gwynedd Properties, Inc., 970 F.2d at 1201. Alternatively, if federal proceedings merely parallel, and do not interfere with, state proceedings, abstention under Younger would not be appropriate. Id. When deciding whether abstention is appropriate with respect to questions of land use, district courts have been instructed to “examine the facts carefully to determine what the essence of the claim is.” Id. An example of this type of analysis is provided in Gwynedd Properties.

In Gwynedd Properties, the court considered whether the district court had properly applied the Younger doctrine to abstain from deciding a plaintiff’s Section 1983 allegations that a township and its supervisors had violated his constitutional rights by refusing to approve zoning variances so that he could develop his property. The plaintiff sought both monetary and non-monetary remedies, including an injunction to enjoin the township from interfering with the plaintiff’s lawful use of his property. Gwynedd, 970 F.2d at 1204. At the time the plaintiff filed his complaint, there were several state court actions, including a zoning appeal, pending.

In analyzing whether the district court erred in abstaining with respect to the plaintiff’s constitutional claims, the Gwynedd court drew a distinction between challenging the legality of a municipal ordinance and alleging that municipal officers maliciously applied legitimate ordinances with the purpose of depriving the plaintiff of constitutional rights. However, the court concluded that to the extent an injunction “enjoining the appellees from denying approvals and permits” would result in a de facto review of the township’s pending zoning decisions, abstention was appropriate. Id. at 1204. See also Acierno v. New Castle County, 40 F.3d 645,

655 n.13 (3d Cir. 1994) (advising district court that Younger abstention might be appropriate in case where plaintiffs asserted violations of constitutional rights related to denial of permit to build shopping center because injunctive relief was requested and a declaratory judgment action with respect to the denial was pending in state court).

After carefully considering the implications of this, the federal action, on the ongoing state proceedings in Commonwealth Court with respect to the Property, the Court concludes that abstention in this case would be appropriate. If this action were to proceed to its conclusion and the Court were to ultimately rule that, as the Plaintiffs request, no commercial use of the Property ever be permitted, the Court clearly would be engaging in state land-use decision-making that would or could directly contradict the case currently pending in the Commonwealth Court of Pennsylvania.

IV. **Lack of Jurisdiction under the Rooker-Feldman Doctrine**

The Defendants, and primarily DCRA, also argue that the Court lacks jurisdiction over the case pursuant to the Rooker-Feldman doctrine. The Rooker-Feldman doctrine arose from two cases²³ in which the Supreme Court concluded that federal courts do not have jurisdiction to review the judgments and decisions of state courts. Erwin Chemerinsky, FEDERAL JURISDICTION at § 8.1 (Aspen Law and Business, 3d ed. 1999). Under the Rooker-Feldman doctrine, a federal

²³ In Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), the court concluded that the allegedly incorrect decision arrived at by a state court that had been affirmed on appeal to the state supreme court could not be addressed by a federal district court because “[t]o do so would be an exercise of appellate jurisdiction.” In District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983), the Court again confirmed that “a United States District Court has not authority to review final judgments of a state court in judicial proceedings.”

court does not have the authority to review (1) “final adjudications of a state’s highest court²⁴ or to evaluate constitutional claims that are (2) ‘inextricably intertwined with the state court’s [decision] in a judicial proceeding.’” FOCUS v. Allegheny County Court of Common Pleas, 75 F.3d 834, 840 (3d Cir. 1996) (citing Blake v. Papadakos, 953 F.2d 68, 71 (3d Cir. 1992)).

In determining whether a claim before it is “inextricably intertwined” with a state court decision, a court must consider whether “entertaining the federal court claim would be the equivalent of an appellate review of that order.” FOCUS, 75 F.3d at 840. A district court must, therefore, examine the state court decision and assess whether federal adjudication of the claim would necessarily require the federal court to conclude that the state court wrongly decided the issues before it. See, e.g., FOCUS, 75 F.3d at 840 (finding that state court decision to issue gag orders and thwart party’s attempt to intervene did not preclude court from considering whether gag orders issued were constitutional); Altemose v. Charlestown Township, No. 98-2862, 1999 WL 179759 (E.D. Pa. March 23, 1999) (finding that Rooker-Feldman precluded court’s deciding whether refusal of zoning board to modify ordinances violated plaintiffs’ federal constitutional rights where state court had found that ordinance was not unconstitutional pursuant to state constitution).²⁵

²⁴ The Court of Appeals for the Third Circuit interprets the Rooker-Feldman doctrine to apply to final decisions of lower state courts. FOCUS v. Allegheny County Court of Common Pleas, 75 F.3d 834, 840 (3d Cir. 1996).

²⁵ The Altemose court came to this conclusion even though the plaintiffs had not raised their civil rights or constitutional claims in the state court proceeding. Noting that the Rooker-Feldman doctrine “applies not only to claims which were actually raised but also to claims, including constitutional claims, which could have been raised in state court,” the court concluded that a decision reviewing any of the claims would be improper. Although it is topically similar, the present circumstances present some distinctions from Altemose. For example, in Altemose the plaintiffs challenged the substance of the zoning ordinances, and proposed a curative

The application of Rooker-Feldman to this case depends upon the nature of the state court claims and the decision rendered by the Zoning Board and the Delaware County Court of Common Pleas, and requires a review of the roadmap that appears to dead-end at the filing of this case. The decision rendered by the Zoning Board concluded that the Property could be rezoned for commercial use, and implicitly concludes that the Urban Renewal Plan is no longer valid. On review, it appears that the Delaware County Court of Common Pleas concluded that the Zoning Board had come to its conclusion without sufficient evidence, and ordered additional evidence to be taken. The Zoning Board conducted an additional proceeding and came to the same conclusion, over the Plaintiffs' apparently passionate protests. The Plaintiffs, rather than again appealing the matter, opted instead to file suit in federal court, alleging violations of their constitutional rights and asking this court to issue a permanent injunction preventing use of the property for purposes other than those specified in the Redevelopment Agreement and corresponding Urban Renewal Plan.

Based on these facts, the present case can easily be considered an appeal of the state court decision because, although the Plaintiffs assert constitutional claims grounded in Section 1983, the relief they seek effectively would reverse the decision of the Board with respect to the zoning variance. No other interpretation of the impact of the sought after relief is sensible. To the extent that the Plaintiffs seek redress for the alleged constitutional violations, and that redress does not require injunctive or other relief that would have the effect of reversing the state court

amendment to them. Altemose, 1999 WL 179759, at * 1. In this case, the Plaintiffs do not challenge the ordinances per se, but rather assert that the individuals charged with implementing the ordinances acted in a discriminatory manner. In this respect, the present circumstances are more similar to Gwynedd Properties, Inc. v. Lower Gwynedd Township, 970 F.2d 1195 (3d Cir. 1992), discussed supra.

decision, the Court would likely have authority to decide the case. However, the only relief the Plaintiffs seek in this case is the injunctive relief described immediately above. Thus, the case presents that Court with what is effectively an appeal of a state court decision, which cannot be adjudicated under Rooker-Feldman.

V. Defenses Specific to Ms. Healy

As the only defendant who is sued as an individual property owner, Ms. Healy has presented some additional grounds upon which the claims against her should be dismissed. However, because of the Court's finding that the Plaintiffs lack standing to bring the claims, additional arguments are moot and they will not be addressed.

CONCLUSION

Upon review of the Amended Complaint, and after considering the terms of the Urban Renewal Plan, it does not appear that any of the Plaintiffs would receive an actual benefit were the injunction that the Plaintiffs request be granted and, therefore the Plaintiffs lack standing to bring the complaint. In the alternative, the Court also notes that because the only relief requested by the Plaintiffs would interfere with state law proceeding that are currently pending, abstention in this case would be appropriate. An appropriate Order follows.

/S/ _____
Gene E.K. Pratter
United States District Judge

March 23, 2005

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

LEE TALIAFERRO, SAMUEL C.	:	CIVIL ACTION
ALEXANDER, BEATRICE MOORE,	:	
AND BERNICE WILLIAMS	:	
	:	
v.	:	
	:	
DARBY TOWNSHIP ZONING	:	
BOARD, ET AL.	:	No. 03-3554

ORDER

AND NOW, this 23rd day of March, 2005, upon consideration of the Motion by Delaware County Redevelopment Authority to Dismiss (Docket No. 26), the Motion by Jesse Byrd-Estes, Darby Township, Darby Township Zoning Board, John Dougherty, Lamont Jacobs, John J. O'Neill, and William Ryan to Dismiss Plaintiffs' Amended Complaint (Docket No. 23), the Motion by Maureen Healy to Dismiss Plaintiffs' Amended Complaint and Motion to Strike (Docket No. 24), the Plaintiffs' response thereto (Docket No. 31), the Supplemental Memorandum of Law filed by Ms. Healy in Response to Plaintiffs' Opposition (Docket No. 33), and after oral argument with respect to the motions, it is **ORDERED** that:

1. The Motion of the Delaware County Redevelopment Authority to Dismiss the Complaint (Docket No. 26) is **GRANTED**.
2. The Motion of Jesse Byrd-Estes, Darby Township, Darby Township Zoning Board, John Dougherty, Lamont Jacobs, John J. O'Neill, and William Ryan to Dismiss Plaintiffs' Amended Complaint (Docket No. 23) is **GRANTED**.
3. The Motion of Maureen Healy to Dismiss Plaintiffs' Amended Complaint for Failure to State a Claim (Docket No. 24) is **GRANTED**.

4. The Motion of Maureen Healy to Strike a Portion of the Plaintiffs' Amended Complaint is **DENIED** as **MOOT**.

BY THE COURT:

/S/ _____
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE