

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Thomas M. Loughery and	:	
Michelle K. Loughery	:	
	:	
v.	:	
	:	
Borough of Jim Thorpe,	:	
and 61 West Broadway, LLC	:	
	:	No. 466 C.D. 2025
Appeal of: Borough of Jim Thorpe	:	Submitted: September 25, 2026

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE STACY WALLACE, Judge

OPINION BY
JUDGE COVEY

FILED: October 30, 2026

The Borough of Jim Thorpe (Borough) appeals from the Carbon County Common Pleas Court’s (trial court) December 10, 2024 order denying its post-trial motion (Post-Trial Motion).¹ The Borough presents two issues for this Court’s review: (1) whether the trial court erred by finding that Thomas M. Loughery and Michelle K. Loughery (collectively, Appellees) submitted sufficient evidence

¹ Technically, an “[a]ppeal lies from the judgment entered and not the denial of post-trial motions,” [*Crosby v. Dep’t of Transp.*, 548 A.2d 281, 283 (Pa. Super. 1988)], and a “verdict [does] not become final for purposes of appeal until properly reduced to and entered as a formal judgment under [Pennsylvania Rule of Civil Procedure (Civil Rule)] 227.4.” *Crystal Lake Camps v. Alford*, 923 A.2d 482, 488 (Pa. Super. 2007).

Mitchell v. Milburn, 199 A.3d 501, 504 n.3 (Pa. Cmwlth. 2018). Thus, this Court construes the Borough’s Notice of Appeal as a timely appeal from the trial court’s September 25, 2026 order entering judgment in favor of Thomas M. Loughery and Michelle K. Loughery.

regarding the dedication of the steps that connected West Broadway and High Street (High Street Steps); and (2) whether the trial court erred by ordering the Borough to continue to maintain the High Street Steps. After review, this Court affirms.

Appellees are the owners of real property located at 49 West Broadway, Jim Thorpe, Carbon County, Pennsylvania (Subject Property). 61 West Broadway, LLC (61 West Broadway) is the owner of real property located at 61 West Broadway, Jim Thorpe, Carbon County, Pennsylvania (Bordering Property). The Bordering Property adjoins the Subject Property to the west. The High Street Steps connect two public streets, High Street and West Broadway, and do not connect any private locations. The High Street Steps are situated in part on the Subject Property, the Bordering Property, and on property the Borough owns along the High Street roadway, according to the Borough's survey (Survey).

On February 14, 2019, Appellees filed a Complaint against the Borough in the trial court containing four counts: (1) adverse possession (Count I); (2) dedication (Count II); (3) public descriptive easement (Count III); and (4) ejectment (Count IV). Therein, Appellees sought a declaratory judgment declaring that the Borough is the owner of the High Street Steps. Appellees alleged that prior to the commencement of this action, the Borough renounced any obligation towards the High Street Steps, notwithstanding that it has repaired and maintained them over the years. Alternatively, Appellees sought an order that would eject the High Street Steps from Appellees' property at the Borough's expense and obligation.

On April 2, 2020, the Borough filed preliminary objections to all four counts of the Complaint (Preliminary Objections). On December 23, 2020, the trial court sustained and dismissed the Preliminary Objections to Counts I and III and overruled the Preliminary Objections to Counts II and IV. The trial court held a non-

jury trial on May 11, 2023. On June 3, 2024, the trial court entered a non-jury verdict in favor of Appellees on Count II and in favor of the Borough on Count IV. On June 12, 2024, the Borough filed its Post-Trial Motion. On December 10, 2024, the trial court denied the Post-Trial Motion.² On January 7, 2025, the Borough appealed to this Court.³ By September 3, 2026 Memorandum and Order, this Court directed the Borough to cause entry of judgment in the trial court and file a certified copy of the docket entries showing entry of judgment. On September 25, 2026, the trial court entered judgment in favor of Appellees. The Borough filed a certified copy of the docket entries showing entry of judgment that same date.

The Borough first argues that the trial court erred by finding that Appellees submitted sufficient evidence regarding the dedication of the High Street Steps. Specifically, the Borough contends that there are no records, whether ordinances, resolutions, or minutes, which show that the Borough Council accepted

² Pursuant to Civil Rule 227.4(1)(b), a post-trial motion is deemed denied by operation of law when the trial court does not enter an order disposing of the motion within 120 days **and** judgment has been entered. *See* Pa.R.Civ.P. 227.4(1)(b). The Civil Rules do not provide a mechanism for post-trial motions to be deemed denied by operation of law after the passage of 120 days. Rather, the Civil Rules permit, but do not require, a party to praecipe for entry of judgment to move the case forward where the trial court does not decide post-trial motions within 120 days. *See id.* Here, because the trial court did not enter judgment until September 25, 2026, the trial court properly ruled on the Post-Trial Motion.

³ This Court’s “review of a non-jury [verdict] is to determine whether the findings of the trial court are supported by competent evidence, and whether an error of law was committed.” *Slack v. Slack*, 256 A.3d 472, 477 n.9 (Pa. Cmwlth. 2021) (quoting *City of Phila. v. Galdo*, 181 A.3d 1289, 1291 n.2 (Pa. Cmwlth. 2018), *aff’d*, 217 A.3d 811 (Pa. 2019)). “It is beyond peradventure that the trial court, sitting as the fact-finder, is free to believe all, part or none of the evidence, to make all credibility determinations, and to resolve all conflicts in the evidence.” *Id.* at 481 (quoting *Laurel Rd. Homeowners Ass’n, Inc. v. Freas*, 191 A.3d 938, 952 (Pa. Cmwlth. 2018)).

By April 23, 2026 Order, this Court precluded 61 West Broadway from filing a brief in this Court for its failure to file a brief pursuant to this Court’s December 12, 2025 Order.

the High Street Steps; rather, the evidence demonstrated that the Borough conducted some de minimis maintenance and repairs on the High Street Steps over the course of 130 years. In addition, the Borough emphasizes that the Survey established the property line between the two adjoining properties, and that the High Street Steps are on the property line, but mostly on the Subject Property. The Borough insists that since there was no action by the Borough Council to accept a dedication of the High Street Steps, the trial court erred by finding that dedication was achieved.

Appellees rejoin that the High Street Steps are a large piece of public infrastructure that the uncontradicted testimony established that the public has freely used to walk between the public streets in the Borough for more than a century without limitation of any kind. Appellees retort that the evidence at trial established that the High Street Steps were dedicated to the Borough by implication. Appellees insist that the public's long-standing free use alone suffices to show the Borough's dedication of the High Street Steps to public purposes. Moreover, Appellees assert that the Borough's authoritative acts over the High Street Steps for more than a century - including using public funds for constructing, repairing, rebuilding, and maintaining them - is also evidence of the dedication of the High Street Steps to public purposes.

This Court has explained:

Real property may be dedicated to public use in a variety of ways. Dedication may be express or it may be implied from the acts of the parties, and it need not take a particular form. **Dedication may be found** in a single act, such as the giving of a deed or the recording of a plan, or it may be found **from a series of acts, all consistent with and pointing to the intention to dedicate**. Dedication, like a contract, requires both offer and acceptance, and once there is acceptance, in whatever form it takes, dedication is irrevocable.

White v. Twp. of Upper St. Claire, 799 A.2d 188, 193 (Pa. Cmwlth. 2002) (footnote omitted; emphasis added). The Pennsylvania Supreme Court has long held:

Where there has been long-continued use of land as a street by the public without objection on the part of the owner of the soil, the [fact-finder] may presume a valid dedication. No particular formality is requisite to constitute a dedication upon the part of the owner. Any act which clearly indicates an intention to dedicate is sufficient.

Waters v. City of Phila., 57 A. 523, 523-24 (Pa. 1902) (citation omitted).

However,

[i]t is the act of acceptance of a dedicated parcel of land which makes the dedication complete. *In re Keifer*, . . . 243 A.2d 336 ([Pa.] 1968); *Tri City Broad[.] v. Howell*, . . . 240 A.2d 556 ([Pa.] 1968); *Boyer v. Baker*, . . . 175 A.2d 143 ([Pa. Super.] 1961). Acceptance of an offer of dedication may be express or implied. See *Wensel v. N[.] Versailles Twp.*, . . . 7 A.2d 590 ([Pa. Super.] 1939). Thus, **when a governmental entity definitively acts** regarding an offer of dedication, **such as adoption of an ordinance or passing a resolution, the action is generally sufficient to manifest the intent to accept the dedication.** *Tri City*, . . . 240 A.2d at 558; *Borough of Milford v. Burnett*, . . . 136 A. 669 ([Pa.] 1927). See *Burger v. Rockhill Builders, Inc.*, . . . 420 A.2d 616[, 618] ([Pa. Super.] 1980) (“**any unequivocal authoritative acts by the public authority establishes acceptance of the offer of dedication**”) (citation and quotation marks omitted).

Lillo v. Moore, 704 A.2d 149, 152-53 (Pa. Super. 1997) (emphasis added).

In *Gass v. City of Pittsburgh*, 91 Pa. Super. 290 (1927), the Pennsylvania Superior Court discussed the cases supporting the offer and acceptance of dedications. Concerning *Ackerman v. City of Williamsport*, 76 A. 421 (Pa. 1910),

Kniss v. Borough of Duquesne, 100 A. 132 (Pa. 1917), and *Felt v. West Homestead Borough*, 103 A. 508 (Pa. 1918), the *Gass* Court explained:

[I]t is clearly shown that, in the absence of a formal acceptance, the liability of a municipality to keep a dedicated street in a safe condition for public travel may be asserted and established upon two separate and distinct grounds, either of which is sufficient to fix liability upon the municipality. **The first of these grounds is through long[-]continued public user without any formal act of acceptance** and the second through authorized or ratified municipal acts from which an acceptance may be implied.

Gass, 91 Pa. Super. at 297 (emphasis added). The *Gass* Court expounded:

The rule with respect to the first ground upon which a municipality may become liable for failure to keep a way in repair is thus stated . . . in *Felt* . . . : “Acceptance of a public road by long[-]continued user was fully discussed in *Ackerman* . . . , and *Kniss* . . . , where it is pointed out that **a road may become a public highway by dedication and acceptance by the public without formal action by the municipality and, in absence of express dedication, the public may acquire the right to the highway as against the land owner by continuous use for a period of [21] years and as against the municipality a much shorter period is sufficient to impose upon the public the duty of keeping the road in repair.**” In *Ackerman* . . . , our Supreme Court said: “Where dedication is once established, it becomes simply a question of acceptance by the public. Either can be established by proof of user. As against the owner of the soil, who would reassert his right in the way, an adverse user for the statutory period must be shown; but **as against a municipality which disclaims all duty in connection with the way, the dedication by the owner not being in dispute, acceptance by the municipality may be shown by proof of public use for a much shorter period.** . . . In the present case the user was continued and uninterrupted for more than [30] years. **A conclusive presumption arises that the street was originally dedicated, and the owners of the soil are precluded**

from asserting any other right therein than what is common to the public. The same evidence which concludes the owners and establishes a dedication, is more than sufficient to warrant a presumption of acceptance of the way by the municipality.”

Gass, 91 Pa. Super. at 297-98 (emphasis added).

In the instant case, because it is uncontested that the public use of the High Street Steps was continuous and uninterrupted for 130 years, there is a conclusive presumption of the owners’ dedication and the Borough’s acceptance. *See Gass*. Further, the record clearly shows the Borough Council’s authorized or ratified municipal acts from which an acceptance may be implied. Specifically, the Borough Council President testified to the lengthy history of meeting minutes showing the Borough’s care and responsibility for the High Street Steps. *See Reproduced Record (R.R.)* at 221a-228a. Among other things, he attested to: (1) the August 6, 1912 meeting minutes regarding the condition of the High Street Steps, where a Borough Council member suggested that the Borough Council “inspect the same and decide what can best be done to make them more substantial and permanent[,]” *see R.R.* at 360a; (2) the September 3, 1912 meeting minutes reflecting that “[the] [Street] Committee was instructed to have them paved with [s]ome [s]ubstantial material . . . ,” *R.R.* at 363a; (3) the November 10, 1977 meeting minutes recording that the Borough obtained a quote to repair the High Street Steps, *see R.R.* at 420a; (4) the November 30, 1977 minutes reflecting the Borough’s 1978 Budget which included \$8,000.00 for “Reconstruction of High Street Steps[,]” *R.R.* at 423a; (5) the August 10, 1978 minutes recording a motion which carried to “authorize[] to advertise for [b]ids for the repair of the High St[reet] Steps[,]” *R.R.* at 448a; and (6) the September 24, 2014 letter from the Borough to its residents

indicating that “[the Borough] is faced with the need to replace the High Street Steps.” R.R. at 217a-218a.

In the instant case, the trial court concluded:

Through the voluminous record created at trial as set forth in [the trial court’s] Findings of Fact, [see R.R. at 467a-480a,] it is clear that a dedication has occurred, not so much through a traditional “offer and acceptance” by the owners and [the Borough], but through an abandonment of the use by the owners in favor of the general public and through the acts of the municipality in repairing, replacing and maintaining the [High Street S]teps and providing for their overall safe ingress and egress by the general public for over a century.

R.R. at 499a. This Court discerns no error in the trial court’s reasoning.

[I]t is clear that [Appellees] relied upon[, *inter alia*,] the first ground to which [the *Gass* Court] have above referred, namely, long[-]continued public user of the way, and [this Court] [is] satisfied that there was sufficient evidence to sustain the finding of the [trial court] that the [High Street Steps] . . . had become a public highway of the [Borough] by dedication of the land owner and acceptance by the public.

Gass, 91 Pa. Super. at 300. Accordingly, the trial court properly ruled that Appellees submitted sufficient evidence regarding the owners’ dedication and the Borough’s acceptance of the High Street Steps.

The Borough next argues that the trial court erred by ordering the Borough to continue to maintain the High Street Steps. Specifically, the Borough contends that if this Court determines that the Borough owns them, the High Street Steps would be considered a street. As such, the Borough asserts that both the Borough Code (Code)⁴ and case law show that the Borough has authority to

⁴ 8 Pa.C.S. §§ 101-3501.

determine whether or not to keep the High Street Steps open or to vacate them; and the Borough has the authority to determine the degree of maintenance appropriate for the High Street Steps. Appellees rejoin that nothing in the Code relieves the Borough of its obligation to maintain the High Street Steps for the public's use and safety. Appellees further retort that because a common law dedication has occurred, what is commonly referred to as the Donated or Dedicated Property Act (DDPA)⁵ applies.

Initially, Section 1721.1(a) of the Code provides:

In accordance with the provisions of this chapter, boroughs may, with or without petition of abutting property owners, lay out, open, widen, straighten, alter, extend[,] and improve, and may establish or reestablish the grades of, and keep in order and repair and in safe passable condition, a street or portion of a street within the borough limits or may vacate the street or portion of a street if deemed expedient for the public good and provide for the costs of alteration.

8 Pa.C.S. § 1721.1(a). Further, Section 1731(a) of the Code authorizes:

Authority of council.--By ordinance, council has the authority to:

(1) Open a street or portion of a street *previously laid out* or simultaneously to lay out and open a street or portion thereof. A street or portion of a street so opened is a public street of the borough.

(2) Vacate or close a street or portion of a street *previously opened or laid out* provided that no street or portion of a street providing the sole means of access to a tract of land is vacated without the consent of those to whom access would be denied. Vacation of a street terminates the

⁵ Act of December 15, 1959, P.L. 1772, *as amended*, 53 P.S. §§ 3381-3386.

public right in or to the street but does not affect a private right acquired by an owner of abutting property.

8 Pa.C.S. § 1731(a) (*italic emphasis added*).

However, Section 1734(b) of the Code proscribes:

No borough may acquire a right in or responsibility for a street privately constructed until dedication of the street has been presented to and accepted by the borough and until the dedication has been recorded in the county office for the recording of deeds.

8 Pa.C.S. § 1734(b). Here, the Borough's obligation for the High Street Steps was not created under the Code's authority. Accordingly, because the Borough did not open or lay out the High Street Steps pursuant to the Code, and the dedication and acceptance of the High Street Steps did not occur thereunder, but rather, was established under common law, the Code does not apply.

The Pennsylvania Supreme Court has explained:

[T]he fundamental purpose of the DDPA is to delineate “the fiduciary nature of municipalities’ obligations relative to donated and dedicated properties and provide[] for orderly relief therefrom in appropriate circumstances.” [*In re Erie Golf Course*], 992 A.2d [75,] 86 [(Pa. 2010)]. [The *Erie Golf Course* Court] further discerned that, in enacting the DDPA, the General Assembly incorporated “salient common-law principles” of the “public trust doctrine” as articulated in our caselaw prior to its enactment. *Id.* Under that doctrine, **whenever property was dedicated to public use by a municipality, this action created a trust for the property with the public as the beneficiary. It correspondingly required the municipality to act in the capacity of a trustee by holding the property in favor of the community, and restricted the municipality from diverting it from public use, or conveying it to a private party.** *B[d.] of Tr[s.] of Phila[.] Museums v. Tr[s.] of Univ[.] of P[a.]*, . . . 96 A. 123, 125 [(Pa.) 1915]; *In re Petition of Acchione*, . . . 227 A.2d 816, 820 [(Pa.) 1967] (**[O]nce land is dedicated**

to a public use by a municipality, the municipality becomes “trustee, subject to all the duties and responsibilities imposed on any other trustee.”). As we recounted in *Philadelphia Museums*, the public trust doctrine was developed in order to protect the significant interests the public acquires in such property through their use of it and the expenditures of tax monies for its care and improvement. *Id.* at 125.

In re Borough of Downingtown, 161 A.3d 844, 872 (Pa. 2017) (emphasis added).

Section 2 of the DDPA expressly mandates:

All lands or buildings heretofore or hereafter donated to a political subdivision for use as a public facility, or **dedicated to the public use** or offered for dedication to such use, **where no formal record appears as to acceptance by the political division**, as a public facility and situate within the bounds of a political subdivision, regardless of whether such dedication occurred before or after the creation or incorporation of the political subdivision, **shall be deemed to be held by such political subdivision, as trustee, for the benefit of the public with full legal title in the said trustee.**

53 P.S. § 3382 (emphasis added).

Here, the trial court concluded:

[The trial court’s] determination of dedication is not premised upon a finding of a statutory dedication which requires strict compliance, but rather a common law dedication by implication. Therefore, the Borough cannot rely upon the [] Code and its provisions to suggest that the [trial c]ourt cannot require it to maintain the High Street Steps.

R.R. at 499a. This Court discerns no error in the trial court’s reasoning. *See Gass*, 91 Pa. Super. at 300 (Because dedication was established through long continued public use, “[i]t follows that it was the legal duty of the city to keep the steps in reasonably safe condition for public travel”). Accordingly, because the Code

does not apply, the trial court properly directed the Borough to continue to maintain the High Street Steps.

For all of the above reasons, the trial court's order is affirmed.

ANNE E. COVEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Thomas M. Loughery and	:	
Michelle K. Loughery	:	
	:	
v.	:	
	:	
Borough of Jim Thorpe,	:	
and 61 West Broadway, LLC	:	
	:	No. 466 C.D. 2025
Appeal of: Borough of Jim Thorpe	:	

O R D E R

AND NOW, this 30th day of October, 2026, the Carbon County
Common Pleas Court's December 10, 2024 order is affirmed.

ANNE E. COVEY, Judge