Adams County
Legal Journal

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IN THIS ISSUE

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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LEGAL NOTICE

THE Annual meeting of the policyholders of Protection Mutual Insurance Company of Littlestown will be held at the office at 101 South Queen Street, Littlestown, Pennsylvania between the hours of 1:00 and 2:00 P.M. on January 10, 1998 to elect directors and to transact any other business properly presented.

ATTEST, Marilyn Q. Butt
Secretary-Treasurer

11/21, 28, 12/5 & 12

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for CHAMPION LINCOLN-MERCURY, INC. The said corporation has been incorporated under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania.

McNees, Wallace & Nurick
Attorneys at Law
100 Pine Street
Harrisburg, PA 17101

12/5

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN pursuant to the Fictitious Names Act, Act 1982-295, as amended, of the filing in the Office of the Secretary of the Commonwealth of Pennsylvania, on June 11, 1997 of an application to conduct a business in Adams County, Pennsylvania under the registered fictitious name of AUSCO. The address of the principal office or place of such business to be carried on under or through such fictitious name is 1338 Biglerville Road, Gettysburg, PA 17325. The entity interested in such business which is party to such registration is Adams Utility Services Company of the same address.

Teeter, Teeter & Teeter
Solicitors

12/5

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on November 7, 1997, for the purpose of obtaining a Certificate of Incorporation of a business Corporation organized under the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444, No. 177.

The name of the corporation is APPLE GARDEN ACRES, INC.

The purpose for which the corporation has been organized is: The corporation shall have unlimited power to engage in and do any law act concerning any or all lawful business for which corporations may be organized under the Pennsylvania Business Corporation Law.

Apple Garden Acres, Inc.
632 Orrtanna Road
Orrtanna, PA 17353

12/5

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on October 30, 1997, for the purpose of obtaining a Certificate of Incorporation of a business Corporation organized under the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444, No. 177.

The name of the corporation is J. E. RUDISILL, JR. TRUCKING, INC.

The purpose for which the corporation has been organized is: The corporation shall have unlimited power to engage in and do any law act concerning any or all lawful business for which corporations may be organized under the Pennsylvania Business Corporation Law.

J. R. Rudisill, Jr.
Trucking, Inc.
41 Stanley Drive
New Oxford, PA 17350

12/5

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution Judgment No. 97-S-636 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 19th day of December, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of land situated in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 92 on a Plan of Lots of Lake Meade Subdivision duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, in Plat Book 1, page 1 which description is incorporated herein by reference.

UNDER AND SUBJECT to all legal highways, easements, rights of way and restrictions of record.

IT BEING the same premises which Alvin H. Ruby and Helen M. Ruby, husband and wife, by their deed dated October 29, 1993 and recorded on November 4, 1993 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 803, page 52, granted and conveyed unto Douglas Gayman and Deborah Gayman.

TAX MAP NO. 8, PARCEL 87.

SEIZED and taken into execution as the property of **Douglas Gayman and Deborah Gayman** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
November 4, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on January 12, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

11/21, 28, 12/5

HAFER, ET UX. VS. GETTYSBURG HOSPITAL, ET AL.

1. Pa.R.C.P. 1019(a) has been construed to mean that the Complaint must not only apprise the Defendant of the claim being asserted, but must also summarize the essential facts to support the claim.

2. There is support for the proposition that a Plaintiff should be given greater leeway in alleging negligence in medical malpractice cases because the hospital and/or doctors have superior knowledge about the details of the medical procedures and records involved, however, to obtain that latitude he should plead the existence of that superior knowledge.

3. In ruling on preliminary objections filed to general allegations of negligence, the most worthy approach is to permit only specific allegations on the theory one should not be permitted to discover their way to a lawsuit.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-1098, THOMAS C. HAFER AND LISA J. HAFER VS. GETTYSBURG HOSPITAL, STEPHEN C. FREY, M.D. AND MARIE V. SPAGNOLI, M.D.

Lewis H. Markowitz, Esq., for Plaintiffs
Evan Black, Esq., for Defendants Gettysburg Hospital and Stephen C. Frey, M.D.
Thomas J. Williams, Esq., for Defendant Marie V. Spagnoli, M.D.

OPINION ON PRELIMINARY OBJECTIONS FILED BY DEFENDANTS, THE GETTYSBURG HOSPITAL AND STEPHEN C. FREY, M.D.

Kuhn, J., December 23, 1996.

Plaintiffs filed a complaint alleging medical malpractice. They claim that on December 23, 1992, Thomas Hafer presented to the emergency room of the Gettysburg Hospital complaining of a wrist injury. He was examined by Stephen C. Frey, M.D., who ordered an x-ray of the wrist. Marie Spagnoli, M.D. read the x-ray and discovered no fracture. Dr. Frey then diagnosed the injury as a sprain and applied a splint. It is further alleged that in April, 1993, Dr. Thomas Howard, an orthopedic physician, diagnosed a fracture of the wrist. Eventually surgery was required.

Defendants, Gettysburg Hospital and Dr. Frey, have moved to strike certain allegations of negligence as being insufficiently specific. The request with regard to Dr. Frey's alleged negligence is to strike the following paragraphs:

> 19. Defendant, Stephen C. Frey, M.D. was negligent in that:

. . .

e. he failed to thoroughly and adequately evaluate Mr. Hafer's complaints;

f. he failed to exercise that degree of skill and care such as is normally possessed by emergency physicians practicing in the community.

The objection with regard to Gettysburg Hospital focuses on its alleged vicarious liability and requests that the following paragraphs be stricken:

21. Defendant Gettysburg Hospital was negligent independently and through its servants or employees in that:

a. the averments contained in paragraphs 19a through 19f and 20a through 20f are incorporated herein by reference;

b. they failed to properly supervise and monitor the activities of their agents to servants or employees;

c. they failed to assure that their agents, servants or employees provided the standard of care to Mr. Hafer.

In regard to subparagraph 21a Gettysburg Hospital objects to the following allegations of negligence attributable to Dr. Spagnoli:

20. Defendant Marie V. Spagnoli, M.D. was negligent in that:

. . .

f. she failed to thoroughly and adequately evaluate Mr. Hafer's complaints;

g. she failed to exercise that degree of skill and care such as is normally possessed by physicians specializing in radiology and practicing in the community.

A motion to strike is appropriate where a pleading fails to conform to law or rule of court. Pa. R.C.P. 1028(a)(2). Pleading rules require that material facts on which a cause of action is based must be stated in a concise and summary form. Pa. R.C.P. 1019(a). The rules also permit preliminary objections challenging the sufficiency of the specificity in the pleading.

Superior Court in Baker v. Rangos, 229 Pa. Super. 333, 324 A.2d 498 (1974) set forth the standard for pleading material facts. It stated,

Rule 1019(a) requires fact pleading . . . "The purpose of [1019(a)] is to require the pleader to disclose the 'material

> facts' sufficient to enable the adverse party to prepare his case." . . . A complaint therefore must do more than "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." . . . It should formulate the issues by fully summarizing the material facts. "Material facts" are "ultimate facts," i.e., those facts essential to support the claim. Evidence from which such facts may be inferred not only need not but should not be alleged . . . Allegations will withstand challenge under 1019(a) if (1) they contain averments of all of the facts the plaintiff will eventually have to prove in order to recover . . . and (2) they are "sufficiently specific so as to enable defendant to prepare his defense," . . .
> 229 Pa. Super. at 349-50, 324 A.2d at 505-6 (citations omitted).
>
> More recently Superior Court added that,
>
> Pa. R.C.P. 1019(a) has been construed to mean that the complaint must not only apprise the defendant of the claim being asserted, but it must also summarize the essential facts to support the claim . . . We recognize the proposition that the Rules of Civil Procedure are to be liberally interpreted. See Pa. R.C.P.126. "However, liberal construction does not entail total disregard of those rules concerning pleading.". . .
>
> Krajsa v. Keypunch, Inc., 424 Pa. Super. 230, 235, 622 A.2d 355, 357 (1993).

General allegations of negligence are not uncommon in medical malpractice cases. There is support for the proposition that leniency should be given to a plaintiff because the hospital and/or doctors have superior knowledge about the details of the medical procedures and records involved. There is certainly support for the proposition that a plaintiff should be given greater leeway where an adverse party has exclusive or superior knowledge of crucial facts, however, to obtain that latitude he should plead the existence of that superior knowledge. Baker v. Rangos, supra., 324 A.2d at 506, n. 4. Here, Plaintiffs did not plead defendants' superior knowledge so they ordinarily would not be entitled to special leniency.

In this area the undersigned has followed the approach taken by Honorable John C. Dowling in Starr v. Myers, 109 Dauphin 147 (1988). He articulately noted that,

> Perhaps the most prolific source of preliminary objections are those demurrers, motions to strike, and motions for more specificity filed to general allegations of negligence. Behind this facade of conclusion pleading lies a far more fundamental concern than averment exactitude or allegata exuberance. Beneath the veneer is the specter of statute of limitations, amplified by the substantive discovery principle and augmented by the procedural rules of discovery. 109 Dauphin 147-8.

Judge Dowling suggested three approaches which could be taken in response to the issue. The first course is to "permit boilerplate allegations and allow the parties to have recourse to discovery to flesh out the non-specific allegations." P. 153. The second approach is "to allow general averments of negligence so long as they relate back to the specific allegations.. P. 153-4 The third avenue "is to permit only specific allegations on the theory that one should not be permitted to 'discover' their way to a lawsuit." P. 154. The third approach was adopted in Starr and is the one we find most worthy.

Among the allegations stricken in Starr was one that the defendant failed "to properly" diagnose plaintiff's condition." In Nelle v. Milton Hershey Medical Center, 111 Dauphin 264 (1991) the Starr rationale was followed in striking allegations that the defendant failed "to render reasonable and professional judgment and care under the circumstances." and "to conform to the requisite standard of reasonable medical and professional care." In an unreported opinion discussed by Judge Dowling in Starr an allegation that a hospital failed "to properly supervise agents, employees of . . . the medical center" was stricken from the complaint.

In our opinion the challenged paragraphs are not sufficiently specific and will be stricken.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 23rd day of December, 1996, in consideration of Preliminary Objections filed by Defendants, Gettysburg Hospital and Stephen C. Frey, M.D., Paragraphs 19(e) and (f), 20(f) and (g) and 21(b) and (c), are stricken from the Complaint.

Plaintiffs are granted twenty (20) days from the date of mailing of this Order to file an amended pleading. If none is so filed said defendants shall have twenty (20) days thereafter to file an answer.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

SECOND PUBLICATION

ESTATE OF GRACE L. BIGELOW, DEC'D
Late of Gettysburg Borough, Adams County, Pennsylvania
Administrators c.t.a.: Rita Marie Gibbons, 155 White Church Road, Gettysburg, PA 17325; Lois Morningred, 19 Green Hill Road, Newport, PA 17074
Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF CATHARINE V. DEITZ, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Executor: Herbert E. Spangler
Attorney: Stephen P. Linebaugh, Esquire, 119 East Market Street, York, PA 17401

ESTATE OF HERBERT ELI GRIEST, a/k/a HERBERT E. GRIEST AND H. E. GRIEST, DEC'D
Late of Huntington Township, Adams County, Pennsylvania
Executor: Alvin Griest, 1170 Upper Bermudian Road, Gardners, PA 17324
Attorney: John C. Zepp, III, Esquire, P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

ESTATE OF FRANCES A. HUFNAGEL, DEC'D
Late of Conewago Township, Adams County, Pennsylvania
Executors: Peter T. Hufnagel, 5473 Hanover Road, Hanover, PA 17331; Julia Ann Neiderer, 1090 Water Drive, Hanover, PA 17331; Benjamin F. Hufnagel, Sr., 80 Witmer Road, Hanover, PA 17331
Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF WALTER A. WHISLER, DEC'D
Late of Conewago Township, Adams County, Pennsylvania
Executrix: Lois E. Whisler, 539 Oxford Ave., Hanover, PA 17331
Attorney: G. Steven McKonly, 119 Baltimore Street, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF MARION H. CULP, DEC'D
Late of Straban Township, Adams County, Pennsylvania
Administrator: David C. Houck, P.O. Box 595, Arendtsville, PA 17303-0595

ESTATE OF DELBERT H. DAVISSON, DEC'D
Late of Liberty Township, Adams County, Pennsylvania
Executor: Jack Blake, 6 Frederick Road, Thurmont, MD 21788
Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF FRANCES M. FRANCIS, a/k/a FRANCES FRANCIS, DEC'D
Late of Mt. Joy Township, Adams County, Pennsylvania
Executrix: Carol Jean Brandewie, a/k/a Carol J. Brandewie, 200 Longstreet Drive, Gettysburg, PA 17325
Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF FANNIE LARUE GOSNELL, DEC'D
Late of Germany Township, Adams County, Pennsylvania
Co-Administrators: Mr. Arthur M. Stonesifer, 8 Stull Drive, Thurmont, MD 21788; Mr. John Luther Stonesifer, 3965 Littlestown Pike, Westminster, MD 21158
Attorney: David K. James, III, Esquire, 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF ALMA M. MYERS, DEC'D
Late of the Borough of Fairfield, PA, Adams County, Pennsylvania
Executor: Lloyd G. Myers, 38540 West 319th, Paola, KS 66071
Attorney: Robert E. Campbell, Esq., Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF BOYD L. OLLER, DEC'D
Late of Franklin Township, Adams County, Pennsylvania
Executor: Donald B. Oller, 1281 New Road, Orrtanna, PA 17353
Attorney: Harold A. Eastman, Jr., Phul & Eastman, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF PAULINE MARY POIST, DEC'D
Late of Hanover, Adams County, Pennsylvania
Executrixes: Linda Becker and Brenda Kopp, c/o 250 York Street, Hanover, PA 17331
Attorney: Samuel K. Gates, 250 York Street, Hanover, PA 17331

ESTATE OF ELIZABETH G. VANLIER, DEC'D
Late of 208 Latimore Creek Rd., York Springs, Adams County, Pennsylvania
Executrixes: Francisca E. Eperthener and/or Gabriella E. Higgins, 208 Latimore Creek Road, York Springs, PA 17372
Attorney: Jan M. Wiley, Esquire, One South Baltimore Street, Dillsburg, PA 17019

ESTATE OF RUBY L. WETZEL, DEC'D
Late of Hamiltonban Township, Adams County, Pennsylvania
Executors: P. Wendell Wetzel, P.O. Box 55, Aspers, PA 17304; Genevieve Weigle, 915 Fleshman Mill Road, New Oxford, PA 17350
Attorney: Robert E. Campbell, Esquire, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the Pennsylvania Business Corporation Law, 15 Pa.C.S.A. § 1307, of the intention to file Articles of Incorporation with the Pennsylvania Department of State, Corporation Bureau. The name of the proposed corporation is SIDEKICK MARTIAL ARTS, INC. The proposed corporation is to be organized under the Business Corporation Law of 1988.

Wolfe & Rice
47 West High Street
Gettysburg, PA 17325
Attorneys for Applicant

12/5

IN THE
COURT OF COMMON PLEAS
OF ADAMS COUNTY,
PENNSYLVANIA

CIVIL ACTION - LAW

No. 97-S-1068

IN RE: KRISTEN RENEE LEATHERMAN

NOTICE

NOTICE IS HEREBY GIVEN that, on November 7, 1997, the Petition of Stephanie Lee Leatherman was filed in the above named Court, requesting an Order to change the name of her daughter, Kristen Renee Leatherman, to Kristen Renee Carbaugh.

The Court has fixed the 22d day of December, 1997, 9:00 o'clock, a.m, in Courtroom 1 or 2 of the Adams County Courthouse, Gettysburg, Pennsylvania, as the time and place for the hearing on said Petition, when and where all interested parties may appear and show cause, if any, why the request of the Petitioner should not be granted.

Robert L. McQuaide
Swope, Heiser & McQuaide
Attorney for Petitioner

12/5

Adams County
Legal Journal

Vol. 39 December 12, 1997 No. 29, pp. 161–166

IN THIS ISSUE

KUHN
VS.
BOARD OF SUPERVISORS OF OXFORD TOWNSHIP
and
SMITH, ET AL. VS. LAWRENCE

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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Second-class postage paid at Gettysburg, PA 17325.

LEGAL NOTICE

THE Annual meeting of the policyholders of Protection Mutual Insurance Company of Littlestown will be held at the office at 101 South Queen Street, Littlestown, Pennsylvania between the hours of 1:00 and 2:00 P.M. on January 10, 1998 to elect directors and to transact any other business properly presented.

ATTEST, Marilyn Q. Butt
Secretary-Treasurer

11/21, 28, 12/5 & 12

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, December 22, 1997, at 9:00 a.m.

BROWN—Orphans' Court Action Number OC-133-97. The First and Final Account of Thomas A. Brown and Ronald L. Brown, Executors of the Last Will and Testament of Harold D. Brown, deceased, late of the Borough of Fairfield, Adams County, Pennsylvania.

AIKEN—Orphans' Court Action Number OC-135-97. The First and Final Account of Adams County National Bank, Executor of the Estate of John H. Aiken, deceased, late of Highland Township, Adams County, Pennsylvania.

STAUB—Orphans' Court Action Number OC-59-96. The First and Final Account of Adams County National Bank, Executor of the Estate of Nellie G. Staub, deceased, late of Straban Township, Adams County, Pennsylvania.

MAYS—Orphans' Court Action Number OC-140-97. The First and Final Account of Adams County National Bank, Executor of the estate of T. Opal Mays, deceased, late of Littlestown, Adams County, Pennsylvania.

OVERBAUGH—Orphans' Court Action Number OC-88-97. The First and Final Account of Eileen Jane Day and Mary Anne Overbaugh, a/k/a Mary Anne Topper, Executrices of the Last Will and Testament of Marilyn L. Overbaugh, a/k/a Marilyn Louise Overbaugh, deceased, late of the Borough of McSherrystown, Adams County, Pennsylvania.

KINDIG—Orphans' Court Action Number OC-141-97. The First and Final Account of James D. Kindig and John R. Kindig, Executors of the Will of Glenn Y. Kindig, deceased, late of Germany Township, Adams County, Pennsylvania.

WISLER—Orphans' Court Action Number OC-69-79. The First and Final Account of Adams County National Bank, Administrator C.T.A. of the Last Will and Testament of Dolores G. Wisler, deceased, late of Straban Township, Adams County, Pennsylvania, including accounting of said bank as Guardian of the Estate of Dolores G. Wisler, an incapacitated person.

Peggy J. Breighner
Clerk of Courts

12/12 & 19

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on or about August 18, 1997, for the incorporation of GETTYSBURG BEER MART, INC., under the Pennsylvania Business Corporation Law of 1988. The corporation shall engage in the sale of malt and brewed beverages, snack items and lottery tickets, together with any other activity not otherwise prohibited. The initial registered office of the corporation is 646 York Street, Gettysburg, PA 17325.

Gary E. Hartman, Esq.
Hartman & Yannetti
Solicitor

12/12

KUHN VS. BOARD OF SUPERVISORS OF OXFORD TOWNSHIP

1. On an appeal from a decision denying a final subdivision plan, where the appeal record did not include finds of fact and the Court received testimony at hearing, the Court is required to make its own findings of fact and decide the case de novo.

2. Where the subdivision ordinance fails to address the situation which has been placed at issue, the Court must revert to the general principle that the township is charged with matters of public safety.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 95-S-225, MARY LEE KUHN VS. THE BOARD OF SUPERVISORS OF OXFORD TOWNSHIP.

Matthew L. Guthrie, Esq., for Plaintiff
Roy A. Keefer, Esq., for Defendant

MEMORANDUM OPINION

Kuhn, J., January 7, 1997.

BACKGROUND:

Appellant, Mary Lee Kuhn, filed an appeal from a decision of the Oxford Township Board of Supervisors dated February 20, 1996, denying her final subdivision plan for Lot #3 in Hollywood Estates. Because the appeal record did not include findings of fact and because the Court received testimony at hearing on July 22, 1996, the Court is required to make its own findings of fact and decide the case de novo. DeCray v. Zoning Hearing Board of Upper Saucon Township, 143 Pa. Comlth. Ct. 469, 475, 599 A.2d 286, 288 (1991); 53 P.S. §1100-5A.

FINDINGS OF FACT:

1. Lot #3 is a rectangular shaped 1.3 acre lot situated at the northeast corner of U.S. Route 30 and Oak Drive.

2. Appellant originally submitted a subdivision plan for Lot #3 for 11 two story attached condominium units.

3. Access was proposed off Oak Lane at the northwestern corner of the lot via a paved entrance.

4. On December 19, 1994, the township engineer proposed that the "access road" be at least 24 feet wide.

5. On November 21, 1995, Appellant withdrew the original plan.

6. On December 5, 1995, Appellant submitted the current plan for four duplex condominium units.

7. The new plan called for a 24 foot wide paved entrance off of Oak Lane past the first unit with a 15 foot turning radius to the right into a 25 foot wide paved area between Units 1-4 to the west and Units 5-8 to the east.

8. Parking spaces and garages for the units are located adjacent to the 25 foot wide paved area between the units.

9. On January 11, 1996, at a Planning Commission meeting Appellant was first advised that the Township was concerned about the 24 foot wide entrance.

10. On February 20, 1996, the Township Supervisors rejected the subdivision plan because they felt the entry was inadequate in width to safely accommodate emergency vehicles.

11. Appellant's engineer, Theodore A. Decker, used a design for the entrance which he felt could accommodate a fire truck 6" wider, 1 foot longer in overhand; and 4' 2" longer in wheel base than Rescue Unit #13 of the New Oxford Fire Department which services this area.

12. The distance from the fire hydrant along Oak Lane to Units 7 and 8 is approximately 320 feet.

13. Louis Kline, Sr., Vice President of Emergency Services Group, who has a degree in fire science, testified on behalf of Appellant and opined that the New Oxford Fire Department fire engines could access the entrance, had supply lines of sufficient length to service the buildings and could back out of the entryway if necessary.

14. J. F. Livingston is a township supervisor and chief of the Irishtown Fire Company which could also service this lot.

15. Mr. Livingston testified that the supervisors' concern was not the ability of a fire engine to access the entryway but rather the need to have more space to maneuver personnel and equipment especially if more than one emergency vehicle was involved in fighting a fire.

16. Non-emergency vehicles could be parked along the entryway which would reduce the maneuverability of emergency vehicles.

DISCUSSION:

The initial dispute between the litigants is whether the township subdivision ordinance addresses the width of the entryway for this lot. The township argues that it is a "minor street" requiring a 36 foot width. Sec. 403.2. A minor street is defined as "a street used primarily for access to abutting properties." A street is defined as "a right-of-way or portion thereof dedicated or intended for general public, vehicular, and/or pedestrian use." Unfortunately, the record is void of any indication that this entryway will be dedicated to public use. However, in response to the Court's inquiry the Township solicitor has indicated that the access road will not be dedicated to public use nor is there any indication that it will be intended for general public use. Instead, it is more likely that it is intended for limited public use to accommodate only those persons residing in or visiting the condominium units.

Appellant contends that the entryway is an "access drive" within provisions of §405 of the ordinance. Access drives are not defined but are discussed in relation to residential, commercial and industrial properties. A residential access drive is restricted to a maximum width of 20 feet. It appears, however, the provisions dealing with residential access drives refer to a single residence and not to multiple residences as would be found in a condominium unit.

Frankly, we believe the ordinance fails to address the situation which has been placed at issue and offers no defined width for an entryway in this type of development. The Court must therefore revert to the general principle that the township is charged with matters of public safety. Fire safety is always a matter of public concern and the maneuverability of fire fighting equipment is critical to that concern. On the basis of the instant record the Court does not conclude that the decision of the Township was arbitrary or capricious. It is not for the Court to determine the exact width which would be appropriate but we do not conclude that the Township abused its discretion in concluding that a 24 foot wide entry was inadequate.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 7th day of January, 1997, in accordance with the attached Memorandum Opinion the appeal filed in this matter is dismissed.

SMITH, ET AL. VS. LAWRENCE

1. It is procedurally improper to simultaneously commence both an action in ejectment and an action to quiet title regarding the same parcel of real estate since ordinarily the plaintiff in an action to quiet title must be in possession of the land in controversy; if he is out of possession, his sole remedy is an action in ejectment.

2. An action in ejectment is a possessory action which can be maintained if the Plaintiff who is out of possession has a right of immediate possession with the concomitant right to demand that the Defendant vacate the land.

3. The party asserting a prescriptive easement must demonstrate each element of such an easement by proof that is clear and positive.

4. A prescriptive easement is created by (1) adverse, (2) open, (3) notorious, (4) continuous and uninterrupted use for a period of 21 years.

5. In order to establish continuity of use on a claim of prescriptive easement, the evidence need not illustrate constant use but instead, continuity is established if the evidence shows a settled course of conduct indicating an attitude of mind on the part of the user or users that the use of the user or users that the use is the exercise of a property right.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 96-S-627, RAYMOND H. SMITH, RAYMOND H. SMITH, JR., WILLIAM A. MCINTYRE, JOHN G. NOEL, SUSAN L. RISER VS. FRANCIS S. LAWRENCE.

Gary E. Hartman, Esq., for Plaintiffs
Wendy Weikal-Beauchat, Esq. for Defendant

MEMORANDUM OPINION

Kuhn, J., January 7, 1997.

This is an action in equity wherein the plaintiffs seek to enforce their right to the open use and enjoyment of a certain alley in the Village of Centennial. At issue is a 10 foot wide public alley which intersects Centennial Road then runs south along the eastern edge of property of Defendant, Francis S. Lawrence, and then turns westward and exists onto Centennial Avenue. Along its course to and from Centennial Avenue the alley abuts the rear of real estate owned, inter alia, by plaintiffs, Raymond H. Smith and Susan L. Riser, and the northern side of real estate owned by Plaintiff, William A. McIntyre. Plaintiff, Raymond H. Smith, Jr., resides on the real estate owned by his father, Raymond H. Smith.

Deeds of record and credible testimony established the existence of the public alley for nearly 100 years. There appears to be no dispute as to the existence of the alley, however, there is a dispute as to its exact location, especially at the southeast (rear) corner of Defendant's lot. All deeds refer to the alley as being 10 feet wide and situate outside the boundary lines of the abutting property.

Credible testimony revealed that the alley has been used for decades on a regular basis by persons in the neighborhood to get to and from their property and onto Centennial Road and Centennial Avenue by vehicular and pedestrian traffic. The alley's stone base has been in existence as long as the witnesses can remember. Stella Lawrence, age 87, and Raymond H. Smith, age 67, testified to the use of the alley and its existence at its present location for their entire lives. Even Defendant, age 65, acknowledged that the alley was "always there." Dennis Neiderer testified that for at least the last 43 years a trash collection business operated by his father and then himself has been using the alley to collect trash from properties abutting the alley.

The genesis of this litigation began in Summer 1996 when Defendant placed a metal post and large rock in the alley at the southeast corner of his lot. This effectively prevented vehicles from making the

turn on the stoned portion of the alley and completely prevented commercial vehicles larger than a standard size automobile from getting through the opening at all. Defendant has taken the position that the curve in the alley at the southeastern corner of his lot has gradually increased over the last 5-10 years and was increasingly cutting across his property. He contends that the alley should remain outside his property line and should be limited to non-commercial vehicular use.

Plaintiffs contend they have a prescriptive right to use the alley as it exists and is defined by its stone base.

Plaintiffs' Complaint sets forth an action in Ejectment (Count I) and an action to Quiet Title (Count II). Initially, the Court will dismiss the quiet title action for procedural reasons. As stated in Plauchak v. Boling, 439 Pa. Super. 156, 653 A.2d 671 (1995),

> It is procedurally improper to simultaneously commence both an action in ejectment and an action to quiet title regarding the same parcel of real estate. Ordinarily, the plaintiff in an action to quiet title must be in possession of the land in controversy; if he is out of possession, his sole remedy is an action in ejectment . . . An action to quiet title may be brought only where an action in ejectment will not lie . . . 439 Pa. Super. at 162, 653 A.2d at 674 (citations omitted.)

Here, the plaintiffs are out of possession therefore a quiet title action will not lie.

An action in ejectment is a possessory action which can be maintained if the plaintiff who is out of possession has a right to immediate possession with the concomitant right to demand that the Defendant vacate the land. Id. An ejectment action can be maintained where the plaintiff is out of possession and his right of possession is based upon a claim of adverse user. Sutton v. Miller, 405 Pa. Super. 213, 592 A.2d 83(1991).

As noted above, the real issue is whether the Plaintiffs have established a right to cut across the rear corner of Defendant's lot. The law on this issue has been set forth in Burkett v. Smyder, 369 Pa. Super. 519, 535 A.2d 671 (1988) wherein the Superior Court stated,

> The party asserting a prescriptive easement must demonstrate each element of such an easement by proof that is clear and positive. . . It is well-settled that a prescriptive easement is created by (1) adverse, (2) open, (3) notorious, (4) continuous and uninterrupted use for a period of 21 years . . . In order to establish continuity, the evidence need

> not illustrate constant use. Instead, 'continuity is established if the evidence shows a settled course of conduct indicating an attitude of mind on the part of the user or users that the use is the exercise of a property right.' . . . 369 Pa. Super. at 522, 535 A.2d at 673 (citations omitted).

After a careful review of the evidence the Court finds that the plaintiffs have established a prescriptive easement across the rear corner of Defendant's real estate. Credible testimony established the use well in excess of 21 years despite Defendant's contention that the invasion of his real estate is of more recent vintage.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 7th day of January, 1997, the Court dismisses Plaintiffs' Quiet Title action (Count II). Judgment is entered in favor of Plaintiffs and against Defendant in ejectment (Count I). An easement by prescription is determined to exist at the southeastern comer of Defendant's real estate where the stone base of the alley existed at the time of the commencement of this litigation. The easement is in favor of all property owners abutting the existing public alley for pedestrian and personal or commercial vehicular traffic to and from their properties. Defendant is directed to remove any impediments from the alley or the easement which may interfere with the open and free ingress, egress and access over the alley. Costs of this action to be paid by Defendant.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said es- es are requested to make payment .hout delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF CLEO A. HELMAN, DEC'D
Late of Straban Township, Adams County, Pennsylvania
Executrix: Nancy E. Group, 810 Heidlersburg Road, Biglerville, PA 17307
Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF MIRIAM A. MILLEVILLE, DEC'D
Late of Franklin Township, Adams County, Pennsylvania
Administrator: Dauphin Deposit Bank and Trust Company, 35 East King Street, P.O. Box 9, Shippensburg, PA 17257
Attorney: Edmund G. Myers, Johnson, Duffie, Stewart & Weidner, 301 Market Street, Lemoyne, PA 17043

THIRD PUBLICATION

ESTATE OF GRACE L. BIGELOW, DEC'D
Late of Gettysburg Borough, Adams County, Pennsylvania
Administrators c.t.a.: Rita Marie Gibbons, 155 White Church Road, Gettysburg, PA 17325; Lois Morningred, 19 Green Hill Road, Newport, PA 17074
Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF CATHARINE V. DEITZ, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Executor: Herbert E. Spangler
Attorney: Stephen P. Linebaugh, Esquire, 119 East Market Street, York, PA 17401

ESTATE OF HERBERT ELI GRIEST, k/a HERBERT E. GRIEST AND H. E. GRIEST, DEC'D
Late of Huntington Township, Adams County, Pennsylvania
Executor: Alvin Griest, 1170 Upper Bermudian Road, Gardners, PA 17324
Attorney: John C. Zepp, III, Esquire, P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

ESTATE OF FRANCES A. HUFNAGEL, DEC'D
Late of Conewago Township, Adams County, Pennsylvania
Executors: Peter T. Hufnagel, 5473 Hanover Road, Hanover, PA 17331; Julia Ann Neiderer, 1090 Water Drive, Hanover, PA 17331; Benjamin F. Hufnagel, Sr., 80 Witmer Road, Hanover, PA 17331
Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF WALTER A. WHISLER, DEC'D
Late of Conewago Township, Adams County, Pennsylvania
Executrix: Lois E. Whisler, 539 Oxford Ave., Hanover, PA 17331
Attorney: G. Steven McKonly, 119 Baltimore Street, Hanover, PA 17331

Adams County Legal Journal

Vol. 39 December 19, 1997 No. 30, pp. 167–172

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-840 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of January, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

All that tract of land situate, lying and being in Huntington Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a steel pin in the center of Oxford Road, S.R. 1016, at corner of Lot No. 3 and the northernmost corner of Lot No. 1 herein on the hereinafter described plan of lots; thence in the center of said road South 29 degrees 50 minutes 29 seconds East, 357.52 feet to a steel pin at the northernmost corner of Lot No. 2; thence by Lot No. 2, through a steel pin set back 27.66 feet from the beginning of this course, South 45 degrees 23 minutes 58 seconds West, 367.62 feet to steel pin on line of Lot No. 3; thence by Lot No. 3 North 29 degrees 42 minutes 07 seconds West, 292.45 feet to a concrete monument set; thence continuing by Lot No. 3, through a steel pin set back 27.66 feet from the end of this course, North 36 degrees 48 minutes 48 seconds East, 400 feet to a steel pin in the center of Oxford Road, S.R. 1016, the place of BEGINNING. CONTAINING 2.676 Acres.

This description was taken from a Subdivision Plan prepared by John R. Williams, PLS, dated June 16, 1994, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 65 at page 57, and designated as Lot No. 1 thereon.

It being part of the same tract of land which Wellden Pyle, Jr. and Helen R. Pyle, husband and wife, by their deed dated March 9, 1974, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 312 at page 336, sold and conveyed unto Eddie C. Altice and Virginia D. Altice, husband and wife; and Eddie C. Altice having died the 6th day of February, 1992, title in fee simple vested in Virginia D. Altice, a/k/a Virginia Altice, the decedent herein.

SEIZED and taken into execution as the property of **David E. Altice** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
November 12, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 16, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/19, 26 & 1/2

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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Business Office – 112 Baltimore Street, Gettysburg, PA 17325. Telephone: (717) 334-1193

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-829 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of January, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in Franklin Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the center of the State Highway leading from McKnightstown to Arendtsville at the intersection of the right of way line of the new Lincoln Highway; thence in the center of said State Highway leading from McKnightstown to Arendtsville, South 35 degrees 30 minutes West, 90 feet to an iron pin; thence by other land now or formerly of Ray Williams, North 43 degrees 15 minutes West, 314 feet to a stake; thence by land now or formerly of Homer Baltzley, North 44 degrees East, 46 feet to a stake; thence by the same, North 45 degrees East, 64 feet to an iron pin at the southern right of way line of the new Lincoln Highway, South 39 degrees East, 301.5 feet to a point in the center of the State Highway leading from McKnightstown to Arendtsville, the place of BEGINNING.

HAVING erected thereon a commercial building known as 2720 Chambersburg Road.

CONTAINING 109 perches.

BEING THE SAME PREMISES which Raymond J. Smith and Rose M. Smith, by deed dated August 30, 1995, and recorded in the Office of the Recorder of Deeds for Adams County, in Record Book 1075, Page 295, granted and conveyed unto Benjamin Z. Siegel and Diana L. Siegel, Mortgagors herein.

TAX PARCEL MAP NO. D11-47

SEIZED and taken into execution as the property of **Benjamin Z. Siegel and Diana L. Siegel** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
December 4, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 16, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/19, 26 & 1/2

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, December 22, 1997, at 9:00 a.m.

BROWN—Orphans' Court Action Number OC-133-97. The First and Final Account of Thomas A. Brown and Ronald L. Brown, Executors of the Last Will and Testament of Harold D. Brown, deceased, late of the Borough of Fairfield, Adams County, Pennsylvania.

AIKEN—Orphans' Court Action Number OC-135-97. The First and Final Account of Adams County National Bank, Executor of the Estate of John H. Aiken, deceased, late of Highland Township, Adams County, Pennsylvania.

STAUB—Orphans' Court Action Number OC-59-96. The First and Final Account of Adams County National Bank, Executor of the Estate of Nellie G. Staub, deceased, late of Straban Township, Adams County, Pennsylvania.

MAYS—Orphans' Court Action Number OC-140-97. The First and Final Account of Adams County National Bank, Executor of the estate of T. Opal Mays, deceased, late of Littlestown, Adams County, Pennsylvania.

OVERBAUGH—Orphans' Court Action Number OC-88-97. The First and Final Account of Eileen Jane Day and Mary Anne Overbaugh, a/k/a Mary Anne Topper, Executrices of the Last Will and Testament of Marilyn L. Overbaugh, a/k/a Marilyn Louise Overbaugh, deceased, late of the Borough of McSherrystown, Adams County, Pennsylvania.

KINDIG—Orphans' Court Action Number OC-141-97. The First and Final Account of James D. Kindig and John R. Kindig, Executors of the Will of Glenn Y. Kindig, deceased, late of Germany Township, Adams County, Pennsylvania.

WISLER—Orphans' Court Action Number OC-69-79. The First and Fi Account of Adams County National Ba Administrator C.T.A. of the Last Will and Testament of Dolores G. Wisler, deceased, late of Straban Township, Adams County, Pennsylvania, including accounting of said bank as Guardian of the Estate of Dolores G. Wisler, an incapacitated person.

Peggy J. Breighner
Clerk of Courts

12/12 & 19

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that an Application for Registration of Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on November 14, 1997, pursuant to the Fictitious Name Act, setting forth that Hershey's International, Inc. is the only entity interested in a business, the character of which is the manufacture and sale (wholesale and/or retail) of spor gloves, and that the designation unc which the business is and will be co ducted is RELIANCE SUPER SPORT and that the location where said business is and will be conducted is 8210 Carlisle Pike, York Springs, PA 17372.

Gary E. Hartman, Esq.
Solicitor

12/19

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, that on November 17, 1997, an application was filed under the Fictitious Name Act, No. 1982-295 (54 Pa. C.S. Section 311) in the Office of the Secretary of the Commonwealth of Pennsylvania setting forth that: Jeffrey T. Zigler and Michele A. Zigler are the only persons or entity owning or interested in a business, the character of which is interior design and decoration, and that the name, style and designation under which said business is and will be conducted is JAMZ ENTERPRISES ar the location where said business is a will be located is 343 North Third Stre McSherrystown, Pennsylvania.

Stonesifer and Kelley

12/19

J.C.P. INC. VS. SNEERINGER, ET AL.

Where a township wrongfully withholds preliminary subdivision approval, the landowner is entitled to damages suffered as a result of the delay in receiving approval and for loss fo use of the premisies during the period of delay but he is not entitled to recover consequential damages or damages arising in connection with transactions or potential transactions with other persons.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 90-S-905, J.C.P. INC. VS. SAMUEL SNEERINGER, DWIGHT ADAMS, EVAN BUTLER, BEVERLY BREAM, RICHARD FUHRMAN, BOARD OF SUPERVISORS OF CONEWAGO TOWNSHIP, ADAMS COUNTY, PENNSYLVANIA.

Glenn C. Vaughn, Esq. for Plaintiff
Anthony R. Sherr, Esq. and Clayton R. Wiolcox, Esq. for Defendants

MEMORANDUM OPINION

Kuhn, J., January 14, 1997.

In this mandamus action J.C.P. Inc. seeks damages from Conewago Township for improperly imposing a moratorium on final approval of any subdivision plans or requests for variances or special exceptions. The moratorium covered the period from its enactment on January 22, 1990, until it was lifted by Court Order dated November 19, 1990.

Plaintiff seeks damages allegedly suffered in connection with its proposed subdivision caused by the delay improperly imposed. Plaintiff relies on 42 Pa. C.S.A. §8303 which provides that a person who fails or refuses to perform a duty required by law without lawful justification is liable for damages in a mandamus action to the person aggrieved by that failure or refusal. However, such damages are not plenary but are limited to those incidental to the specific relief being sought. Stoner v. Township of Lower Merion, 138 Pa. Comlth. Ct. 257, 587 A.2d 879 (1991), Alloc. den. 604 A.2d 252 (1992). Where a township wrongfully withholds preliminary subdivision approval, the landowner is entitled to damages suffered as a result of the delay in receiving approval and for loss of use of the premises during the period of delay but he is not entitled to recover consequential damages or damages arising in connection with transactions or potential transactions with other persons. 138 Pa. Comlth. Ct. at 269-70, and 271-2, 558 A.2d at 885 and 886.

Plaintiff first contends that the land it was intending to develop was being purchased from Lewis and Nadine Klunk for $550,000.00 pursuant to an Agreement of Sale dated October 17, 1989. The contract provided that settlement was to be held on or before April 30, 1990, "or

30 days after sewer module approval." Paragraph 8 of an addendum to the agreement provided that.

> 8. Settlement shall occur on or before April 30, 1990, unless sooner required under Paragraph 3(g) of the Agreement. If for no fault of the Buyers, D.E.R. Sewer Module approval has not occurred by April 30, 1990, then sellers agree to extend settlement date until sewer modules have been approved. If D.E.R. modules approvals have not been approved, By no fault of the Buyers, within one year from ratification thereof then the selling consideration shall be escalated as per the consumer price index.

Settlement with the Klunks occurred on January 7, 1993, and Plaintiff paid $55,042.67 in excess of the contract price per Paragraph 8. On this issue, Plaintiff had the burden of establishing 1) whether the escalation clause was applicable, 2) the consumer price index, and 3) whether the moratorium delayed the project and, if so, to what extent.

The Court has some concern whether the escalation clause applies. As noted, the clause is triggered if sewer modules have not been approved "within one year from ratification thereof." It is not entirely clear what "thereof" refers to and no testimony was offered to clarify that verbiage. Logic, however, suggests that it refers to the Agreement of Sale. This is supported by the testimony of Plaintiff's President, Paul Pisula, who stated that the excess consideration was calculated for the period October, 1990 - October 28, 1992.

There was confusion regarding the consumer price index. Plaintiff presented the testimony of Kenneth Scalet, a professor of economics and business at York College who presented a chart showing an increase of 4.7% from October, 1990 to April, 1992. However, the excess actually paid represents a 10.01% increase. Plaintiffs failed to demonstrate how the larger figure was determined and the Court cannot attribute the 5.3% difference to the period April - October, 1992.

Plaintiff contends that the project was delayed for a period of 10 months and that the township should be responsible for that amount of delay. Testimony revealed that if the moratorium had not been enacted and the developer's surveyor continued preparation and submission of the subdivision plan that final approval could have been received within approximately 6 months. That would be the extent of the delay attributable to the township.

The consumer price index for the period October, 1990 - April, 1991, was 1.96%. The extent to which the township's delay increased the contract price was $550,000 x 1.96% = $10,780.00.

Plaintiff next contends that it is entitled to the increased cost of construction caused by the delay. Plaintiff has failed in this proof. Plaintiff presented an exhibit of estimated construction cost of $1,516,745 and presented testimony that $1.7 million was actually paid for the infrastructure. However, the estimate was prepared in April, 1989, for another developer and, at most, represented a similar but not the identical infrastructure constructed by Plaintiff. Furthermore, as noted above, the moratorium only caused a six month delay. Plaintiff made five plan submissions before final approval was received in June, 1992. Construction did not begin until the following winter.

Plaintiff's estimate of damages is too speculative. Plaintiff offered no evidence of what the actual project would have cost if construction began near late Spring 1991 compared with the costs which would have been incurred if the construction was commenced when approval could have been received in mid 1990 but for the moratorium.

Finally, Plaintiff advanced a down payment of $10,000.00 under the Agreement of Sale. Plaintiff seeks interest on that money for the period of the delay. No evidence was presented on this issue and the Court cannot simply apply the legal rate. Furthermore, an addendum to the Agreement of Sale dated October 19, 1992 authorized a release of the down payment to the sellers and stated "The interest accrued shall be split equally between the Buyer and Seller."

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 14th day of January, 1997, a verdict is entered in favor of Plaintiff and against Defendant in the amount of $10,780.00.

COMMONWEALTH VS. BETTS

1. Collateral attacks on underlying convictions are not permissible in license suspension appeals.
2. In a driving under suspension prosecution, the reasons for the suspension are immaterial.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal No. CC-126-97, COMMONWEALTH VS. ROGER LEE BETTS.

Bernard Yannetti, Jr., Esq., Assistant D.A., for Commonwealth
Robert Chester, Esq., for Defendant

MEMORANDUM OPINION

Kuhn, J., May 8, 1997.

On October 4, 1996, Defendant was charged with driving under suspension in violation of 75 Pa. C.S.A. §1543(b). On appeal from a finding of guilty by a district justice the facts are stipulated but Defendant challenges whether he was lawfully under suspension on October 4, 1996.

Defendant's certified driver's record from DOT reveals two relevant DOT actions. First, on August 19, 1995, Defendant was charged with driving under the influence in New Jersey and subsequently convicted on April 4, 1996. On May 7, 1996, DOT sent notice to Defendant that effective June 11, 1996, his driving privileges would be suspended for one year pursuant to the Driver License Compact.

Second, on February 15, 1996, Defendant refused to submit for chemical testing as required by 75 Pa. C.S.A. §1547. By notice dated March 19, 1996, DOT suspended Defendant's driving privileges for one year effective April 23, 1996. That privilege was restored pending appeal on April 12, 1996. Subsequently, DOT sent another notice to Defendant on July 4, 1996, that his suspension for this offense would become effective on June 1, 1997, which would be at the end of the suspension on the New Jersey driving under the influence conviction.

Defendant argues that pursuant to Sullivan v. Commonwealth, Department of Transportation, 682 A.2d 5 (Pa. Comlth. Ct., July 19, 1996) his suspension for the New Jersey conviction was invalid. There the Commonwealth Court ruled that the Driver License Compact effective January 1, 1995, was not properly enacted and therefore a Pennsylvania suspension based upon a driver's conviction for a traffic offense in another state was not valid under the Compact. Sullivan however was a license suspension appeal. Here, Defendant attempts to challenge the validity of his suspension in a criminal proceeding.

Defendant has not availed himself of the opportunity to appeal the suspension of his license or sought restoration from DOT. Instead, despite DOT's May 7, 1996, notice Defendant drove his vehicle on October 4, 1996.

While Sullivan on its face strongly suggests the invalidity of Defendant's suspension based upon the New Jersey conviction the critical issue is whether this court can find that Defendant's suspension was invalid in this proceeding and therefore conclude that he was not driving under suspension. We believe this is not the proper forum in which to challenge the validity of the underlying suspension.

Cases are legion which hold that collateral attacks on underlying convictions are not permissible in license suspension appeals. Commonwealth, Department of Transportation v. Johnson, 144 Pa. Comlth. Ct. 599, 601 A.2d 1339 (1992). Here, Defendant is attempting to make a collateral attack on the validity of his suspension, in essence, arguing that his Pennsylvania suspension is void ab initio because the Compact was not properly enacted. We have found no cases on point but apply the same rationale used in the civil license suspension appeals, that is judgments should not be collaterally attacked.

The Court has not been advised whether the Compact was ever properly enacted before October 4, 1996, however, that fact has no bearing upon the decision we must render. It is clear that Defendant's license was suspended and had not been restored as of October 4, 1996. When stopped by the police, Defendant advised them that he was under suspension and, in fact, had surrendered his license to Penn Dot on September 28, 1996.

In a §1543(b) driving under suspension case the Commonwealth must prove beyond a reasonable doubt that 1) Defendant was driving, 2) while his license was suspended and had not been restored, 3) he had notice of the suspension, and 4) the suspension was related to a D.U.I. or refusal to submit to chemical testing. In this case there is no question that each of these elements had been satisfied.

Section 1543(b) is a summary offense requiring no mens rea and a defendant is held to be absolutely liable. Commonwealth v. Baer, 452 Pa. Super. 547, 553-4, 682 A.2d 802, 805-6 (1996). Defendant contends that his suspension was void ab initio, however, in a driving under suspension prosecution the reasons for the suspension are immaterial. Id. In fact, even if a defendant is suspended for a violation of the Vehicle Code, but is subsequently found not guilty he can nevertheless be found guilty of driving under suspension for driving conducted before the suspension is rescinded. Commonwealth v. Enfield, 1 D & C 4th 576 (York Co. 1988).

The same rationale is applicable here. Whether or not Defendant's suspension was still valid on October 4, 1996, his license had not been restored. The law will not permit the collateral challenge to that suspension which Defendant advocates.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 8th day of May, 1997, the Court finds the Defendant guilty of violating Section 1543(b), 75 Pa. C.S.A. §1543(b), Driving Under Suspension. Sentencing is set for the 13th day of June, 1997, at 9:00 A.M., Courtroom No. 2.

OPINION PURSUANT TO PA. R.APP.P.1925(A)

All issues raised on appeal have been previously addressed in the Opinion and Order of Court dated May 8, 1997.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 94-N-76 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of January, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those three (3) tracts of land situate, lying and being in Mt. Joy Township, Adams County, Pennsylvania, bounded and described as follows:

TRACT NO. 1:

BEGINNING at a point in the center of the state highway leading from Gettysburg to Littlestown at corner of land now or formerly of Earl Benner; thence along said land now or formerly of Earl Benner, North 55 degrees 20 minutes East, 410 feet to a point on line of land now or formerly of Ellsworth E. Boyd; thence along said land now or formerly of Ellsworth E. Boyd, South 52 degrees 15 minutes East, 197.5 feet to corner of land now or formerly of Glenn W. McCleaf; thence along said land now or formerly of Glenn W. McCleaf, South 34 degrees West, 365.3 feet to a point in the center of the aforesaid state highway; thence in the center of said state highway, North 56 degrees West, 346.6 feet to the point and place of BEGINNING. CONTAINING 2 Acres 56 Perches.

TRACT NO. 2:

BEGINNING at an iron pipe at other land now or formerly of Maitland Bros. Co. and land now or formerly of Mrs. L. U. Collins; thence by land of said Maitland Bros. Co., North 52 degrees 7 minutes West, 547.3 feet to a post at land now or formerly of Maitland Bros. Co. and land retained by John S. Persons; thence by land retained by John S. Persons, North 39 degrees 1 minute East, 1021.2 feet to a point at land retained by John S. Persons; thence by the same and through an iron pipe (reference point 140.3 feet along the line) South 49 degrees 57 minutes East, 311.1 feet to an iron pipe at land now or formerly of Mrs. L. U. Collins aforesaid; thence by the same, South 25 degrees 46 minutes West, 1032.4 feet to an iron pipe, the place of BEGINNING. CONTAINING 10 Acres, more or less.

Said tract of land being the same which was surveyed by J.R. Hershey, R.E., on November 19, 1963.

LESS, HOWEVER, a tract of land containing 8.899 Acres which was sold to Gettysburg Asphalt Co. Inc. and recorded in Deed Book 249 at page 980.

TRACT NO. 3:

BEGINNING at a tract in the center of the state highway leading from Gettysburg to Littlestown at corner of land now or formerly of Earl Benner; thence along said land now or formerly of Earl Benner, North 55 degrees 35 minutes East, 409.32 feet to an iron pin; thence continuing along same, North 52 degrees 17 minutes West, 275 feet to an iron pin on line of land now or formerly of Steve Fisher; thence along said land now or formerly of Steve Fisher, North 38 degrees 44 minutes East, 1021.60 feet to an iron pin; thence continuing along same, South 50 degrees 7 minutes East, 311.1 feet to an iron pin on line of land now or formerly of Mrs. L. U. Collins; thence along said land now or formerly of Mrs. L. U. Collins, South 25 degrees 41 minutes West, 608.05 feet to an iron pin at corner of other land now or formerly of Maitland Bros. Co.; thence along other land of Maitland Bros. Co., North 56 degrees 27 minutes West, 174.85 feet to an iron pin; thence continuing along same, South 32 degrees 46 minutes West, 403.75 feet to an iron pin; thence continuing along same, South 40 degrees 4 minutes West, 380 feet to a tract in the center of the aforesaid state highway; thence in the center of said state highway, North 56 degrees West, 151.95 feet to the tack, the place of BEGINNING. CONTAINING 8.899 Acres.

The above description was taken from a draft of survey prepared by Gettysburg Engineering Co.,Inc.,dated November 11 and 12, 1964.

It is noted that Gettysburg Asphalt Co., Inc., Adams Industrial Park, Inc. merged into and with Maitland Bros. Co. by Certificate of Merger dated October 1, 1973, and recorded in Miscellaneous Book 19 at page 585.

SEIZED and taken into execution as the property of **Maitland Bros. Co.** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
November 19, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 16, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/19, 26 & 1/2

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-623 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of January, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate in Union Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in the center line of Bart's Church Road, Township Road No. T-459, at corner of Lot No. 9 on the subdivision plan hereinafter referred to; thence in and along the center line of Bart's Church Road, South 31 degrees 32 minutes 20 seconds East, 220 feet to a point in the center line of Clouser Road, Township Road T-455; thence in, along and through the center line of Clouser Road, South 46 degrees 45 minutes 00 seconds West, 165.61 feet to a point at Lot No. 1 on the subdivision plan hereinafter referred to, lands now or formerly of Charles H. Brown, et ux.; thence along Lot No. 1, and through a steel pin set 25 feet from the beginning of this course, North 56 degrees 53 minutes 30 seconds West, 280.64 feet to a steel pin at Lot No. 9 on the subdivision plan hereinafter referred to; thence along Lot No. 9, and through a steel pin set 25 feet from the terminus of this course, North 58 degrees 27 minutes 40 seconds East, 282.33 feet to a point in the center line of Bart's Church Road, the point and place of BEGINNING. CONTAINING 1.231 acres and designated as Lot No. 8 on the final subdivision plan prepared for Mildred C. Mummert by Mort, Brown and Associates, dated September 16, 1988, revised October 28, 1988, designated as File No. D-418, which said subdivision plan is recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 51 at Page 62.

The tract of land above described being the same which Ray C. Fleshman, Sr., unmarried, by deed dated April 23, 1993, and recorded the same date in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Record Book 714-121, granted and conveyed unto Mark A. Yingling and Alice M. Yingling, husband and wife.

Tax Map K-17, Parcel 135.

SEIZED and taken into execution as the property of **Mark A. Yingling and Alice M. Yingling** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
December 3, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 16, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/19, 26 & 1/2

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF MILDRED W. BENNER, DEC'D
Late of Mt. Joy Township, Adams County, Pennsylvania
Administrator: D. Edwin Benner, 230 Benner Road, Gettysburg, PA 17325
Attorney: John A. Wolfe, Esq., Wolfe & Rice, 47 West High Street, Gettysburg, PA 17325

ESTATE OF DONALD W. BROWN a/k/a DONALD WILLIAM BROWN, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Executor: William D. Brown, 250 Bragg Circle, Hanover, PA 17331
Attorney: Keith R. Nonemaker, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie, & Yingst, 40 York Street, Hanover, PA 17331

ESTATE OF MARTHA REXROTH a/k/a MARTHA M. REXROTH, DEC'D
Late of Biglerville Borough, Adams County, Pennsylvania
Executrix: Helen Rexroth, 24 W. Hanover Street, Biglerville, PA 17307
Attorney: Robert E. Campbell, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF EMILIE D. TYSON, DEC'D
Late of Huntington Township, Adams County, Pennsylvania
Executor: Ralph W. Tyson, 4000 Carlisle Road, Gardners, PA 17324
Attorney: John A. Wolfe, Esq., Wolfe & Rice, 47 West High Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF CLEO A. HELMAN, DEC'D
Late of Straban Township, Adams County, Pennsylvania
Executrix: Nancy E. Group, 810 Heidlersburg Road, Biglerville, PA 17307
Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF MIRIAM A. MILLEVILLE, DEC'D
Late of Franklin Township, Adams County, Pennsylvania
Administrator: Dauphin Deposit Bank and Trust Company, 35 East King Street, P.O. Box 9, Shippensburg, PA 17257
Attorney: Edmund G. Myers, Johnson, Duffie, Stewart & Weidner, 301 Market Street, Lemoyne, PA 17043

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-925 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 30th day of January, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot or tract of land with the improvements erected thereon situate in the Borough of New Oxford, Adams County, Pennsylvania, more commonly designated as Lot No. 26A as set forth on the Final Plan Re-Subdivision of Lot 26D Oxford Commons recorded in the Office of the Recorder of Deeds for Adams County, Pennsylvania in Plan Book 60, page 36 (erroneously stated as Plan Book 62, page 47 in the prior deed), said lot being more particularly bounded and described as follows, to wit:

BEGINNING at a steel pin set at the South corner of Lot No. 12 of Oxford Commons Phase I, said steel pin being located 30.00 feet Northeast from the centerline of Water Street and also located 150.00 feet Southeast from the centerline of Oxford Circle; thence along Lot Nos. 12 through 16 of Oxford Commons Phase I, North sixty-six (66) degrees nineteen (19) minutes twelve (12) seconds East one hundred thirty (130.00) feet to an existing steel pin; thence along Lot No. 24 of Oxford Commons Phase I, South twenty-three (23) degrees forty (40) minutes forty-eight (48) seconds East thirty and eight hundredths (30.08) feet to a steel pin set; thence along Lot No. 26B of Oxford Commons and through the centerline of a partition wall of an existing townhouse, South sixty-five (65) degrees twenty-three (23) minutes seven (7) seconds West one hundred thirty and two hundredths (130.02) feet to a steel pin set. Said steel pin being located 30.00 feet Northeast from the centerline of Water Street; thence along the right of way line of Water Street North twenty-three (23) degrees forty (40) minutes forty-eight (48) seconds West thirty-two and twenty; hundredths feet to a steel pin set and the place of BEGINNING. (This tract was erroneously described as 206 South Water Street in this prior deed. The correct address is 202 South Water Street, New Oxford, Pennsylvania).

Tax Parcel # 7-99

TITLE TO SAID PREMISES IS VESTED IN Cyril A. Kuhn by Deed from The Peoples State Bank dated 9/27/95 recorded 10/14/95 in Record Book 1091 Page 165.

SEIZED and taken into execution as the property of **Cyril A. Kuhn** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
December 8, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 23, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/19, 26 & 1/2

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-629 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 30th day of January, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of ground situate, lying and being in the Village of Heidlersburg, Tyrone Township, Adams County, Pennsylvania, more particularly bounded and described as follows, to-wit:

BEGINNING at a steel pin set on the right-of-way line of Pennsylvania Route 234, Legislative Route 342-B, and at the corner of a 20 feet wide alley (unopened); thence along said right-of-way line of Pennsylvania Route 234, South 76 degrees 19 minutes 00 seconds East, 165.00 feet to a nail set on said right-of-way line and at a corner of the Public Square of the Village of Heidlersburg, South 23 degrees 16 minutes 00 seconds West, 75.00 feet to a steel pin set at a corner of said Public Square and on line of lands now or formerly of Franklin L. Weigle; thence by said lands now or formerly of Weigle, North 76 degrees 19 minutes 00 seconds West, 165.00 feet to a steel pin set along said 20 feet wide alley (unopened) at corner of said lands now or formerly of Weigle; thence along said 20 feet wide alley (unopened) on the right-of-way line of Pennsylvania Route 234, the place of BEGINNING. Containing 12,202 Square Feet or 0.280 Acre.

The above described lot of ground is the same which Mary L. Adams, Widow, by her Deed dated February 22, 1985 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book Volume 396, Page 38, sold and conveyed unto Lloyd L. Stevens and Ruth M. Stevens, husband and wife as tenants by the entireties.

SEIZED and taken into execution as the property of **Lloyd L. Stevens and Ruth M. Stevens** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
December 5, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 23, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/19, 26 & 1/2

Adams County Legal Journal

Vol. 39 December 26, 1997 No. 31, pp. 173–178

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-840 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of January, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

All that tract of land situate, lying and being in Huntington Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a steel pin in the center of Oxford Road, S.R. 1016, at corner of Lot No. 3 and the northernmost corner of Lot No. 1 herein on the hereinafter described plan of lots; thence in the center of said road South 29 degrees 50 minutes 29 seconds East, 357.52 feet to a steel pin at the northernmost corner of Lot No. 2; thence by Lot No. 2, through a steel pin set back 27.66 feet from the beginning of this course, South 45 degrees 23 minutes 58 seconds West, 27.62 feet to steel pin on line of Lot No. 3; thence by Lot No. 3 North 29 degrees 42 minutes 07 seconds West, 292.45 feet to a concrete monument set; thence continuing by Lot No. 3, through a steel pin set back 27.66 feet from the end of this course, North 36 degrees 48 minutes 48 seconds East, 400 feet to a steel pin in the center of Oxford Road, S.R. 1016, the place of BEGINNING. CONTAINING 2.676 Acres.

This description was taken from a Subdivision Plan prepared by John R. Williams, PLS, dated June 16, 1994, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 65 at page 57, and designated as Lot No. 1 thereon.

It being part of the same tract of land which Wellden Pyle, Jr. and Helen R. Pyle, husband and wife, by their deed dated March 9, 1974, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 312 page 336, sold and conveyed unto Eddie C. Altice and Virginia D. Altice, husband and wife; and Eddie C. Altice having died the 6th day of February, 1992, title in fee simple vested in Virginia D. Altice, a/k/a Virginia Altice, the decedent herein.

SEIZED and taken into execution as the property of **David E. Altice** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
November 12, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 16, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/19, 26 & 1/2

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN THAT Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on the 1st day of December, 1997, for the purpose of obtaining a Certificate of Incorporation of a proposed corporation to be organized under the Pennsylvania Business Corporation Law of 1933, P.L. 364, as amended.

The name of the corporation is ROUTE 30 SUPPLY, INC.

The purpose of the corporation is to engage in and to do any and all business for which Pennsylvania business corporation may be lawfully formed, including but not limited to the selling of building materials, such as lumber, metal, mulch, sand etc.

The location and post office address of its initial registered office is RD #1, Box 250, Abbottstown, Pennsylvania 17301.

John James Mooney, III, Esquire
Mooney & Associates
230 York Street
Hanover, Pennsylvania 17331

12/26

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purposes of obtaining a Certificate of Incorporation of a proposed nonprofit corporation to be organized under the provisions of the Pennsylvania Nonprofit Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as amended.

The name of the corporation is UPPER ADAMS YOUTH BASEBALL LEAGUE, INC.

Puhl & Eastman
16 Lincoln Square
Gettysburg, PA 17325

12/26

CERTIFICATE OF AUTHORITY

NOTICE IS HEREBY GIVEN that an application has been made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, by Transportation Management Services, Inc., doing business as TMS OF MICHIGAN, a foreign corporation formed under the laws of the State of Michigan, where its principal office is located at 1126 North Main Street, Rochester, MI 48307, County of Oakland, for a Certificate of Authority to do business within the Commonwealth of Pennsylvania under the provisions of the Business Corporation Law of 1988. The proposed registered office of said corporation in the Commonwealth of Pennsylvania will be located at 1150 Rosewood Drive, Blue Bell, PA 19422, County of Montgomery.

Geoffrey N. Zeh
1150 Rosewood Drive
Blue Bell, PA 19422

12/26

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published every Friday by Adams County Bar Association, Donald G. Oyler, Esq., Editor and Business Manager.

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Business Office – 112 Baltimore Street, Gettysburg, PA 17325. Telephone: (717) 334-1193

Second-class postage paid at Gettysburg, PA 17325.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-829 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of January, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in Franklin Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the center of the State Highway leading from McKnightstown to Arendtsville at the intersection of the right of way line of the new Lincoln Highway; thence in the center of said State Highway leading from McKnightstown to Arendtsville, South 35 degrees 30 minutes West, 90 feet to an iron pin; thence by other land now or formerly of Ray Williams, North 43 degrees 15 minutes West, 314 feet to a stake; thence by land now or formerly of Homer Baltzley, North 44 degrees East, 46 feet to a stake; thence by the same, North 45 degrees East, 64 feet to an iron pin at the southern right of way line of the new Lincoln Highway, South 39 degrees East, 301.5 feet to a point in the center of the State Highway leading from McKnightstown to Arendtsville, the place of BEGINNING.

HAVING erected thereon a commercial building known as 2720 Chambersburg Road.

CONTAINING 109 perches.

BEING THE SAME PREMISES which Raymond J. Smith and Rose M. Smith, by deed dated August 30, 1995, and recorded in the Office of the Recorder of Deeds for Adams County, in Record Book 1075, Page 295, granted and conveyed unto Benjamin Z. Siegel and Diana L. Siegel, Mortgagors herein.

TAX PARCEL MAP NO. D11-47

SEIZED and taken into execution as the property of **Benjamin Z. Siegel and Diana L. Siegel** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
December 4, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 16, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/19, 26 & 1/2

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-623 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of January, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate in Union Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in the center line of Bart's Church Road, Township Road No. T-459, at corner of Lot No. 9 on the subdivision plan hereinafter referred to; thence in and along the center line of Bart's Church Road, South 31 degrees 32 minutes 20 seconds East, 220 feet to a point in the center line of Clouser Road, Township Road T-455; thence in, along and through the center line of Clouser Road, South 46 degrees 45 minutes 00 seconds West, 165.61 feet to a point at Lot No. 1 on the subdivision plan hereinafter referred to, lands now or formerly of Charles H. Brown, et ux.; thence along Lot No. 1, and through a steel pin set 25 feet from the beginning of this course, North 56 degrees 53 minutes 30 seconds West, 280.64 feet to a steel pin at Lot No. 9 on the subdivision plan hereinafter referred to; thence along Lot No. 9, and through a steel pin set 25 feet from the terminus of this course, North 58 degrees 27 minutes 40 seconds East, 282.33 feet to a point in the center line of Bart's Church Road, the point and place of BEGINNING. CONTAINING 1.231 acres and designated as Lot No. 8 on the final subdivision plan prepared for Mildred C. Mummert by Mort, Brown and Associates, dated September 16, 1988, revised October 28, 1988, designated as File No. D-418, which said subdivision plan is recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 51 at Page 62.

The tract of land above described being the same which Ray C. Fleshman, Sr., unmarried, by deed dated April 23, 1993, and recorded the same date in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Record Book 714-121, granted and conveyed unto Mark A. Yingling and Alice M. Yingling, husband and wife.

Tax Map K-17, Parcel 135.

SEIZED and taken into execution as the property of **Mark A. Yingling and Alice M. Yingling** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
December 3, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 16, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/19, 26 & 1/2

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, in compliance with the requirements of Section 311, of Act 1982 - 295 (54 Pa. C.S. 311), the undersigned entity(ies) announce their intention to file in the Office of the Secretary of the Commonwealth of Pennsylvania, on approximately November 14, 1997, a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of THE ROSE GARDEN NATURAL FOODS CO., with its principal place of business at 26 Springs Ave. - Suite E, Gettysburg, PA. The names and addresses of the persons owning or interested in said business are Charles J. and Catherine M. Rose, residing at 207 Chambersburg Street, Gettysburg, PA. The character or nature of the business is Natural Food Store.

The Rose Garden Natural Foods Co.
26 Springs Ave. - Suite E
Gettysburg, PA 17325

12/26

COMMONWEALTH VS. MULLIN

1. The Township acted properly by filing a private criminal complaint against Defendant for violation of the Township Floodplain Ordinance.

2. Pa. R. Crim. P. 51 provides that criminal proceedings in summary cases shall be instituted, inter alia, by filing a complaint, and it is clear that summary cases include violation of ordinances for which imprisonment may be imposed upon failure to pay a fine or penalty.

3. Since Pa. R. Crim. P.86 so provides, an appeal in a summary proceeding, including prosecution for violation of a municipal ordinance which provides for imprisonment upon failure to pay a fine, shall be perfected by filing a notice of appeal with the clerk of courts.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal CC-302-96, COMMONWEALTH VS. RICHARD P. MULLIN.

Bernard Yannetti, Jr., Esq., Assistant District Attorney
John J. Mooney, III, Esq. for Defendant
Henry O. Heiser, III, Esq., for Township

MEMORANDUM OPINION

Kuhn, J., March 17, 1997.

Procedurally this matter commenced when Larry E. Gebhart, Chairman of the Board of Supervisors of Mount Pleasant Township on December 13, 1995, filed a private criminal complaint against Defendant, Richard P. Mullin, for violation of Sec. 4.03F of the Floodplain Ordinance adopted by the township on June 28, 1990. On March 18, 1996, Defendant was found guilty in absentia by District Justice Samuel K. Frymeyer and ordered to pay fines and costs totaling $6,134.50. Notice to Defendant was provided in accordance with Pa. R.Crim.P. 84(d). Defendant filed a timely appeal with the Clerk of Courts on a form entitled "Notice of Appeal From Summary Criminal Conviction" as required by Pa. R.Crim.P. 86(a). A summary appeal hearing was held before the undersigned on November 12, 1996.

At the hearing the township's case was presented by its solicitor. Defendant appeared with counsel but offered no evidence. The credible testimony revealed that the Conewago Creek flows through real estate owned by Defendant which fronts on Fleshman Mill Road. Most of that tract lies in Mount Pleasant Township but a smaller portion also lies in Oxford Township. The Mount Pleasant portion lies entirely within the floodplain of Conewago Creek. During the period October 13-December 13, 1995, township officials observed significant numbers of cars, trucks, trailers, automotive parts, plastic and metal buckets, lumber and tarps scattered about the premises. They also

observed that Defendant had commenced construction of a pole building.

Township claims that the storage of these items violates §4.03F of the Floodplain Ordinance which provides,

> Section 4.03 Design and Construction Standards.
>
> The following minimum standards apply for all construction and development proposed within any identified floodplain area:
>
> . . .
>
> F. Storage
> All materials that are buoyant, flammable, explosive, or in times of flooding, could be injurious to human, animal or plant life, and not listed in Section 4.04, Development Which May Endanger Human Life, shall be stored at or above the Regulatory Flood Elevation and/or flood proofed to the maximum extent possible.

Some of the items scattered about were certainly buoyant. In fact, during a flood in January, 1996, some of these items were carried by the water to neighboring property.

Section 2.10B of the Ordinance provides that one who fails to comply with provisions of the Ordinance "shall be guilty of an offense and, upon conviction, shall pay a fine to the Township of not less than twenty-five dollars ($25.00) nor more than three hundred dollars ($300.00) plus costs of prosecution." In default of payment the offender can be imprisoned for up to 10 days.

Defendant argues that this matter has been treated as a criminal matter without following certain required procedures or that if civil the township failed to file a civil complaint on appeal. Defendant initially argues that the township pursued the alleged violation by means of criminal procedures without authorization for the filing of a private criminal complaint, citing Pa. R.Crim.P. 106. We do not believe that rule has any relevance. Prior District Attorney approval is only required where a misdemeanor or felony is charged. The matter before the Court does not involve a misdemeanor or felony offense.

A brief history of the law on prosecutions under municipal ordinances demonstrates that the procedure followed in this case was proper. It was settled law in Pennsylvania that an action for violation of a municipal ordinance is civil in nature. Borough of Waynesburg v.

VanScyoc, 419 Pa. 104, 105, 213 A.2d 216, 217 (1965). As stated in York v. Baynes, 188 Pa. Super. 581, 585, 149 A.2d 681, 683 (1959),

> an action brought against a defendant for violation of a municipal ordinance is a suit for the recovery of a penalty due the municipality and is a civil proceeding. It is not a summary proceeding, which is a criminal proceeding, even though it may be started by a warrant. A judgment entered against a defendant for a violation of a municipal ordinance is for a penalty, even though it may be referred to by the legislature and the magistrate as a 'fine.' (emphasis added.)

In City of Easton v. Marra, 230 Pa. Super. 352, 326 A.2d 637 (1974), the City of Easton filed a complaint against the defendant for violation of the city's housing code. The magistrate found that the defendant violated the code and imposed fines. The defendant appealed to the civil division of the Court of Common Pleas. The trial court dismissed the appeal for defendant's failure to file a rule upon the city to file a complaint as required by the rules. Superior Court affirmed, citing York v. Baynes, supra. for the proposition that an action brought for violation of a municipal ordinance is civil in nature and therefore must follow the civil rules governing appeals from a magistrate's decision. At first glance, therefore, it would appear that the township should have filed a civil complaint.

However, three years later the issue of what procedural rules apply when appealing a magistrate's decision on violation of a municipal ordinance became clouded. In Lower Merion Township v. Schenk, 247 Pa. Super. 494, 372 A.2d 934 (1977), the defendant was issued a citation for violation of a township ordinance. The magistrate found her guilty and ordered her to pay a fine plus costs. Defendant filed her appeal with the Clerk of Court in the criminal division. The township moved to strike the appeal on the grounds that the action was civil and not criminal in nature. The trial court granted the motion but Superior Court[1] reversed. While recognizing the holding in York v. Baynes the court nevertheless determined that the procedure used (citation, plea of not guilty, posting of security, finding of guilt, criminal transcript) was criminal, not civil, and therefore defendant should not be penalized for filing her appeal in the criminal division.

Had the Lower Merion decision ended at that point one might have decided that the City of Easton was distinguishable based upon where the defendant's appeal was filed or too harsh in its results. However,

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[1] Three judges joined the lead opinion, one judge concurred in the result without writing an opinion, and three judges joined in a dissent.

the court then determined that York v. Baynes had been overruled by Pa. R.Crim.P. 67(f) which at that time provided that Rule 67 was "the exclusive means of appealing from a summary conviction . . ." The court further determined that the appeal in the case was from a summary conviction. City of Easton was distinguished as being appealed before the effective date of Rule 67. The dissent disagreed and opined that the criminal rules are not applicable to civil proceedings such as that involving Schenk.

In In Re Investigation Grand Jury of Philadelphia County, 496 Pa. 452, 437 A.2d 1128 (1981) our Supreme Court was asked to determine whether information received by an investigating grand jury could be disclosed to the Law Department of Philadelphia for use in its civil equity action against grand jury witnesses for violation of the Philadelphia Code. Ordinarily, such disclosure is limited to other law enforcement agencies to assist them in investigating crimes under their investigative jurisdiction. 42 Pa. C.S.A. §4549(b). The Court repeated its recognition set forth in Borough of Waynesburg, supra., that an action for violation of a municipal ordinance is civil in nature. The Court then reviewed applicable criminal procedure rules. Under Pa. R.Crim.P. 3 "criminal proceedings" include "all actions for the enforcement of the penal laws" and "penal laws" include "all statutes and embodiments of the common law which establish, create or define crimes or offenses <u>including any ordinances which may provide for imprisonment upon conviction or upon failure to pay a fine or penalty.</u>" The Court then stated,

> However, the inclusion of "ordinances . . ." within the definition of "penal laws" does not make violations of such ordinances "crimes." Rather, it merely reflects the established principle that, in a civil action whose object is to penalize a civil defendant for the commission of an offense against the law, protections available to defendants in traditional criminal prosecutions may attach. 496 Pa. at 460-1, 437 A.2d at 1132.

Thus, the Court appeared to be implying that the criminal rules, including the summary appeal rules would apply, while maintaining the civil nature of the proceeding.

Superior Court revisited this issue in Commonwealth v. Schellenberger, 390 Pa. Super. 413, 568 A.2d 968 (1990). There the defendant was convicted of violating Lower Macungie Township's earned income tax ordinance. He was sentenced to pay fines. Defendant argued that the trial court had no jurisdiction over the matter

because it was civil in nature and not a criminal case. The Court rejected this argument and stated,

> Appellant incorrectly relies on the now overturned decision in York v. Baynes, 188 Pa. Super. 581, 149 A.2d 681 (1959), for the proposition an action brought against a defendant for violation of a municipal ordinance is actually a suit for recovery of a penalty due the municipality and is not a summary criminal proceeding but is a civil proceeding. Because the . . . Ordinance provide for a hearing before a magistrate and for imprisonment upon conviction, we find the instant case is a criminal case pursuant to the Pennsylvania Rules of Criminal Procedure.
> 4. See Pa. R.Crim.P. 3 and 67(f).
> 390 Pa. Super. at 417, 568 A.2d at 970.

Finally, in Commonwealth v. Harchelroad, 154 Pa. Comlth. Ct. 259, 623 A.2d 878 (1993), Alloc den. 633 A.2d 153 (1993) the municipal code enforcement officer filed a criminal complaint against the Defendant for violating the municipality's zoning ordinance. The ordinance was adopted pursuant to authority in the Pennsylvania Municipalities Planning Code and did not specify whether enforcement proceedings were civil or criminal. Although this was not the issue in this case the Court nevertheless discussed the filing of the criminal complaint in a footnote wherein it was stated,

> the fact that the enforcement proceeding was initiated by a private criminal complaint rather than a civil complaint is not fatal to the Municipality's action against Harchelroad.
> Use of the private criminal complaint will not prejudice Harchelroad because although prosecutions under municipal ordinances are civil, not criminal actions . . . the Rules of Criminal Procedure govern these summary actions . . . and defendants in municipal enforcement actions are afforded the same protections as defendants in criminal proceedings.
> 154 Pa. Comlth Ct. at 261, 623 A.2d at 879, n. 1 (citations omitted).

In fact, the township in the matter sub judice acted properly by filing a private criminal complaint. Pa. R.Crim.P. 51 provides that criminal proceedings in summary cases shall be instituted, inter alia, by filing a complaint. Commentary to that rule makes it clear that summary cases include violation of ordinances for which, as here, imprisonment

may be imposed upon failure to pay a fine or penalty. See also Pa. R.Crim.P. 3. Furthermore, Defendant must have recognized the proper procedure because he filed his appeal with the Clerk of Courts.

Currently, Pa. R.Crim.P. 86 (formerly Rule 67) provides that an appeal "in a summary proceeding, including prosecution for violation of a municipal ordinance which provides for imprisonment . . . upon failure to pay a fine . . ." shall be perfected by filing a notice of appeal with the clerk of courts.

The concept that the proceedings are civil in nature has also been recognized in the recent amendment to the Second Class Township Code. Section 66601(C) thereof, 53 P.S. §66601(C), enacted November 9, 1995, and effective 180 days thereafter clearly delineated that civil enforcement proceedings filed by a municipality is the procedure to be used to determine liability for violation of an ordinance. However, nothing in that enactment indicated that the criminal rules of procedure were not to be followed.

Therefore, the Court finds nothing procedurally defective in the matter sub judice. Having so concluded we need not be concerned with whether this township ordinance was enacted pursuant to general authority in the Second Class Township Code, 53 P.S. §66506, or provisions of the Floodplain Management Act of 1978, 32 P.S. §679.101, et seq.

Factually, the Court finds that Defendant has violated the ordinance section at issue.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 17th day of March, 1997, the Court finds the Defendant guilty of violation of Section 4.03F of the Floodplain Ordinance of Mount Pleasant Township during the period October 13-December 13, 1995. Sentencing is hereby set for the 11th day of April, 1997, at 9:00 a.m., Courtroom No. 2.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 94-N-76 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of January, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those three (3) tracts of land situ-, lying and being in Mt. Joy Township, Adams County, Pennsylvania, bounded and described as follows:

TRACT NO. 1:

BEGINNING at a point in the center of the state highway leading from Gettysburg to Littlestown at corner of land now or formerly of Earl Benner; thence along said land now or formerly of Earl Benner, North 55 degrees 20 minutes East, 410 feet to a point on line of land now or formerly of Ellsworth E. Boyd; thence along said land now or formerly of Ellsworth E. Boyd, South 52 degrees 15 minutes East, 197.5 feet to corner of land now or formerly of Glenn W. McCleaf; thence along said land now or formerly of Glenn W. McCleaf, South 34 degrees West, 365.3 feet to a point in the center of the aforesaid state highway; thence in the center of said state highway, North 56 degrees West, 346.6 feet to the point and place of BEGINNING. CONTAINING 2 Acres 56 Perches.

TRACT NO. 2:

BEGINNING at an iron pipe at other .and now or formerly of Maitland Bros. Co. and land now or formerly of Mrs. L. U. Collins; thence by land of said Maitland Bros. Co., North 52 degrees 7 minutes West, 547.3 feet to a post at land now or formerly of Maitland Bros. Co. and land retained by John S. Persons; thence by land retained by John S. Persons, North 39 degrees 1 minute East, 1021.2 feet to a point at land retained by John S. Persons; thence by the same and through an iron pipe (reference point 140.3 feet along the line) South 49 degrees 57 minutes East, 311.1 feet to an iron pipe at land now or formerly of Mrs. L. U. Collins aforesaid; thence by the same, South 25 degrees 46 minutes West, 1032.4 feet to an iron pipe, the place of BEGINNING. CONTAINING 10 Acres, more or less.

Said tract of land being the same which was surveyed by J.R. Hershey, R.E., on November 19, 1963.

LESS, HOWEVER, a tract of land containing 8.899 Acres which was sold to Gettysburg Asphalt Co. Inc. and recorded ı Deed Book 249 at page 980.

TRACT NO. 3:

BEGINNING at a tract in the center of the state highway leading from Gettysburg to Littlestown at corner of land now or formerly of Earl Benner; thence along said land now or formerly of Earl Benner, North 55 degrees 35 minutes East, 409.32 feet to an iron pin; thence continuing along same, North 52 degrees 17 minutes West, 275 feet to an iron pin on line of land now or formerly of Steve Fisher; thence along said land now or formerly of Steve Fisher, North 38 degrees 44 minutes East, 1021.60 feet to an iron pin; thence continuing along same, South 50 degrees 7 minutes East, 311.1 feet to an iron pin on line of land now or formerly of Mrs. L. U. Collins; thence along said land now or formerly of Mrs. L. U. Collins, South 25 degrees 41 minutes West, 608.05 feet to an iron pin at corner of other land now or formerly of Maitland Bros. Co.; thence along other land of Maitland Bros. Co., North 56 degrees 27 minutes West, 174.85 feet to an iron pin; thence continuing along same, South 32 degrees 46 minutes West, 403.75 feet to an iron pin; thence continuing along same, South 40 degrees 4 minutes West, 380 feet to a tract in the center of the aforesaid state highway; thence in the center of said state highway, North 56 degrees West, 151.95 feet to the tack, the place of BEGINNING. CONTAINING 8.899 Acres.

The above description was taken from a draft of survey prepared by Gettysburg Engineering Co.,Inc.,dated November 11 and 12, 1964.

It is noted that Gettysburg Asphalt Co., Inc., Adams Industrial Park, Inc. merged into and with Maitland Bros. Co. by Certificate of Merger dated October 1, 1973, and recorded in Miscellaneous Book 19 at page 585.

SEIZED and taken into execution as the property of **Maitland Bros. Co.** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
November 19, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 16, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/19, 26 & 1/2

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-413 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 30th day of January, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the following described tract of land situate, lying and being in Straban Township, Adams County, Pennsylvania, more particularly described as follows, to wit:

BEGINNING at a point in the center line of New Chester Road (T-514) which runs from U.S. Route 30 to Swift Run Road (T-515), where the dividing line between Lots 1 and 2 intersect same. Said beginning point is more exactly located as follows: from a point where the center lines of the Western Maryland Railroad and New Chester Road intersect and running therefrom along the center line of New Chester Road, North 26 degrees 28 minutes 45 seconds East, 464.99 feet to a point, the point of beginning of Lot 2; thence continuing along the center line of New Chester Road, North 26 degrees 06 minutes 50 seconds East, 350.40 feet to a point and North 46 degrees 09 minutes 17 seconds East, 148.95 feet to a point in the dividing line between Lots 2 and 3 of "Jack's Acres," thence along the dividing line between Lots 2 and 3 of "Jack's Acres," the following courses and distances; South 61 degrees 41 minutes 10 seconds East, 499.33 feet to a point, South 26 degrees 06 minutes 50 seconds West, 156.16 feet to a point and South 64 degrees 19 minutes 37 seconds East, 933.89 feet to a point in the westerly line of lands, now or formerly of Harold R. Neverly; thence along said Neverly's land, South 30 degrees 12 minutes 50 seconds West, 285.00 feet to a point in the center line of the Western Maryland Railroad; thence along the center line of the Western Maryland Railroad, North 82 degrees 48 minutes 40 seconds West 587.07 feet to a point in the dividing line between Lots 1 and 2 of "Jack's Acres"; thence along the dividing line between Lots 1 and 2 of "Jack's Acres," the following courses and distances; North 31 degrees 11 minutes 40 seconds East, 226.39 feet to a point, North 63 degrees 53 minutes 10 seconds West, 584.88 feet to a point and North 76 degrees 12 minutes 10 seconds West, 351.59 feet to a point in the center line of New Chester Road, the point of BEGINNING. CONTAINING 12.16 acres of land, more or less and being composed of all of Lot 2 of "Jack's Acres" as shown on a plan recorded on June 7, 1966 in Plat Book 50 on page 1.

BEING THE SAME premises which John H. Vockroth and Hazel M. Vockroth, husband and wife, by their deed dated the 14th day of April, 1989, and recorded at Adams County in the Office of the Recorder of Deeds, in and for the County of Adams, in Adams County Record Book 519, Page 695, granted and conveyed unto Kathy P. Oberlin, single, the Defendant herein.

SEIZED and taken into execution as the property of **Kathy P. Oberlin** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
December 12, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 23, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/26, 1/2 & 9

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF DOROTHY M. BUCHER, DEC'D
Late of Franklin Township, Adams County, Pennsylvania
Co-Executors: Mark R. Bucher, Jr., 190 Tillietown Road, Biglerville, PA 17307; Harry E. Bucher, 427 Silo Road, Orrtanna, PA 17353
Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF CHRISTINE N. LOSMAN, a/k/a CHRISTINE NAOMI LOSMAN, DEC'D
Late of the Borough of McSherrystown, Adams County, Pennsylvania
Executor: Bernard C. Brady
Attorney: David C. Smith, Esquire, 334 Main Street, McSherrystown, PA 17344

ESTATE OF LOVIE B. RUNKLE, DEC'D
Late of Adams County, Pennsylvania
Co-Executors: Gloria A. Myers, 3968 Palmer Avenue, York, PA 17404; Rosie M. Rill, 4 Smeach Drive, Hanover, PA 17331; Galen Bortner, RD #5, Box 5248, Spring Grove, PA 17362
Attorney: John James Mooney, III, Esquire, Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF DONALD J. WEAVER, DEC'D
Late of Mt. Pleasant Township, Adams County, Pennsylvania
Administratrix c.t.a.: Debra A. Chin, 5822 Cub Stream Drive, Centreville, VA 20120
Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF MILDRED W. BENNER, DEC'D
Late of Mt. Joy Township, Adams County, Pennsylvania
Administrator: D. Edwin Benner, 230 Benner Road, Gettysburg, PA 17325
Attorney: John A. Wolfe, Esq., Wolfe & Rice, 47 West High Street, Gettysburg, PA 17325

ESTATE OF DONALD W. BROWN a/k/a DONALD WILLIAM BROWN, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Executor: William D. Brown, 250 Bragg Circle, Hanover, PA 17331
Attorney: Keith R. Nonemaker, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie, & Yingst, 40 York Street, Hanover, PA 17331

ESTATE OF MARTHA REXROTH a/k/a MARTHA M. REXROTH, DEC'D
Late of Biglerville Borough, Adams County, Pennsylvania
Executrix: Helen Rexroth, 24 W. Hanover Street, Biglerville, PA 17307
Attorney: Robert E. Campbell, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF EMILIE D. TYSON, DEC'D
Late of Huntington Township, Adams County, Pennsylvania
Executor: Ralph W. Tyson, 4000 Carlisle Road, Gardners, PA 17324
Attorney: John A. Wolfe, Esq., Wolfe & Rice, 47 West High Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF CLEO A. HELMAN, DEC'D
Late of Straban Township, Adams County, Pennsylvania
Executrix: Nancy E. Group, 810 Heidlersburg Road, Biglerville, PA 17307
Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF MIRIAM A. MILLEVILLE, DEC'D
Late of Franklin Township, Adams County, Pennsylvania
Administrator: Dauphin Deposit Bank and Trust Company, 35 East King Street, P.O. Box 9, Shippensburg, PA 17257
Attorney: Edmund G. Myers, Johnson, Duffie, Stewart & Weidner, 301 Market Street, Lemoyne, PA 17043

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on the 1st day of December, 1997, for the purpose of obtaining a Certificate of Incorporation of a proposed corporation to be organized under the Pennsylvania Business Corporation Law of 1933, P.L. 364, as amended.

The name of the corporation is SG LAND DEVELOPMENT, INC.

The purpose of the corporation is to engage in and to do any and all business for which Pennsylvania business corporation may be lawfully formed, including but not limited to the building of residential homes and buildings and the ownership and development of real estate. The location and post office address of its initial registered office is RD #1, Box 250, Abbottstown, Pennsylvania 17301.

John James Mooney, III, Esquire
Mooney & Associates
230 York Street
Hanover, Pennsylvania 17331

12/26

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation for HILLTOP PRECISION MACHINING, INC. were filed with the Department of State of the Commonwealth of Pennsylvania on November 24, 1997, under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444.

Rudisill, Guthrie, Nonemaker,
Guthrie & Yingst
Solicitor

12/26

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-925 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 30th day of January, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot or tract of land with the improvements erected thereon situate in the Borough of New Oxford, Adams County, Pennsylvania, more commonly designated as Lot No. 26A as set forth on the Final Plan Re-Subdivision of Lot 26D Oxford Commons recorded in the Office of the Recorder of Deeds for Adams County, Pennsylvania in Plan Book 60, page 36 (erroneously stated as Plan Book 62, page 47 in the prior deed), said lot being more particularly bounded and described as follows, to wit:

BEGINNING at a steel pin set at the South corner of Lot No. 12 of Oxford Commons Phase I, said steel pin being located 30.00 feet Northeast from the centerline of Water Street and also located 150.00 feet Southeast from the centerline of Oxford Circle; thence along Lot Nos. 12 through 16 of Oxford Commons Phase I, North sixty-six (66) degrees nineteen (19) minutes twelve (12) seconds East one hundred thirty (130.00) feet to an existing steel pin; thence along Lot No. 24 of Oxford Commons Phase I, South twenty-three (23) degrees forty (40) minutes forty-eight (48) seconds East thirty and eight hundredths (30.08) feet to a steel pin set; thence along Lot No. 26B of Oxford Commons and through the centerline of a partition wall of an existing townhouse, South sixty-five (65) degrees twenty-three (23) minutes seven (7) seconds West one hundred thirty and two hundredths (130.02) feet to a steel pin set. Said steel pin being located 30.00 feet Northeast from the centerline of Water Street; thence along the right of way line of Water Street North twenty-three (23) degrees forty (40) minutes forty-eight (48) seconds West thirty-two and twenty; hundredths feet to a steel pin set and the place of BEGINNING. (This tract was erroneously described as 206 South Water Street in this prior deed. The correct address is 202 South Water Street, New Oxford, Pennsylvania).

Tax Parcel # 7-99

TITLE TO SAID PREMISES IS VESTED IN Cyril A. Kuhn by Deed from The Peoples State Bank dated 9/27/95 recorded 10/14/95 in Record Book 1091 Page 165.

SEIZED and taken into execution as the property of **Cyril A. Kuhn** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
December 8, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 23, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/19, 26 & 1/2

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-629 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 30th day of January, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of ground situate, lying and being in the Village of Heidlersburg, Tyrone Township, Adams County, Pennsylvania, more particularly bounded and described as follows, to-wit:

BEGINNING at a steel pin set on the right-of-way line of Pennsylvania Route 234, Legislative Route 342-B, and at the corner of a 20 feet wide alley (unopened); thence along said right-of-way line of Pennsylvania Route 234, South 76 degrees 19 minutes 00 seconds East, 165.00 feet to a nail set on said right-of-way line and at a corner of the Public Square of the Village of Heidlersburg, South 23 degrees 16 minutes 00 seconds West, 75.00 feet to a steel pin set at a corner of said Public Square and on line of lands now or formerly of Franklin L. Weigle; thence by said lands now or formerly of Weigle, North 76 degrees 19 minutes 00 seconds West, 165.00 feet to a steel pin set along said 20 feet wide alley (unopened) at corner of said lands now or formerly of Weigle; thence along said 20 feet wide alley (unopened) on the right-of-way line of Pennsylvania Route 234, the place of BEGINNING. Containing 12,202 Square Feet or 0.280 Acre.

The above described lot of ground is the same which Mary L. Adams, Widow, by her Deed dated February 22, 1985 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book Volume 396, Page 38, sold and conveyed unto Lloyd L. Stevens and Ruth M. Stevens, husband and wife as tenants by the entireties.

SEIZED and taken into execution as the property of **Lloyd L. Stevens and Ruth M. Stevens** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
December 5, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 23, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/19, 26 & 1/2

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania on November 17, 1997, for the purpose of obtaining a Certificate of Incorporation for a proposed corporation to be organized under the Pennsylvania Business Corporations Law of 1933, P.L. 364, as amended. The name of the corporation is SPIRIT-FILLED COMMUNICATIONS. The purpose of the Corporation is to have unlimited power to engage in and do any lawful act concerning any or all lawful business for which corporations may be incorporated under the Business Corporation Law of the Commonwealth of Pennsylvania.

The location and post office address of the initial registered office of the Corporation, 79 Kensington Drive, Littlestown, Pennsylvania, 17340.

Douglas H. Gent, Esquire
Solicit

12/26

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

Notice IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, January 5, 1998, at 10:30 a.m.

KAEHLER—Orphans' Court Action Number OC-146-97. The First and Final Account of Angela K. Hunter and Judith K. Sterner, Co-Executors of the Estate of Isabel H. Kaehler, deceased, late of Conewago Township, Adams County, Pennsylvania.

WILLIAMS—Orphans' Court Action Number OC-151-97. The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Evelyn Eleanor Williams, deceased, late of Conewago Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

12/26 & 1/2