

# Adams County Legal Journal

Vol. 49

December 7, 2007

No. 29, pp. 181-189

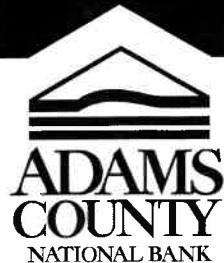
## IN THIS ISSUE

### COMMONWEALTH VS. HARRISON


*This opinion continued from last issue (11/30/2007)*

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## ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published weekly by Adams County Bar Association, John W. Phillips, Esq., Editor and Business Manager.

Subscribers within Adams County should send subscriptions direct to the business office. Subscribers outside of Adams County should send subscriptions to Wm. W. Gaunt & Sons, Inc., 3011 Gulf Drive, Holmes Beach, FL 34217-2199. Postmaster: Send address changes to Adams County Legal Journal, 111 Baltimore Street, Room 305, Gettysburg, PA 17325.

Business Office – 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 337-9812

Periodicals postage paid at Gettysburg, PA 17325.

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-485 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of January, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain land situated in the Commonwealth of Pennsylvania, County of Adams, Township of Freedom, described as follows:

BEGINNING at an iron pin in Township Road T-318 at a point where it intersects with Township Road T-324 and at the Southwestern corner of land now or formerly of Carl H. Perkins and the Northeastern corner of land now or formerly of Sydney M. Shapiro; thence running in Township Road T-318 and by land now or formerly of Sydney M. Shapiro, South 65 degrees 22 minutes 05 seconds West, 233.76 feet to a railroad spike at the Southeastern corner of Tract No. 1 above; thence by Tract No. 1 and through an iron pin set back 25 feet from the start of this course North 05 degrees 52 minutes 55 seconds West 420.86 feet to an iron pin on line of land of Lot No. 3 in the hereinafter described plan of lots, which lot is now or formerly owned by Alan P. Horoschak and wife; thence by Lot No. 3 and crossing Township Road T-324, North 73 degrees 14 minutes 21 seconds East 396.48 feet to an iron pin, situate 18 feet East of the center line of T-324 and on line of land now or formerly of Henry P. Benoit; thence running along and in Township Road T-324, by land now or formerly of Henry P. Benoit and by land now or formerly of Carl H. Perkins, South 15 degrees 52 minutes 37 seconds West 452.86 feet to an iron pin at the intersection of Township Road T-324 and Township Road T-318, the point and place of BEGINNING.

Tax Parcel #: 13-D-15-22

Property Address: 165 Dawn Road, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **Gaddam Prakash & Sharmila Prakash** and to be sold by me.

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 25, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

11/30, 12/7 & 14

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1036 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of January, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Hamiltonban Township (previously cited as Orrtanna), Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in the Fairfield Road, running thence in center of said road, North sixty-three and one-half (63-1/2) degrees East, two and four-tenths (2.4) perches; thence by Lot No. 4, South twenty-six (26) degrees East, six and five-tenths (6.5) perches to a stake; thence by lands now or formerly of Peter Kready, South fifty-four (54) degrees West, two and five-tenths (2.5) perches to center of Mill Race; thence by Lot No. 2, North twenty-five and one-quarter (25-1/4) degrees West, seven (7) perches to the place of BEGINNING. CONTAINING sixteen (16) perches of land, neat measure.

TITLE TO SAID PREMISES IS VESTED IN John A. Hendrickson, single and Glenn A. Hendrickson, single, as joint tenants with the right of Survivorship and not as tenants in common, by Deed from Alvah L. Stonesifer, Jr., Executor of the Last Will and Testament of Edith B.

Stonesifer, dated 04/17/1991, recorded 04/18/1991, in Deed Book 584, page 913.

Premises being: 1855 Carroll Tract Road, Orrtanna, PA 17353

Tax Parcel No. 18-C12-0042

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

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 25, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

11/30, 12/7 & 14

## COMMONWEALTH VS. HARRISON

*Continued from last issue (11/30/2007)*

I have determined to first examine the information provided by Defendant's ex-girlfriend. If that information, in and of itself, is insufficient to establish probable cause for the issuance of a search warrant, then I need not determine whether that information continues to be sufficient when passed to the affiant through multiple sources.

The Commonwealth argues that the Affidavit contained sufficient probable cause for a search warrant to issue because the ex-girlfriend has a special familiarity with Defendant and his residence. Therefore, her statement that Defendant has viewed child pornography on his home computer and her observations of printed child pornographic images in his residence is sufficient to establish her reliability and probable cause. The Commonwealth goes so far as to suggest that these facts create not a mere suspicion, but a substantial likelihood, that child pornographic images would be found on Defendant's computer. Defendant counters that the Affidavit lacks the requisite corroboration to make the ex-girlfriend's information reliable.

The issue before the Court may be stated as follows: where an ex-girlfriend reports that (1) she lived with Defendant from July, 2003 through August 2005; (2) she is the mother of his two children; (3) she is living in a shelter for abused women as a result of altercations with Defendant; (4) the parties have a custody agreement whereby Defendant has custody of the children three weekends per month; (5) she claims that during their relationship Defendant has made statements of having sexual fantasies about the children and of having engaged in sexual conduct with his daughter; (6) Defendant readily talks about viewing child pornography on his computer; and (7) the computer was in Defendant's residence as of the end of August, 2005, is there sufficient probable cause to issue a search warrant to seize Defendant's computer and "any other items related to this crime." There is scant Pennsylvania authority speaking directly to this issue. However, this Court is guided by one Pennsylvania trial court decision and several out-of-state decisions.

In *Commonwealth v. Kirkpatrick*, 76 Pa. D. & C.4th 49, 50 (Monroe Co. 2005), an individual, residing at the same address as the defendant, opened a file<sup>2</sup> located on a shared computer network. When the file was opened, it contained file names entitled "8 year old

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<sup>2</sup>Through the network, the file was linked back to the defendant's computer.

boys,” “10 year old girls,” “kindergarten kids,” and “dad with daughters.” *Id.* After investigating officers executed a search warrant<sup>3</sup> at the defendant’s residence and seized two hard drives from his computer, a forensic analysis of the hard drives revealed several images indicating child pornography. *Id.* at 50-1. The defendant filed a motion to suppress, arguing that the affidavit of probable cause lacked probable cause because it merely alleged that the defendant had a computer with these file names and that they, in and of themselves do not suggest a violation of 18 Pa. C.S.A. § 6312(d)(1).<sup>4</sup> *Id.* at 57.

The Monroe County Court of Common Pleas found that the affidavit was frustratingly sparse because it merely set “forth the titles of four computer files without providing any clear indication as to what those files contained or to whom they belonged.” *Id.* at 62-63. Consequently, the court held that based on a four corners analysis, the titles of the four files, in themselves, were not sufficient to indicate child pornography and substantiate a finding of probable cause. *Id.* at 63.

The defendant also contended that there was insufficient proof of the veracity of the informant (Ms. Renda) to support the issuance of

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<sup>3</sup>The affidavit of probable cause read:

“That on March 16 2005 this Affiant who is employed by the Stroud Area Regional Police Department received a [sic] information from Gabriela Renda regarding possible child pornography. She stated that she was having problems with her computer that is located in her bedroom at her residence of 756 Main St. She stated that while she was trying to figure the problem out, she opened a file that is located in a shared Network File. This network is shared via a router and is connected to a computer that [sic] owned by Christopher Kirkpatrick who lives in another bedroom at the same address. This is a LAN (Local Area Network) service that is subscribed from Blue Ridge Cable. This subscription is subscribed to Renda and she also pays for this service. When she opened this file, it had files in to [sic] that she thought was [sic] suspicious. She saw several files that were named (8 year old boys), (10 year old girls), (kindergarten kids), and one named [Qdad with daughtersQ].” *Id.* at 56.

<sup>4</sup>18 Pa. C.S.A. § 6312(d)(1), Possession of child pornography, states: “Any person who knowingly possesses or controls any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act commits an offense.”

The defendant further argued that in order for the affidavit to satisfy 18 Pa. C.S.A. § 6312(d)(1), “it would have had to include at a minimum, a statement that...the informant had viewed the computer files and actually saw images that depicted acts that are prohibited under § 6312(a) as well as sufficient facts to demonstrate her reliability as an informant.”

a valid warrant. *Id.* After examining the affidavit, the court found that Ms. Renda's credibility was not suitably established. *Id.* Although the affidavit described how and why she came into contact with the file names, it failed to include any information that would tend to demonstrate her veracity or reliability in that regard. *Id.* Additionally, the court found that there was "no language in the affidavit to demonstrate that the Affiant was able or attempted to corroborate the information he received." *Id.* at 65. Therefore, the court held that the search warrant was not properly granted by the magistrate. *Id.*

Similarly, in the instant case the Affidavit sets forth how and why the ex-girlfriend obtained the information she reported, but it completely lacks any information that would tend to support her veracity. In fact, unlike the informant in *Kirkpatrick*, here there is a reason to suggest that she might not be credible. Here, the ex-girlfriend, along with her children, lived with Defendant apparently during a time when he might have been viewing child pornography and, purportedly, told her of his fantasies and conduct with his daughter. However, there is no indication that she reported this conduct to any authorities. Only after being physically abused and forced to reside in a shelter did she first report her information. Even then, the information was reported to a child welfare agency in Maryland and not to the police. Despite her purported knowledge of Defendant's propensity toward child pornography and of his sexual fantasies, she allegedly entered into an agreement for Defendant to have custody of the children three weekends per month. After what may have been the second or third (but certainly no later than the fifth) such weekend, she reported her concerns to the agency. Any reasonable person examining similar allegations should proceed cautiously and seek some assurance that these allegations are not being advanced to gain advantage in a custody dispute. As in *Kirkpatrick*, the lack of corroboration of any of the ex-girlfriend's allegations makes her statements constitutionally unreliable.

The Commonwealth has cited *State v. Wible*, 51 P.3d 830 (Wash. Ct. App. 2002) in support of its position. There, while working on the defendant's computer, two repairmen came across several files which they believed to be child pornography and images from two video files which were sexual in nature and depicted young girls. *Id.* at 833. The repairmen reported their observations to police who obtained a

search warrant. *Id.* Wible filed a motion to suppress challenging the reliability of the informants. *Id.* The court noted the following:

affidavits relying on information from citizen informants must (1) set forth the underlying factual circumstances from which the informant makes his conclusions so that a magistrate can independently determine the reliability of the manner in which the informant acquired his information and (2) set forth facts from which the officer can conclude the informant is credible and his information is reliable.

*Id.*

The court found that the affidavit contained facts sufficient to satisfy the basis of knowledge prong based on the informants' personal observations of the computer images. *Id.* at 834. Additionally, the file names<sup>5</sup> supported the report that the images depicted minors and were sexual in nature. *Id.* Furthermore, the court concluded that the affidavit satisfied the reliability prong because named citizen informants are presumed reliable.<sup>6</sup> *Id.* at 835. Wible's motion to suppress was denied. *Id.* at 837.

At first glance, this case seems to support the Commonwealth's position that there was a substantial basis to support the magistrate's finding of probable cause. However, in *Wible* the reporting citizens, unlike the ex-girlfriend here, appear to be disinterested persons. Furthermore, they had actual possession of the computer and gave the police specific descriptions of what they observed. Other than reporting that Defendant printed pictures of very young girls at some unknown time, the ex-girlfriend's information was based solely on what she was told. In other words, the details she described and her motives for reporting the offense were more suspect than in *Wible* and required more corroboration.

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<sup>5</sup>The file names were "11 year old," "8 year old Rape," and "8 year old Smile."

<sup>6</sup>Under Washington law, "when the informant is an ordinary citizen...and his identity is revealed to the issuing magistrate, intrinsic indicia of the informant's reliability may be found in his detailed description of the underlying circumstances of the crime observed or about which he had knowledge. If the underlying circumstances are sufficiently detailed to satisfy the first prong of *Aguillar-Spinelli*, they may themselves provide built in credibility guides to the informant's reliability, thus fulfilling the second prong as well. The detailed information encompassed in the affidavit's internal content attests to the informant's reliability by its very specificity; no independent corroboration is required. *Id.* at 835.

The Commonwealth has also cited *Elardo v. State*, 163 S.W.3d 760 (Tex. Ct. App. 2005) apparently for the purpose of arguing that information is presumed reliable when it is provided by a private citizen whose only contact with the police was to witness a crime. The Commonwealth contends that the ex-girlfriend is a private citizen who witnessed a crime and therefore her information should be deemed reliable.

In *Elardo*, the defendant's daughter-in-law went to the defendant's home to retrieve a television and observed him viewing child pornography on his computer. The daughter-in-law reported this observation to the police who, in turn obtained a search warrant.<sup>7</sup> During the search, the police seized images of child pornography. The defendant's suppression motion was denied by the trial court. On appeal, the Texas Court of Appeals reversed, finding that

[w]hile the affidavit in support of the warrant did contain facts indicating that the information may have been obtained in a reliable manner by the informant, the warrant did not contain any facts concerning why the information was reliable or any other indicia or reliability. Under the totality of the circumstances, the affidavit was not sufficient to constitute a substantial basis for determining that probable cause existed.

*Id.* at 763-4.

I do not find *Elardo* to be beneficial to the Commonwealth.

Texas, like Pennsylvania, follows *Illinois v. Gates*. The *Elardo* court noted that *Gates* did not dispense with the two-pronged test developed in *Aguilar-Spinelli*<sup>8</sup> but rather held that it should not be

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<sup>7</sup>The search warrant was based on the following affidavit of probable cause in relevant part: "A reliable source provided affiant with information that he/she has been in the residence described above within the last 12 hours and has seen the visual material on a computer in the above described residence. The reliable source also witnessed the party named above, viewing the visual material at that time. The reliable source advised that he/she has known the above party for a number of years and has been told on several occasions that the party above keeps this type of visual material in the residence." *Id.* at 766.

<sup>8</sup>Because of the potential unreliability of statements given by anonymous informants, the United States Supreme Court developed the *Aguilar-Spinelli* analysis which required a two-prong test: (1) the informants obtained the relevant information in a reliable manner and (2) the informant was reliable. See *Aguilar v. Texas*, 378 U.S. 108 (1964) and *Spinelli v. United States*, 393 U.S. 410 (1969).

applied too rigorously. *Elardo*, 163 S.W.3d at 766. Instead, the totality of the circumstances test is followed which, by necessity, includes an examination of the veracity, reliability, and basis of knowledge, i.e., the personal observation of the informant. *Id.* at 767. The strong nature of the basis of knowledge factor, however, is not sufficient to compensate for a complete lack of the veracity or reliability factors. *Id.* A deficiency in one of these factors, however, may be compensated for by a strong showing as to the other factors. *Id.*

*Elardo* noted some courts have held that information provided by private citizens whose only contact with the police was to witness the crime is presumed to be reliable. *Id.* at 768-69. This concept developed because the Supreme Court in *Gates*, 462 U.S. at 233-34 suggested that “if an unquestionably honest citizen comes forward with a report of criminal activity – which if fabricated would subject him to criminal liability – we have found rigorous scrutiny of the basis of his knowledge unnecessary.”<sup>9</sup> Whether a court views that circumstance as a presumption of reliability or a reason to lessen the scrutiny applied to the basis of knowledge factor, it would be incredulous to argue that simply alleging that an informant witnessed a crime, without more, is constitutionally sufficient for the issuance of a search warrant. A magistrate should not merely ratify the bare conclusions of others. The extent of the knowledge and the circumstances under which that knowledge was obtained must also be examined. Reduced scrutiny is not equivalent to blind adherence. The magistrate is bound to view the totality of the circumstances not just the conclusions drawn by the police.

Unfortunately for the Commonwealth, a common sense reading of the four corners of the Affidavit does not lead one to the conclusion that the ex-girlfriend is an “unquestionably” honest private citizen

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<sup>9</sup>In *Elardo*, the State argued that the magistrate had a substantial basis to determine there was probable cause because the source of the information was a private citizen whose only contact with the police was to witness the crime. *Id.* at 768. The court noted that “[i]f the affidavit had alleged that the reliable source was reliable because she was a private citizen whose only contact with the police was to witness the crime, the State’s argument may be correct.” *Id.* at 769. Nevertheless, “the State’s argument fails...because the affidavit failed to mention that the reliable source was a private citizen whose only contact with the police was to witness the crime.” *Id.* Likewise, in the instant case similar averments were not present. I am not suggesting that deficiency is critical. Instead, it is but one arrow in the quiver which must be included under the totality of the circumstances analysis.



who is merely reporting a crime she witnessed. Instead, for the reasons set forth above, her integrity must be scrutinized, rather than presumed, by a neutral and detached magistrate.<sup>10</sup>

The importance of police corroboration of information supplied by an informant was recently illustrated in *U.S. v. Solomon*, 432 F.3d 824 (8th Cir. 2005). There, Solomon's housemate (Tradup) reported to police she had learned that the defendant was a registered sex offender and, out of concern, she searched his bedroom for information regarding his sex offense. *Id.* at 826. She found what she believed to be images of child pornography. *Id.* She also discovered a child's bathing suit under Solomon's pillow and a girl's clothing slip inside his dresser drawer even though he did not have children. *Id.* The police met with Tradup and she turned over nine images of alleged child pornography she claimed she had taken from the defendant's bedroom. *Id.* Police also verified that Solomon was a sex offender and that his name appeared on a sign in front of the house address provided by Tradup. *Id.* Based on this information, the police obtained a search warrant and recovered a computer hard drive. *Id.* Evidence discovered resulted in the defendant being charged under federal law with possession of child pornography. *Id.*

Solomon moved to suppress the evidence obtained during the search on the basis that the warrant was not supported by probable cause. *Id.* at 827. The motion was denied. *Id.* The Eighth Circuit noted that when an affidavit is based on information from an informant, that person's reliability, veracity, and basis of knowledge are relevant to whether the affidavit provides sufficient probable cause to support the issuance of a warrant. *Id.* The court had no difficulty concluding that probable cause existed. *Id.* First, the informant had an exceptionally strong basis of knowledge that the evidence would be found in the defendant's home because she lived there and personally discovered the child pornography and other suspicious items. *Id.* Second, the fact that Tradup met with the police allowed them the opportunity to assess her credibility.

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<sup>10</sup>Unlike the affidavit in *Elardo* which simply stated that a "reliable source" [the daughter-in-law] observed Elardo in the act of viewing computer images in his home within the past 12 hours, the Affidavit in this case describes a history which provides the ex-girlfriend with a motive to fabricate. Again, the Court is not suggesting that she did fabricate any portion of her report. The issue is not whether she was or was not truthful but rather what information was available from which a magistrate could conclude that her information was reliable.

*Id.* Third, she supported her allegations by supplying the police with photos she indicated had been retrieved from Solomon's bedroom. *Id.* at 828. Fourth, the police were able to corroborate other information such as Solomon's criminal record and his address. *Id.*

In the instant matter, an examination of the ex-girlfriend's basis of knowledge, veracity and reliability within the four corners of the Affidavit reveals serious concerns. Here, the informant had a somewhat limited (rather than strong) basis of knowledge that child pornography would be found in Defendant's home. She reported that she had lived with Defendant over several years, Defendant was constantly on his computer, he still had the computer in his residence as of the end of August, 2005, at some (unknown) time in the past "he has also printed out pictures of what she described as very young undeveloped girls from his computer," and he verbally told her that he had recently been viewing child pornography.<sup>11</sup> However, the ex-girlfriend did not personally meet with the trooper<sup>12</sup> nor did she provide him with any prints or other evidence which might provide some veracity to her allegations. Furthermore, the Affidavit does not even allege that the trooper verified through any other source that Defendant resided at the address to be searched. In other words, here, unlike *Solomon*, there was no information set forth in the Affidavit from which the informant's veracity or reliability could be determined. Therefore, in this case, the mere assertion that she was a private citizen reporting an alleged crime is not sufficient to establish probable cause.

Under the totality of the circumstances analysis, her limited knowledge, in my opinion, is inadequate to compensate for the complete lack of information supporting her veracity and/or reliability. Therefore, I find that there was not a substantial basis upon which the issuing magistrate could determine the existence of probable cause.

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<sup>11</sup> There may be some question whether simply viewing child pornography on a computer is a crime in light of the recent decision in *Commonwealth v. Diodoro*, 2006 Pa. Super. 308, 313-14 (Pa. Super. 2006) wherein the Superior Court held that "absent...evidence that the defendant knowingly downloaded or saved pornographic images to his hard drive or knew that the web browser cached the images," the defendant could not be found criminally liable for possession of child pornography.

<sup>12</sup> The Commonwealth argues that the ex-girlfriend did, in fact, meet with the trooper before he applied for the search warrant. However, this information is referenced in a Pennsylvania State Police Incident Report dated November 4, 2005. Nowhere in the Affidavit is it alleged that such a meeting occurred. Therefore, the Court is unable to consider that meeting.

Accordingly, I am compelled to conclude that Defendant's Omnibus Pre-trial Motion must be granted.<sup>13</sup>

ORDER OF COURT

AND NOW, this 5th day of December, 2006, in accordance with the attached Opinion, the Omnibus Pre-Trial Motion filed by Defendant on February 13, 2006, is granted.

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<sup>13</sup>I am mindful of the old adage that bad facts make bad law. There is no question that the police found material at Defendant's home which would meet the definition of child pornography. This Court certainly does not condone the exploitation of children for this type of depraved behavior. Furthermore, any normal person would be outraged and disgusted if the balance of the ex-girlfriend's allegations were true. Nevertheless, in a society based on law, courts cannot afford to allow the results to justify the means.

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. D7-S-1010 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of January, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot or piece of ground situate in Menallen Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a p.k. nail Wenksville Road (SR 4010) at Lot No. 1; thence in said road and along Lot No. 1 South 60 degrees 53 minutes 12 seconds West 176.63 feet to a railroad spike at lands now or formerly of Lawrence W. Hays; thence along lands of same North 22 degrees 49 minutes 19 seconds West 317.29 feet to a corner post in concrete; thence continuing along same North 31 degrees 26 minutes 40 seconds East 227.62 feet to a rebar at lands now or formerly of Thomas Beamer; thence along lands of same South 38 degrees 44 minutes 11 seconds East 405.90 feet to a rebar in Wenksville Road; thence in Wenksville Road South 55 degrees 34 minutes 4 seconds West 125.56 feet to a bolt in Wenksville Road; thence in Wenksville Road South 32 degrees 6 minutes 6 seconds East 15.46 feet to a p.k. nail at corner of Lot No. 1 the place of BEGINNING.

THE above description was taken from a final plan dated October 13, 1995, by Mark A. Kuntz and recorded on December 10, 1997 in the Office of the Recorder of Deeds for Adams County, Pennsylvania, in Plan Book 72, Page 55 and is known as Lot No. 2 thereon.

Map Number: 29-D5-13B

Being known as 1840 Wenksville Road, Biglerville, PA 17307

SEIZED and taken into execution as the property of **Garrett A. Forsythe & Wendy A. Forsythe** and to be sold by me.

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 25, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

11/30, 12/7 & 14

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-222 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of January, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land, together with improvements thereon erected, lying and being and situate in the Borough of Abbottstown, Adams County, Pennsylvania, more particularly described as follows:

BEGINNING at a point at High Street at Lot No. 3 now or formerly of George Hoffeirs; thence by the same North fourteen and one-fourth (14-1/4) degrees West one hundred eighty-one and five-tenths (181.5) feet to a point at fourteen (14) foot wide alley; thence along said alley North seventy-five and three-fourths (75-3/4) degrees East sixty-six (66) feet to a stone at another fourteen (14) foot wide alley; thence along the last mentioned alley South fourteen and one-fourth (14-1/4) degrees East one hundred eighty-one and five-tenths (181.5) feet to a stone at High Street aforesaid; thence along High Street South seventy-five and three-fourths (75-3/4) degrees to a point, the place of BEGINNING.

IT BEING known as Lot No. 4 on a plan of lots as laid out by Z.E. Craumer, Surveyor, on January 14, 1928, as the land of Grant Freed.

IT BEING the same tract of land which Carol M. Drenzo, Administratrix of the Estate of Adriana N. Drenzo, by deed dated April 30, 1997 and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Record Book 1365, page 305, granted and conveyed unto David R. Kirby and Sandra L. Kirby, husband and wife, Grantors herein.

This is a conveyance between husband and wife.

AND the said grantors hereby covenant and agree that they and each of them will warrant specially the property hereby conveyed.

Being Known As: 249 High Street, Abbottstown, PA 17301

Property ID No.: 1-3-20

TITLE TO SAID PREMISES IS VESTED IN David R. Kirby by Deed from David R. Kirby and Sandra L. Kirby, husband

and wife dated 6/23/00 recorded 6/29/00 in Deed Book 2078 Page 20.

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

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 25, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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11/30, 12/7 & 14

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-142 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of January, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot or piece of ground situate in Mount Joy Township and partly in Straban Township, County of Adams, Commonwealth of Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point on the Eastern edge of Thomas Drive, a 60 foot roadway at Southwest corner of land now or formerly of Arthur E. Bohner and wife; thence by the Southern boundary of said land now or formerly of Bohner South 62 degrees 00 minutes 00 seconds East, 200 feet to a point at land now or formerly of David C. Crockett; thence by said land now or formerly of Crockett and land now or formerly of Herbert Storbeck and others, South 28 degrees 00 minutes 00 seconds West, 198.75 feet to a point on the North boundary of Hood Drive; thence by the North boundary of Hood Drive, North 24 degrees 30 minutes West, 79.4 feet to a point on the North boundary of Hood Drive; thence along the North boundary of Hood Drive by a curve to the left, having a chord bearing of North 31 degrees 30 minutes 00 seconds West, and a chord distance of 80.36 feet as set forth in Miscellaneous Book 4 Page 427, to a point on the Northern boundary of Hood Drive; thence by said Northern boundary of said Hood Drive North 62 degrees 00 minutes 00 seconds West, 45 feet on said boundary line; thence by said boundary line of Hood Drive with a curve to the right, the radius of which is 25 feet, the chord distance of which is 35.96 feet as set forth above, to a point on the Eastern boundary of Thomas Drive; thence by that said boundary North 28 degrees 00 minutes 00 seconds East, 107.30 feet to the place of BEGINNING.

Tax Parcel No.: 31-4-76

Premises Being: 289 Hood Drive, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **Angel L. McLaughlin, Known Heir to the Estate of Gwen J. McLaughlin, Deceased** and to be sold by me.

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 25, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

11/30, 12/7 & 14

## LEGAL NOTICE-ANNUAL MEETING

The annual meeting of the policyholders of the Protection Mutual Insurance Company of Littlestown will be held at the office located at 101 South Queen Street in Littlestown, PA, between the hours of 1:00 and 2:00 p.m., on January 12th, 2008 to elect directors and to transact any other business properly presented.

Attest: Marilyn Q. Butt  
President & Treasurer; Director  
12/7, 14, 21 & 28

## FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Section 311 of the Act of December 16, 1982, P.L. 1309, No. 295, codified as amended (54 Pa. C.S.A. §311), there was filed in the Office of the Secretary of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on November 15, 2007, an Application for Registration of Fictitious Name of D & D RENTALS, the address of the principal place of business being 1275 Old Harrisburg Road, Gettysburg, Pennsylvania 17325. The names and addresses of the persons who are parties to said registration are: David P. Knox, 1275 Old Harrisburg Road, Gettysburg, Pennsylvania 17325; and Dennis J. Knox, 1375 Table Rock Road, Gettysburg, Pennsylvania 17325.

Puhl, Eastman & Thrasher  
Attorneys

12/7

## 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 business corporation to be organized under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as amended.

The name of the corporation is FIRE HOUSE GRILL, INC.

Robert L. McQuaide, Esq.  
McQuaide Law Office  
Suite 204  
18 Carlisle Street  
Gettysburg, PA 17325

12/7

## 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 RACHEL C. LAWVER a/k/a RACHAEL C. LAWVER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Mr. Richard L. Lawver, 1547 Fairview Avenue, Chambersburg, PA 17202

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF THOMAS L. PHILLIPS, JR., DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Thomas R. Phillips, 4953 Gloucester Dr., Doylestown, PA 18902

Attorney: Phillips & Phillips, 101 W. Middle St., Gettysburg, PA 17325

ESTATE OF DOROTHY A. SCHUCHART, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Earl J. Schuchart, Jr., 67 N. Water St., Spring Grove, PA 17362

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF LEROY EDWARD STARNER, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Leroy E. Stamer, Jr., 640 Shippensburg Road, Biglerville, PA 17307

Attorney: David K. James, III, Esq., 234 Baltimore St., Gettysburg, PA 17325

## SECOND PUBLICATION

ESTATE OF RAYMOND T. GUISE, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executrix: Mildred G. Guise, 325 Centre Mills Road, Aspers, PA 17304

Attorney: Puhl, Eastman & Thrasher, Attorneys at Law, 220 Baltimore Street, Gettysburg, PA 17325

## THIRD PUBLICATION

ESTATE OF A. RICHARD BUTLER a/k/a ALVIN RICHARD BUTLER, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania

Executrix: Kelly M. Fill, 156 Pine Grove Road, Hanover, PA 17331

Attorney: John R. White, Esq., Campbell & White, P.C., 112 Baltimore St., Gettysburg, PA 17325

ESTATE OF CATHERINE VIOLA GLADFELTER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Administrator C.T.A.: Jeanne M. Gladfelter, 1111 Birdview Road, Westminster, MD 21157

Attorney: Arthur J. Becker, Jr., Esq., Becker & Strausbaugh, P.C., 544 Carlisle Street, Hanover, PA 17331

ESTATE OF FREDERICK N. PITTINGER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Administrator: Patricia M. Pittinger, 61 Peanut Drive, Hanover, PA 17331

Attorney: Donald W. Dorr, Esq., 846 Broadway, Hanover, PA 17331



# Adams County Legal Journal

Vol. 49

December 14, 2007

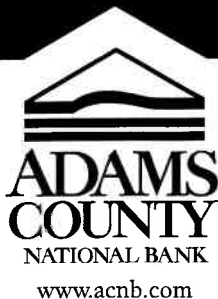
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Helping families achieve  
their long-range financial goals  
is our business.

*Celebrating 150 years!*  
1857-2007



 Equal Housing Lender. Equal Opportunity Lender. Member FDIC.



## ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published weekly by Adams County Bar Association, John W. Phillips, Esq., Editor and Business Manager.

Subscribers within Adams County should send subscriptions direct to the business office. Subscribers outside of Adams County should send subscriptions to Wm. W. Gaunt & Sons, Inc., 3011 Gulf Drive, Holmes Beach, FL 34217-2199. Postmaster: Send address changes to Adams County Legal Journal, 111 Baltimore Street, Room 305, Gettysburg, PA 17325.

Business Office – 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 337-9812

Periodicals postage paid at Gettysburg, PA 17325.

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-485 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of January, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain land situated in the Commonwealth of Pennsylvania, County of Adams, Township of Freedom, described as follows:

BEGINNING at an iron pin in Township Road T-318 at a point where it intersects with Township Road T-324 and at the Southwestern corner of land now or formerly of Carl H. Perkins and the Northeastern corner of land now or formerly of Sydney M. Shapiro; thence running in Township Road T-318 and by land now or formerly of Sydney M. Shapiro, South 65 degrees 22 minutes 05 seconds West, 233.76 feet to a railroad spike at the Southeastern corner of Tract No. 1 above; thence by Tract No. 1 and through an iron pin set back 25 feet from the start of this course North 05 degrees 52 minutes 55 seconds West 420.86 feet to an iron pin on line of land of Lot No. 3 in the hereinafter described plan of lots, which lot is now or formerly owned by Alan P. Horoschak and wife; thence by Lot No. 3 and crossing Township Road T-324, North 73 degrees 14 minutes 21 seconds East 396.48 feet to an iron pin, situate 18 feet East of the center line of T-324 and on line of land now or formerly of Henry P. Benoit; thence running along and in Township Road T-324, by land now or formerly of Henry P. Benoit and by land now or formerly of Carl H. Perkins, South 15 degrees 52 minutes 37 seconds West 452.86 feet to an iron pin at the intersection of Township Road T-324 and Township Road T-318, the point and place of BEGINNING.

Tax Parcel #: 13-D-15-22

Property Address: 165 Dawn Road, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **Gaddam Prakash & Sharmila Prakash** and to be sold by me.

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 25, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

11/30, 12/7 & 14

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1036 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of January, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Hamiltonban Township (previously cited as Orrtanna), Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in the Fairfield Road, running thence in center of said road, North sixty-three and one-half (63-1/2) degrees East, two and four-tenths (2.4) perches; thence by Lot No. 4, South twenty-six (26) degrees East, six and five-tenths (6.5) perches to a stake; thence by lands now or formerly of Peter Kready, South fifty-four (54) degrees West, two and five-tenths (2.5) perches to center of Mill Race; thence by Lot No. 2, North twenty-five and one-quarter (25-1/4) degrees West, seven (7) perches to the place of BEGINNING. CONTAINING sixteen (16) perches of land, neat measure.

TITLE TO SAID PREMISES IS VESTED IN John A. Hendrickson, single and Glenn A. Hendrickson, single, as joint tenants with the right of Survivorship and not as tenants in common, by Deed from Alvah L. Stonesifer, Jr., Executor of the Last Will and Testament of Edith B.

Stonesifer, dated 04/17/1991, recorded 04/18/1991, in Deed Book 584, page 913.

Premises being: 1855 Carroll Tract Road, Orrtanna, PA 17353

Tax Parcel No. 18-C12-0042

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

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 25, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

11/30, 12/7 & 14

## LEGAL NOTICE--ANNUAL MEETING

The annual meeting of the policyholders of the Protection Mutual Insurance Company of Littlestown will be held at the office located at 101 South Queen Street in Littlestown, PA, between the hours of 1:00 and 2:00 p.m., on January 12th, 2008 to elect directors and to transact any other business properly presented.

Attest: Marilyn Q. Butt  
President & Treasurer; Director  
12/7, 14, 21 & 28

## COMMONWEALTH VS. SULLIVAN

1. A claim challenging the sufficiency of the evidence is a question of law. Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt.

2. When reviewing a sufficiency claim the court is required to view the evidence in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence.

3. Challenges as to whether a conviction was against the weight of the evidence are addressed to the sound discretion of the trial judge.

4. In order to convict an individual of driving under the influence of alcohol, the Commonwealth is required to establish the following elements: 1) that the defendant drove, operated or was in actual physical control of the movement of a vehicle; 2) on a highway or traffic way; 3) after imbibing a sufficient amount of alcohol; 4) that the alcohol concentration of the individual's blood was .16 percent or higher; and 5) within two hours after the individual had driven, operated or been in actual physical control of the movement of the motor vehicle.

5. Despite being privately owned, persuasive and controlling precedent recognizes that individuals using the road system and parking areas in Lake Meade (a Planned Community) deserve and expect to be protected from incidents involving serious traffic offenses. The road system and parking areas within the Lake Meade community fall within the definitions of those areas protected under the umbrella of the vehicle code.

In the Court of Common Pleas of Adams County, Pennsylvania, Criminal, No. CP-01-CR-9-2006, COMMONWEALTH OF PENNSYLVANIA VS. PATRICK D. SULLIVAN.

Shane F. Crosby, Esq., Assistant District Attorney, for Commonwealth  
Farley G. Holt, Esq., for Defendant

George, J., December 12, 2006

### OPINION PURSUANT TO PA.R.A.P. 1925(B)

The Defendant, Patrick D. Sullivan ("Sullivan"), was convicted of driving under the influence of alcohol (highest rate of alcohol) following a jury trial held on October 6, 2006.<sup>1</sup> Pursuant to a pre-trial stipulation entered between the parties, Sullivan's conviction was a second offense for sentencing purposes and, therefore, the offense was graded as a misdemeanor of the first degree. On November 7,

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<sup>1</sup> Sullivan was convicted on both counts of the information, driving under the influence of alcohol (general impairment) under 75 Pa. C.S.A. § 3802(a)(1) and driving under the influence of alcohol (highest rate of alcohol) under 75 Pa. C.S.A. § 3802(c). At the time of sentencing, the Court merged the convictions and imposed sentence only on the more serious offense, driving under the influence of alcohol (highest rate of alcohol).

2006, Sullivan was sentenced to serve forty-eight (48) months in the intermediate punishment program with ninety (90) days spent in restrictive sentencing consisting of forty-five (45) days of partial confinement and forty-five (45) days of house arrest. Following sentencing, Sullivan has filed an appeal. In his Statement of Matters Complained of on Appeal, Sullivan raises boilerplate arguments concerning the sufficiency and weight of the evidence without specifying any specific deficiency in the Commonwealth's proof.

A claim challenging the sufficiency of the evidence is a question of law. Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt. *Commonwealth v. Karkaria*, 625 A.2d 1167 (Pa. 1993). Where the evidence offered to support the verdict is in contradiction to the physical facts, in contravention to human experience and the laws of nature, then the evidence is insufficient as a matter of law. *Commonwealth v. Santana*, 333 A.2d 876 (Pa. 1975). When reviewing a sufficiency claim the court is required to view the evidence in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence. *Commonwealth v. Chambers*, 599 A.2d 630 (Pa. 1991).

Challenges as to whether a conviction was against the weight of the evidence are addressed to the sound discretion of the trial judge. *Commonwealth v. Davis*, 799 A.2d 860 (Pa. Super. 2002). Such decisions will not be reversed on appeal absent a showing of abuse of discretion. *Id.* Pennsylvania Rule of Criminal Procedure 607 provides that in order to be preserved, a weight claim must be raised with the trial judge, either before or at sentencing, or in a post-sentence motion. Because Sullivan failed to preserve his weight claim it is waived. *Commonwealth v. Washington*, 825 A.2d 1264 (Pa. Super. 2003).

Viewing the evidence in the light most favorable to the Commonwealth, testimony at trial revealed the following:<sup>2</sup>

On December 10, 2005, at approximately 7:40 a.m., Karen Powlas arrived for work at the guardhouse at the Lake Meade Home Owners Association ("Association") located in Adams County. Lake Meade is a gated

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<sup>2</sup> A transcript of the trial testimony has not yet been prepared. The Court relies upon its own notes in preparing the factual background.

community located in Reading and Latimore Townships consisting of 293 acres. The community has approximately 18 miles of roads and includes 1,047 homes. Over 3,000 residents live in the community. The property is patrolled by security funded by the Association as well as by municipal police officers from both Reading and Latimore Townships. Additionally, when municipal police are not available, the Pennsylvania State Police respond to incidents within the community. Lake Meade has one main entrance, Lake Meade Drive, which has separate gates for resident entrance and non-resident entrance. Non-residents entering the community must stop at the guardhouse and provide their name and address to the security officer. Non-residents frequently enter the property to utilize sports fields within the property; make deliveries to residents; conduct garden tours at properties within the community; participate in events open to the public held within community boundaries; and to visit residents of the community. In addition, public school buses enter the community for purposes of providing transportation to local public schools. Nevertheless, the roads are privately owned by the Association and access to the property may be restricted in the discretion of the Association's Board of Directors.

Upon arriving at work, Ms. Powlas heard and observed a truck in a parking lot adjoining Lake Meade Drive with the engine running and lights on. The truck was located approximately 50 feet from the guardhouse and backed in the center of the parking area with its headlights facing the roadway. As Powlas approached the vehicle, she observed that the operator of the vehicle was slumped over the steering wheel. She immediately returned to the guardhouse and contacted County Control to dispatch emergency services.

In response to the dispatch from County Control, William Sloman, the Deputy Chief of Lake Meade Fire and Rescue and an emergency medical technician, responded to the scene. Upon his arrival at approximately 8:42 a.m., he approached the vehicle and observed an

unconscious adult male in the vehicle. He noted that the vehicle was running and the vehicle's lights were on. He also observed that the windows to the vehicle were steamed. At trial, he identified Sullivan as the person sitting in the driver's compartment. After approaching the vehicle, Deputy Chief Sloman knocked on the driver's side window in an effort to wake Sullivan. Sullivan responded and stepped out of the vehicle. Deputy Chief Sloman immediately smelled alcoholic beverages emitting from Sullivan's person and observed that Sullivan was disoriented. Sullivan further exhibited slurred speech and difficulty in understanding. When Sullivan exited the vehicle, he immediately staggered and fell against the door of the vehicle. At the request of Deputy Chief Sloman, Sullivan re-entered his vehicle. Deputy Chief Sloman, however, shut the vehicle off and placed the keys to the vehicle on the floor.

Corporal James Graham of the Pennsylvania State Police also responded to the incident. Corporal Graham has extensive training and experience in detecting persons under the influence of alcohol, including training in the administration of field sobriety tests and education in detecting signs of intoxicants. He has come into contact hundreds of times with intoxicated persons and has arrested hundreds of individuals for driving under the influence of alcohol. Upon his arrival at the scene, he spoke with Sullivan who was seated in the truck. Corporal Graham observed that the keys to the vehicle were once again in the ignition. Corporal Graham observed that Sullivan was manifestly under the influence of alcohol. In response to inquiry from Corporal Graham, Sullivan indicated that he had been out earlier in the morning and had been drinking. Sullivan claimed that he didn't want to go home. He further indicated that he pulled over and stopped because he could not drive. Corporal Graham attempted to have Sullivan perform field sobriety tests; however, Sullivan claimed he had injuries which prevented him from taking those tests. The only indication of alcohol in the vehicle was an

unopened can of beer in the passenger compartment of the truck as well as two unopened containers in the truck bed. Based upon his observations, Corporal Graham concluded that Sullivan was under the influence of alcohol to the extent that he was incapable of safely operating a motor vehicle. He placed Sullivan under arrest and transported him to the Hanover Hospital. At 9:56 a.m. that same date, Sullivan provided a sample of his blood which yielded a blood alcohol concentration of .22 percent. Following the blood test, Corporal Graham advised Sullivan of his Miranda warnings and obtained a statement from him. Sullivan indicated to Corporal Graham that he was at Dillon's Bar.<sup>3</sup> After leaving Dillon's Bar, he stopped at the Goalpost Bar.<sup>4</sup> Sullivan claimed that he had left the Goalpost at closing time and purchased a six-pack of beer as he was leaving. While at the various lounges, Sullivan claimed to have drunk beer and Bacardi and Sprite.

In order to convict an individual of driving under the influence of alcohol (highest rate of alcohol), the Commonwealth is required to establish the following elements: 1) that the defendant drove, operated or was in actual physical control of the movement of a vehicle; 2) on a highway or traffic way; 3) after imbibing a sufficient amount of alcohol; 4) that the alcohol concentration of the individual's blood was .16 percent or higher; and 5) within two hours after the individual had driven, operated or been in actual physical control of the movement of the motor vehicle. 75 Pa.C.S.A. § 3802(c). A review of the testimony reflects that the Commonwealth has presented sufficient evidence to establish each of the elements of the motor vehicle offense for which Sullivan was convicted. Moreover, after hearing the trial testimony, the verdict does not shock this Court's sense of justice.

Undisputed trial testimony revealed that Sullivan's blood alcohol content was .22 percent within two hours of him being discovered inside his vehicle. Since the truck was running with the headlights

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<sup>3</sup>Dillon's Bar is an establishment located in East Berlin, Adams County, which testimony revealed is approximately 6-7 miles from the Lake Meade entrance.

<sup>4</sup>The Goalpost Bar is located in the village of Hampton which is on a direct route between East Berlin Borough and the Lake Meade Home Owners Association.

on when Sullivan was discovered slumped over in the driver's compartment, evidence is more than sufficient to establish that he was in actual physical control of the movement of the vehicle. *Commonwealth v. Lehman*, 820 A.2d 766 (Pa. Super. 2003), *appeal granted* 834 A.2d 1141, *affirmed* 870 A.2d 818 (Pa. 2005) (evidence sufficient to support a finding of actual physical control where a defendant was discovered in driver's seat of his vehicle with engine running and headlights on). Physical control is further established by Sullivan's action of placing the keys in the vehicle's ignition following the keys removed by Deputy Chief Sloman but prior to Corporal Graham's interaction with him. Thus, it is unquestionable that Sullivan consumed alcohol prior to controlling a vehicle and produced a sample of his blood within two hours thereafter which yielded a B.A.C. of .22 percent.

The only remaining element necessary to sustain Sullivan's conviction is whether his operation or physical control of the vehicle occurred on a highway or traffic way. Evidence at trial suggested that although privately owned, the road system and parking area within the Lake Meade community was frequently used by property owners, visitors, employees, business invitees as well as others. Undoubtedly this use satisfies the public component embodied in the definition of traffic way. See 75 Pa. C.S.A. § 102. Despite being privately owned, persuasive and controlling precedent recognizes that individuals using the road system and parking areas in Lake Meade deserve and expect to be protected from incidents involving serious traffic offenses. The road system and parking areas within the Lake Meade community fall within the definitions of those areas protected under the umbrella of the vehicle code. See *Commonwealth v. Cameron*, 668 A.2d 1163 (Pa. Super. 1995) (apartment building parking area meets definition of "traffic way"); *Commonwealth v. Zabierowsky*, 730 A.2d 987 (Pa. Super. 1999) (interior five-story parking garage with limited access meets definition of "traffic way"); *Commonwealth v. Cozzone*, 593 A.2d 860 (Pa. Super. 1991) (unrestricted parking area of a condominium complex held to be a traffic way under the vehicle code).

Even if I assume, *arguendo*, that the parking lot in which Sullivan's truck was located does not fall within the ambit of "traffic way" as defined by the Motor Vehicle Code, the evidence is still sufficient to support the verdict. Sullivan, by his own admission to

Corporal Graham, acknowledged drinking alcoholic beverages at two different establishments prior to operating his vehicle. He conceded that he parked his vehicle because he “could not drive.” Upon his discovery by Corporal Graham, he was manifestly under the influence of alcohol. Within approximately an hour and fifteen minutes following his discovery, Sullivan produced a sample of his blood which yielded a blood alcohol concentration of .22 percent. There is no evidence of alcohol consumption at the scene where Sullivan was found as the only alcohol containers in the vehicle were unopened. This evidence is more than sufficient to circumstantially establish that Sullivan drove on public roads at a time when his blood alcohol concentration exceeded .16 percent and while he was manifestly under the influence of alcohol. *Commonwealth v. Williams*, 871 A.2d 254 (Pa. Super. 2005) (evidence where a defendant found in parking area slumped over the wheel of the car with engine running and headlights on accompanied by no indication of alcohol consumption at scene sufficient to sustain verdict).

Clearly a review of the evidence, and all reasonable inferences drawn therefrom in a light most favorable to the Commonwealth, reveals that the evidence is more than sufficient to establish Sullivan’s conviction. Additionally, the claim challenging the verdict as against the weight of the evidence is meritless. The evidence of Sullivan’s guilt is overwhelming. Accordingly, affirmance of this sentence is requested.



## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1010 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of January, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot or piece of ground situate in Menallen Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a p.k. nail Wenksville Road (SR 4010) at Lot No. 1; thence in said road and along Lot No. 1 South 60 degrees 53 minutes 12 seconds West 176.63 feet to a railroad spike at lands now or formerly of Lawrence W. Hays; thence along lands of same North 22 degrees 49 minutes 19 seconds West 317.29 feet to a corner post in concrete; thence continuing along same North 31 degrees 26 minutes 40 seconds East 227.62 feet to a rebar at lands now or formerly of Thomas Beamer; thence along lands of same South 38 degrees 44 minutes 11 seconds East 405.90 feet to a rebar in Wenksville Road; thence in Wenksville Road South 55 degrees 34 minutes 4 seconds West 125.56 feet to a bolt in Wenksville Road; thence in Wenksville Road South 32 degrees 6 minutes 6 seconds East 15.46 feet to a p.k. nail at corner of Lot No. 1 the place of BEGINNING.

THE above description was taken from a final plan dated October 13, 1995, by Mark A. Kuntz and recorded on December 10, 1997 in the Office of the Recorder of Deeds for Adams County, Pennsylvania, in Plan Book 72, Page 55 and is known as Lot No. 2 thereon.

Map Number: 29-D5-13B

Being known as 1840 Wenksville Road, Biglerville, PA 17307

SEIZED and taken into execution as the property of **Garrett A. Forsythe & Wendy A. Forsythe** and to be sold by me.

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 25, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

11/30, 12/7 & 14

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-222 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of January, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land, together with improvements thereon erected, lying and being and situate in the Borough of Abbottstown, Adams County, Pennsylvania, more particularly described as follows:

BEGINNING at a point at High Street at Lot No. 3 now or formerly of George Hoffeis; thence by the same North fourteen and one-fourth (14-1/4) degrees West one hundred eighty-one and five-tenths (181.5) feet to a point at fourteen (14) foot wide alley; thence along said alley North seventy-five and three-fourths (75-3/4) degrees East sixty-six (66) feet to a stone at another fourteen (14) foot wide alley; thence along the last mentioned alley South fourteen and one-fourth (14-1/4) degrees East one hundred eighty-one and five-tenths (181.5) feet to a stone at High Street aforesaid; thence along High Street South seventy-five and three-fourths (75-3/4) degrees to a point, the place of BEGINNING.

IT BEING known as Lot No. 4 on a plan of lots as laid out by Z.E. Craumer, Surveyor, on January 14, 1928, as the land of Grant Freed.

IT BEING the same tract of land which Carol M. Drenzo, Administratrix of the Estate of Adriana N. Drenzo, by deed dated April 30, 1997 and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Record Book 1365, page 305, granted and conveyed unto David R. Kirby and Sandra L. Kirby, husband and wife, Grantors herein.

This is a conveyance between husband and wife.

AND the said grantors hereby covenant and agree that they and each of them will warrant specially the property hereby conveyed.

Being Known As: 249 High Street, Abbottstown, PA 17301

Property ID No.: 1-3-20

TITLE TO SAID PREMISES IS VESTED IN David R. Kirby by Deed from David R. Kirby and Sandra L. Kirby, husband

and wife dated 6/23/00 recorded 6/29/00 in Deed Book 2078 Page 20.

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

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 25, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

11/30, 12/7 & 14

## INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, Harrisburg, Pennsylvania, on November 15, 2007, for the purpose of obtaining a Certificate of Incorporation of a nonprofit corporation under the Pennsylvania Nonprofit Corporation Law of 1988. The name of the corporation is **PREPARING THE WAY CHURCH, INC.** The registered office for the corporation is: 4259 Fairfield Road, Fairfield, PA 17320.

Battersby Law Office  
Matthew R. Battersby, Esq.  
Attorney for the Corporation  
20 W. Main St., P.O. Box 215  
Fairfield, PA 17320  
(717) 642-6260

12/14

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-142 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of January, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot or piece of ground situate in Mount Joy Township and partly in Straban Township, County of Adams, Commonwealth of Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point on the Eastern edge of Thomas Drive, a 60 foot roadway at Southwest corner of land now or formerly of Arthur E. Bohner and wife; thence by the Southern boundary of said land now or formerly of Bohner South 62 degrees 00 minutes 00 seconds East, 200 feet to a point at land now or formerly of David C. Crockett; thence by said land now or formerly of Crockett and land now or formerly of Herbert Storbeck and others, South 28 degrees 00 minutes 00 seconds West, 198.75 feet to a point on the North boundary of Hood Drive; thence by the North boundary of Hood Drive, North 24 degrees 30 minutes West, 79.4 feet to a point on the North boundary of Hood Drive; thence along the North boundary of Hood Drive by a curve to the left, having a chord bearing of North 31 degrees 30 minutes 00 seconds West, and a chord distance of 80.36 feet as set forth in Miscellaneous Book 4 Page 427, to a point on the Northern boundary of Hood Drive; thence by said Northern boundary of said Hood Drive North 62 degrees 00 minutes 00 seconds West, 45 feet on said boundary line; thence by said boundary line of Hood Drive with a curve to the right, the radius of which is 25 feet, the chord distance of which is 35.96 feet as set forth above, to a point on the Eastern boundary of Thomas Drive; thence by that said boundary North 28 degrees 00 minutes 00 seconds East, 107.30 feet to the place of BEGINNING.

Tax Parcel No.: 31-4-76

Premises Being: 289 Hood Drive, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **Angel L. McLaughlin, Known Heir to the Estate of Gwen J. McLaughlin, Deceased** and to be sold by me.

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 25, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

11/30, 12/7 & 14

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-641 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of January, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain parcel of land lying and being situate in the Borough of Bonneauville, County of Adams, and Commonwealth of Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a point on the Southeastern right-of-way line of Carole Court (fifty (50) feet in width) at Lot No. 17 of the hereinafter referred to subdivision plan; thence along said Lot No. 17, South sixty-two (62) degrees eight (8) minutes East, one hundred (100) feet to a point at Lot No 21; thence along said Lot No. 21 and continuing further along Lot No. 20, South twenty-seven (27) degrees fifty-two (52) minutes West, seventy-five (75) feet to a point at Lot No. 19; thence along said Lot No. 19, North sixty-two (62) degrees eight (08) minutes West, one hundred one and five hundredths (101.05) feet to a point on the Southeastern right-of-way line for the aforementioned line of said Carole Court by a curve to the left whose radius is seven hundred twenty-one and four-tenths (721.4) feet, the long chord bearing of which is North twenty-nine (29) degrees twenty-four (24) minutes eighteen (18) seconds East and chord length of thirty-nine and one-tenth (39.1) feet to a point; thence along same North twenty-seven (27) degrees fifty-two (52) minutes East, thirty-five and ninety-two hundredths (35.92) feet to the point and place of BEGINNING, CONTAINING 7,513.7 square feet, more or less, and designated as Lot No. 18 on a plan of lots of Bonnisfield, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 9, at Page 24, and subject to

all legal highways, easements, right-of-way and restrictions of record.

PARCEL No. (6)-9-32

BEING known and numbered as 4 Carole Court, Gettysburg, PA 17325.

BEING the same premises which Davidine Sirk, now Davidine Cool, by Deed dated April 7, 1995 and recorded April 17, 1995 in and for Adams County, Pennsylvania, in Deed Book Volume 1017, Page 99, granted and conveyed unto Davidine Cool and Howard H. Cool, Sr., her husband as tenants by the entireties.

SEIZED and taken into execution as the property of **Howard H. Cool, Sr. & Davidine Cool** and to be sold by me.

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 15, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/14, 21 & 28

## INCORPORATION NOTICE

NOTICE IS GIVEN that Articles of Incorporation that will incorporate NEW CHURCH FELLOWSHIP, INC. have been delivered to the Secretary of State for filing in accordance with 15 Pa. C.S. §5306. The initial registered office of the corporation is located at 380 Wenschhof Rd., Fairfield, PA 17320.

12/14

**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 WILLIAM E. BOWERS, DEC'D**

Late of the Borough of Littlestown, Adams County, Pennsylvania  
 Executrix: Sandra L. Bowers, 66 Crouse Park, Littlestown, PA 17340  
 Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

**ESTATE OF MILDRED M. DEWEES a/k/a M. MILDRED DEWEES, DEC'D**

Late of the Borough of McSherrystown, Adams County, Pennsylvania  
 Co-Executors: Ronald R. Dewees, P.O. Box 228, Biglerville, PA 17307; Donna M. Asper, 2574 Biglerville Road, Gettysburg, PA 17325; Barry F. Dewees, 201 Fair Avenue, Hanover, PA 17331  
 Attorney: John R. White, Campbell & White, P.C., 112 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF WILLIAM B. LEPPA, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania  
 Personal Representative: Allen W. Leppo, 1245 N. Moulstown Rd., Hanover, PA 17331  
 Attorney: G. Steven McKonly, Esq., 119 Baltimore Street, Hanover, PA 17331

**ESTATE OF CLYDE E. ORNER, DEC'D**

Late of Menallen Township, Adams County, Pennsylvania  
 Executor: Steven C. Knouse, 500 Excelsior Road, Biglerville, PA 17307  
 Attorney: John R. White, Esq., Campbell & White, P.C., 112 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF LORRINE M. ROHRBAUGH a/k/a LORRAINE M. ROHRBAUGH, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania  
 Co-Executors: Sandra L. Warner and Gerald M. Warner, 66 Oak Hills Drive, Hanover, PA 17331  
 Attorney: Douglas H. Gent, Esq., Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

**SECOND PUBLICATION**

**ESTATE OF RACHEL C. LAWVER a/k/a RACHAEL C. LAWVER, DEC'D**

Late of Straban Township, Adams County, Pennsylvania  
 Executor: Mr. Richard L. Lawver, 1547 Fairview Avenue, Chambersburg, PA 17202  
 Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF THOMAS L. PHILLIPS, JR., DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania  
 Executor: Thomas R. Phillips, 4953 Gloucester Dr., Doylestown, PA 18902  
 Attorney: Phillips & Phillips, 101 W. Middle St., Gettysburg, PA 17325

**ESTATE OF DOROTHY A. SCHUCHART, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania  
 Executor: Earl J. Schuchart, Jr., 67 N. Water St., Spring Grove, PA 17362  
 Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

**ESTATE OF LEROY EDWARD STARNER, DEC'D**

Late of Huntington Township, Adams County, Pennsylvania  
 Leroy E. Starnier, Jr., 640 Shippensburg Road, Biglerville, PA 17307  
 Attorney: David K. James, III, Esq., 234 Baltimore St., Gettysburg, PA 17325

**THIRD PUBLICATION**

**ESTATE OF RAYMOND T. GUISE, DEC'D**

Late of Butler Township, Adams County, Pennsylvania  
 Executrix: Mildred G. Guise, 325 Centre Mills Road, Aspers, PA 17304  
 Attorney: Puhl, Eastman & Thrasher, Attorneys at Law, 220 Baltimore Street, Gettysburg, PA 17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-980 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of January, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot, piece or parcel of land, with the buildings and improvements thereon erected situate, lying and being in the Township of Tyrone, County of Adams and Commonwealth of Pennsylvania, as follows:

BEGINNING at a stone in or at the Western edge of the E Co. Road (T-564); thence in and along said E Co. Road North 27 degrees 12 minutes 04 seconds West 185.49 feet to a railroad spike in said E Co. Road; thence crossing said E Co. Road, through an iron pin set 25 feet from the beginning of this course and along Lot B in and upon the below-mentioned draft of survey and subdivision plan, North 82 degrees 58 minutes 32 seconds East, 561.03 feet to an iron pin (see note 5. in the below-mentioned draft of survey and subdivision plan) at corner of Lots B and C in and upon the below-mentioned draft of survey and subdivision plan; thence along Lot C in and upon the below-mentioned draft of survey and subdivision plan South 20 degrees 43 minutes 24 seconds East, 130.00 feet to an iron pin at corner of said Lot C and lands now or formerly of Andrew E. Burgess and Patricia A. Curtis; thence continuing along said lands of Burgess and Curtis South 77 degrees 48 minutes 02 seconds West, 530.00 feet to a stone in or at the Western edge of said E Co. Road (T-564), the point and place of BEGINNING.

BEING the same premises which Ronald L. Harris, Jr. and Sandra M. Smith, n/k/a, Sandra M. Harris by deed from dated 12/26/02 recorded 1/8/03 in Deed Book 2932 Page 307. Granted and conveyed unto Ronald L. Harris, Jr. and Sandra M. Harris their heirs and assigns.

Parcel ID # (40) H06-3A

Being Known As: 829 Company Farm Road, (Tyrone Township), Aspers, PA 17304.

SEIZED and taken into execution as the property of **Ronald L. Harris, Jr. & Sandra M. Harris** and to be sold by me.

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 15, 2008,

and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/14, 21 & 28

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1120 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of January, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in the Borough of Gettysburg, Adams County, Pennsylvania, as shown as Lot No. 9 on that certain 'Corrective As-Built Subdivision Plat' prepared by Robert A. Sharrah, PLS, for Frederick Douglass Townhouses, dated June 29, 1996, bearing Drawing Number E-293 (the 'Corrective Plat'), and recorded on or about July 16, 1996, in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Plat Book 69 at page 54, which Corrective Plat is herein incorporated by reference, and bounded and described as follows:

FROM a 3/4 inch steel rod in the Northern line of a twelve (12) foot wide pave alley known as Pape Alley and located at or near the Northeast corner of the intersection of Pape Alley and South Franklin Street, continues South 83 degrees 49 minutes 01 seconds East along said Northern line of Pape Alley a distance of 131.00 feet to a second 3/4 inch steel rod in the Northern line of Pape Alley, and then from said steel rod continue North 05 degrees 45 minutes 00 seconds East, a distance of 110.98 feet to a point, the place of beginning, thence from said point at the place of beginning, North 05 degrees 45 minutes 00 seconds East, a distance of 20.00 feet to a point at the dividing line between Lot No. 8 and Lot No. 9 on said Corrective Plat; thence along said dividing line between Lot Nos. 8 and 9, North 84 degrees 15 minutes 00 seconds West, a distance of 65.50 feet to a point at the dividing line between Lot No. 4 and Lot No. 9 as shown on the Corrective Plat; thence along said dividing line between Lot No. 4 and Lot No. 9, South 05 degrees 44

minutes 58 seconds West, a distance of 20.00 feet to a point on the dividing line between Lot No. 10 and Lot No. 9 shown on said Corrective Plat; thence along said dividing line between Lot No. 10 and Lot No. 9, South 84 degrees 15 minutes 00 seconds East, a distance of 65.50 feet to a point, the place of BEGINNING.

TITLE TO SAID PREMISES IS VESTED IN Melinda L. Jaworskyj, by Deed from Mark E. Hughbanks, Single, dated 07/30/2004, recorded 08/02/2004, in Deed Book 3658, page 44.

Premises being: 140 West High Street, Gettysburg, PA 17325

Tax Parcel No. (16) 010-0217 | - 000

SEIZED and taken into execution as the property of **Melinda L. Jaworskyj** and to be sold by me.

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 15, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/14, 21 & 28

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Act of Assembly No. 295 of 1982, of the filing in the Office of the Secretary of Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on October 12, 2007, a certificate for the conduct of business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of "FLIGHTLINE REFINISHING" with its principal place of business at 725 Quaker Run Road, Aspers, Pennsylvania. The names and addresses of the persons owning or interested in said business are Gregory E. Snyder.

Jeffery M. Cook, Esq.  
Attorney At Law  
234 Baltimore Street  
Gettysburg, PA 17325

12/14

# Adams County Legal Journal

Vol. 49

December 21, 2007

No. 31, pp. 197-201

## **NEW ADVERTISING RATES EFFECTIVE 1/1/08**

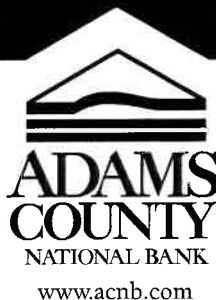
Decedent's Estate Notice	\$50.00
Corporation Notice	50.00
Fictitious Name	50.00
Change of Name	50.00
Guardianship Account	50.00
Trust Account	50.00

THE ABOVE FIXED PRICE LEGAL ADVERTISING RATES INCLUDE ONE PROOF OF PUBLICATION AND **MUST BE PAID FOR IN ADVANCE**. ALL OTHER LEGAL ADVERTISING WILL BE BILLED IN THE SAME AMOUNT CHARGED BY THE GETTYSBURG TIMES PLUS \$5.00 FOR PROOF OF PUBLICATION.

**PLEASE KEEP FOR FUTURE REFERENCE**

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makes a business of caring for  
other people's property.

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## ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published weekly by Adams County Bar Association, John W. Phillips, Esq., Editor and Business Manager.

Subscribers within Adams County should send subscriptions direct to the business office. Subscribers outside of Adams County should send subscriptions to Wm. W. Gaunt & Sons, Inc., 3011 Gulf Drive, Holmes Beach, FL 34217-2199. Postmaster: Send address changes to Adams County Legal Journal, 111 Baltimore Street, Room 305, Gettysburg, PA 17325.

Business Office – 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 337-9812

Periodicals postage paid at Gettysburg, PA 17325.

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-641 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of January, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain parcel of land lying and being situate in the Borough of Bonneauville, County of Adams, and Commonwealth of Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a point on the Southeastern right-of-way line of Carole Court (fifty (50) feet in width) at Lot No. 17 of the hereinafter referred to subdivision plan; thence along said Lot No. 17, South sixty-two (62) degrees eight (8) minutes East, one hundred (100) feet to a point at Lot No 21; thence along said Lot No. 21 and continuing further along Lot No. 20, South twenty-seven (27) degrees fifty-two (52) minutes West, seventy-five (75) feet to a point at Lot No. 19; thence along said Lot No. 19, North sixty-two (62) degrees eight (8) minutes West, one hundred one and five hundredths (101.05) feet to a point on the Southeastern right-of-way line for the aforementioned line of said Carole Court by a curve to the left whose radius is seven hundred twenty-one and four-tenths (721.4) feet, the long chord bearing of which is North twenty-nine (29) degrees twenty-four (24) minutes eighteen (18) seconds East and chord length of thirty-nine and one-tenth (39.1) feet to a point; thence along same North twenty-seven (27) degrees fifty-two (52) minutes East, thirty-five and ninety-two hundredths (35.92) feet to the point and place of BEGINNING, CONTAINING 7,513.7 square feet, more or less, and designated as Lot No. 18 on a plan of lots of Bonniefield, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 9, at Page 24, and subject to all legal highways, easements, right-of-way and restrictions of record.

PARCEL No. (6)9-32

BEING known and numbered as 4 Carole Court, Gettysburg, PA 17325.

BEING the same premises which Davidine Sirk, now Davidine Cool, by Deed dated April 7, 1995 and recorded April 17, 1995 in and for Adams County, Pennsylvania, in Deed Book Volume 1017, Page 99, granted and conveyed unto Davidine Cool and Howard H. Cool, Sr., her husband as tenants by the entireties.

SEIZED and taken into execution as the property of **Howard H. Cool, Sr. & Davidine Cool** and to be sold by me.

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 15, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/14, 21 & 28

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1099 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of January, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

The following described real property situate in the Borough of Carroll Valley, County of Adams, and Commonwealth of Pennsylvania, to wit:

ALL that certain tract of land situated, lying and being in Carroll Valley Borough, (formerly Liberty Township), Adams County, Pennsylvania, being Lot No. 64 in Section RH, bounded and described as follows:

BEGINNING at a point in the center of Mile Trail at Lot No. 63; thence by said

Lot South 2 degrees 37 minutes 20 seconds West, 225 feet to Lot No. 44; thence by said lot North 87 degrees 2 minutes 40 seconds West, 100 feet to Lot No. 65; thence by said lot North 2 degrees 37 minutes 20 seconds East, 225 feet to a point in the center of said Mile Trail; thence in said Mile Trail South 87 degrees 22 minutes 40 seconds East, 100 feet to the point and place of BEGINNING.

By fee simple deed from Charles H. Mort and Agnes Mort, husband and wife as set forth in Deed Book 1224, Page 0278 and recorded on 7/10/1996, Adams County records.

The source deed as stated above is the last record of vesting filed for this property. There have been no vesting changes since the date of the above referenced source.

TITLE TO SAID PREMISES IS VESTED IN Christopher C. Mart and Julie A. Mart, husband and wife, as tenants of an estate by the entireties, by Deed from Charles H. Mart and Agnes Mart, husband and wife, dated 07/11/1996, recorded 07/11/1996, in Deed Book 1224, Page 278.

Premises being: 57 Mile Trail, Fairfield, PA 17320

Tax Parcel No. (43) 041-0137-000

SEIZED and taken into execution as the property of **Christopher C. Mort & Julie A. Mort** and to be sold by me.

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 15, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/21, 28 & 1/4

## GETTYSBURG AUTO EXCHANGE ET AL VS. FREEDOM TWP. ZONING HEARING ET AL

1. Trial court's scope of review is limited to a determination of whether the Zoning Hearing Board committed an error of law or an abuse of discretion.

2. In reviewing the decision of an agency, the trial court should not substitute its judgment for that of the agency. Determinations concerning the weight and credibility of the testimony and evidence are properly left to the discretion of the board.

3. A use of land which lawfully existed prior to the enactment of a zoning ordinance, and which is maintained after the effective date of the zoning ordinance although it does not comply with the use restrictions applicable to the area in which it is situated, may lawfully and validly continue despite the prohibitions in the zoning ordinance.

4. To qualify as a continuation of an existing nonconforming use, the use under consideration must be sufficiently similar to the nonconforming use as not to constitute a new or different use.

5. In order to establish a prior nonconforming use, the land owner is required to provide objective evidence that the subject land was devoted to such use at the time the zoning ordinance was enacted. An accessory use cannot be the basis for the establishment of a nonconforming principle use. Nor will the manifestly casual use of a property by the owner thereof commit the premises to a nonconforming use status.

6. Evidence which depicts a sporadic, intermittent and imprecisely stated use is sufficient to be objective evidence of the precise extent, nature, time of creation and continuation of the nonconforming use as required by law.

In the Court of Common Pleas of Adams County, Pennsylvania,  
Civil, No. 06-S-51, GETTYSBURG AUTO EXCHANGE, LLC,  
AND WILLIAM C. STAKE VS. FREEDOM TOWNSHIP ZONING HEARING AND FREEDOM TOWNSHIP BOARD OF SUPERVISORS

Charles M. Suhr, Esq., for Appellants

James T. Yingst, Esq., for Appellee

Linus E. Fenicle, Esq., for Intervenor

George, Jr., December 13, 2006

### OPINION

Gettysburg Auto Exchange, LLC and William C. Stake (collectively referred to as "Stake")<sup>1</sup> appeal from the decision of the Freedom Township Zoning Hearing Board denying Stake's challenge of an enforcement notice issued against him by the Freedom

---

<sup>1</sup>Stake is the owner of the subject property and sole principle of Gettysburg Auto Exchange, LLC. Gettysburg Auto Exchange, LLC is a Pennsylvania limited liability corporation operating an auto auction business immediately adjacent to the subject property.

Township Zoning Officer. For the reasons set forth below, I affirm the decision of the Zoning Hearing Board and dismiss the appeal.

Stake is the owner of neighboring properties located along the Emmitsburg Road in Freedom Township, Adams County, Pennsylvania. On one property he operates an auto auction business ("auction property"). The second property, consisting of approximately 11 acres, borders the auction property and is currently improved with a house and barn ("Chronister property").<sup>2</sup> On July 11, 2005, the Freedom Township Zoning Officer sent Stake an enforcement notice advising him that use of the Chronister property for purposes related to the auto auction violated Section 305 of the Freedom Township Zoning Ordinance which prohibits the expansion of a non-conforming use to an adjoining property. Stake filed a timely appeal from the enforcement notice. At hearing, Stake did not dispute that the auction property was a nonconforming use under the Freedom Township Zoning Ordinance. Also, he did not challenge that the Chronister property was being used to store approximately 20-25 vehicles being held for auction and as a parking area for patrons one evening per week when auctions are held. Rather, he alleges that his use of the Chronister property is permitted on the basis that the Chronister property is also entitled to nonconforming use status.

In denying the appeal, the Zoning Hearing Board held that the Freedom Township Zoning Ordinance was adopted by the Township on June 27, 1996. The Board further determined that prior to adoption of the ordinance, the Chronister property was used primarily as a residential rental property. Although the Board acknowledged that vehicles were stored on the Chronister property from time to time, they specifically found that the vehicle storage was intermittent and varied in quantity. According to the findings of the Board, the vehicles on the property at this time were either the personal vehicles of the tenant or vehicles which would be sold by Mr. Chronister at other locations. The Board specifically found that there were neither sales of vehicles nor customer parking taking place at the Chronister property prior to the adoption of the zoning ordinance. The Board concluded that any vehicle use on the Chronister property prior to the

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<sup>2</sup>The property is more specifically identified on Adams County Tax Map E-17 as parcel 82 and was purchased by Stake on January 15, 2004 from Gary and Jean Chronister.



adoption of the zoning ordinance was an accessory use to the residence on the property as the property was not in any way affiliated with the auction business on the adjoining property and storage of vehicles on the property was sporadic and casual. Stake currently appeals to this Court arguing that the Board's decision was against the weight of the evidence in that the parking of vehicles on the Chronister property prior to adoption of the ordinance was a primary use of the property entitled to nonconforming status. In support of his argument, Stake argues that the Board abused its discretion in finding that the parking of vehicles on the Chronister property was intermittent and sporadic.

In analyzing the issue before the Court, I am guided by firmly established legal principles. Where, as here, the trial court does not take additional evidence, my scope of review is limited to a determination of whether the Zoning Hearing Board committed an error of law or an abuse of discretion. *Dudlik v. Upper Moreland Twp. Zoning Hearing Bd.*, 840 A.2d 1048 (Pa. Cmwlth. 2004). An abuse of discretion will be found only where the board's findings of fact are not supported by substantial evidence. *Kassouf v. Zoning Hearing Bd. of Scott Twp.*, 535 A.2d 261 (Pa. Cmwlth. 1987). Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Valley View Civic Association v. Zoning Bd. of Adjustment*, 462 A.2d 637 (Pa. 1983). In reviewing the decision of an agency, the trial court should not substitute its judgment for that of the agency. See *Popowsky v. Pennsylvania Public Utility Comm'n.*, 706 A.2d 1197 (Pa. 1997). Rather, determinations concerning the weight and credibility of the testimony and evidence are properly left to the discretion of the board. *Southeastern Chester County Refuse Auth. v. Zoning Hearing Bd. of London Grove Twp.*, 898 A.2d 680 (Pa. Cmwlth. 2006).

With these standards in mind, I find that the record contains substantial evidence to support the findings by the Board. Specifically, there is ample evidence on the record that prior to the adoption of the zoning ordinance, the Chronister property was used primarily as a residential rental unit. The record also supports the finding that the vehicles on the property were primarily personal vehicles of the tenants. Although other vehicles were placed at the property for Mr. Chronister's business purposes, storage of the vehicles was intermittent and varied in number of vehicles and time of storage.

Having found that the record supports the Board's factual findings, I find no legal error in the Board's application of the law. Stake suggests that he is entitled to use of the Chronister property due to the status as a nonconforming use which predated the zoning ordinance. Undoubtedly, a use of land which lawfully existed prior to the enactment of a zoning ordinance, and which is maintained after the effective date of the zoning ordinance although it does not comply with the use restrictions applicable to the area in which it is situated, may lawfully and validly continue despite the prohibitions in the zoning ordinance. See generally *Hanna v. Bd. of Adjustment*, 183 A.2d 539 (Pa. 1962). The benefit of legal nonconforming use status is available, however, only for the lawful use which existed on the land when the ordinance took effect. *Antonini v. Zoning Hearing Bd. of Marple Twp.*, 505 A.2d 1076 (Pa. Cmwlth. 1986). Thus, the nonconforming use which is within the orbit of protection of the law is a use which existed at the time of passage of the zoning ordinance and not a new or different nonconforming use. *Hanna*, 183 A.2d at 543-44.

To qualify as a continuation of an existing nonconforming use, the use under consideration must be sufficiently similar to the nonconforming use as not to constitute a new or different use. *Id.* It is the burden of the party seeking to prove the existence of a nonconforming use to establish both its existence and extent prior to the enactment of the ordinance at issue. *Smalley v. Zoning Hearing Bd. of Middletown Twp.*, 834 A.2d 535 (Pa. 2003). In order to establish a prior nonconforming use, the land owner is required to provide objective evidence that the subject land was devoted to such use at the time the zoning ordinance was enacted. *R. K. Kibblehouse Quarries v. Marlborough Twp. Zoning Hearing Bd.*, 630 A.2d 937, 941 (Pa. Cmwlth. 1993) *alloc. denied* 655 A.2d 996 (Pa. 1994). An accessory use cannot be the basis for the establishment of a nonconforming principle use. *Ashline v. Bristol Twp. Zoning Bd. of Adjustment*, 182 A.2d 531 (Pa. 1962). Nor will the manifestly casual use of a property by the owner thereof commit the premises to a nonconforming use status. *Id.*

In *Jones v. Twp. of North Huntingdon Zoning Hearing Bd.*, 467 A.2d 1206 (Pa. Cmwlth. 1983), the Commonwealth Court considered the identical issue on a substantially similar factual record. The appellant in *Jones* sought to escape the ramifications of enforcement of a zoning ordinance which prohibited the parking of commercial

vehicles in the residential zone in which the appellant's property was located. The appellant argued that he was entitled to the protections of a nonconforming use and was, therefore, lawfully able to continue parking commercial vehicles at his property. The trial court upheld the factual findings by the board that the evidence demonstrated only sporadic use of the property for the parking of commercial vehicles prior to the enactment of the zoning ordinance. After reviewing a summary of relevant testimony which is analogous to that before the Court, the Commonwealth Court upheld the trial court's denial of nonconforming use status. The *Jones* Court concluded that evidence which depicts a sporadic, intermittent and imprecisely stated use is insufficient to be objective evidence of the precise extent, nature, time of creation and continuation of the nonconforming use as required by law. *Jones*, 467 A.2d at 1208. Other appellate authority is in accord with this decision. See *Ashline*, *supra* (occasional use of a small portion of property for overflow from an auto salvage business which was casual is insufficient to establish nonconforming use); *Bevans v. Hilltown Twp.*, 457 A.2d 977 (Pa. Cmwlth. 1983) (the parking of several trucks at a residential premises from time to time insufficient to establish nonconforming use for parking lot facilities to accommodate an average of nine trucks daily).

Since the evidence fully supports the Board's factual conclusions, I cannot hold that the Board abused its discretion in concluding that the present owner's use was different and, therefore, not a continuation of any nonconforming use by the previous owner. Moreover, I find no error in the Board's application of the law to their factual findings. Accordingly, the attached Order is entered.

#### ORDER

AND NOW, this 13th day of December, 2006, the appeal of Gettysburg Auto Exchange, LLC and William C. Stake is denied. The decision of the Freedom Township Zoning Hearing Board is affirmed.

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-980 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of January, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot, piece or parcel of land, with the buildings and improvements thereon erected situate, lying and being in the Township of Tyrone, County of Adams and Commonwealth of Pennsylvania, as follows:

BEGINNING at a stone in or at the Western edge of the E Co. Road (T-564); thence in and along said E Co. Road North 27 degrees 12 minutes 04 seconds West 185.49 feet to a railroad spike in said E Co. Road; thence crossing said E Co. Road, through an iron pin set 25 feet from the beginning of this course and along Lot B in and upon the below-mentioned draft of survey and subdivision plan, North 82 degrees 58 minutes 32 seconds East, 561.03 feet to an iron pin (see note 5. in the below-mentioned draft of survey and subdivision plan) at corner of Lots B and C in and upon the below-mentioned draft of survey and subdivision plan; thence along Lot C in and upon the below-mentioned draft of survey and subdivision plan South 20 degrees 43 minutes 24 seconds East, 130.00 feet to an iron pin at corner of said Lot C and lands now or formerly of Andrew E. Burgess and Patricia A. Curtis; thence continuing along said lands of Burgess and Curtis South 77 degrees 48 minutes 02 seconds West, 530.00 feet to a stone in or at the Western edge of said E Co. Road (T-564), the point and place of BEGINNING.

BEING the same premises which Ronald L. Harris, Jr. and Sandra M. Smith, n/k/a, Sandra M. Harris by deed from dated 12/26/02 recorded 1/8/03 in Deed Book 2932 Page 307. Granted and conveyed unto Ronald L. Harris, Jr. and Sandra M. Harris their heirs and assigns.

Parcel ID # (40) H06-3A

Being Known As: 829 Company Farm Road, (Tyrone Township), Aspers, PA 17304.

SEIZED and taken into execution as the property of **Ronald L. Harris, Jr. & Sandra M. Harris** and to be sold by me.

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 15, 2008,

and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/14, 21 & 28

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1120 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of January, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in the Borough of Gettysburg, Adams County, Pennsylvania, as shown as Lot No. 9 on that certain 'Corrective As-Built Subdivision Plat' prepared by Robert A. Sharrh, PLS, for Frederick Douglass Townhouses, dated June 29, 1996, bearing Drawing Number E-293 (the 'Corrective Plat'), and recorded on or about July 16, 1996, in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Plat Book 69 at page 54, which Corrective Plat is herein incorporated by reference, and bounded and described as follows:

FROM a 3/4 inch steel rod in the Northern line of a twelve (12) foot wide pave alley known as Pape Alley and located at or near the Northeast corner of the intersection of Pape Alley and South Franklin Street, continues South 83 degrees 49 minutes 01 seconds East along said Northern line of Pape Alley a distance of 131.00 feet to a second 3/4 inch steel rod in the Northern line of Pape Alley, and then from said steel rod continue North 05 degrees 45 minutes 00 seconds East, a distance of 110.98 feet to a point, the place of beginning, thence from said point at the place of beginning, North 05 degrees 45 minutes 00 seconds East, a distance of 20.00 feet to a point at the dividing line between Lot No. 8 and Lot No. 9 on said Corrective Plat; thence along said dividing line between Lot Nos. 8 and 9, North 84 degrees 15 minutes 00 seconds West, a distance of 65.50 feet to a point at the dividing line between Lot No. 4 and Lot No. 9 as shown on the Corrective Plat; thence along said dividing line between Lot No. 4 and Lot No. 9, South 05 degrees 44

minutes 58 seconds West, a distance of 20.00 feet to a point on the dividing line between Lot No. 10 and Lot No. 9 shown on said Corrective Plat; thence along said dividing line between Lot No. 10 and Lot No. 9, South 84 degrees 15 minutes 00 seconds East, a distance of 65.50 feet to a point, the place of BEGINNING.

TITLE TO SAID PREMISES IS VESTED IN Melinda L. Jaworskyj, by Deed from Mark E. Hughbanks, Single, dated 07/30/2004, recorded 08/02/2004, in Deed Book 3658, page 44.

Premises being: 140 West High Street, Gettysburg, PA 17325

Tax Parcel No. (16) 010-0217 | - 000

SEIZED and taken into execution as the property of **Melinda L. Jaworskyj** and to be sold by me.

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 15, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/14, 21 & 28

## LEGAL NOTICE-ANNUAL MEETING

The annual meeting of the policyholders of the Protection Mutual Insurance Company of Littlestown will be held at the office located at 101 South Queen Street in Littlestown, PA, between the hours of 1:00 and 2:00 p.m., on January 12th, 2008 to elect directors and to transact any other business properly presented.

Attest: Marilyn Q. Butt  
President & Treasurer; Director

12/7, 14, 21 & 28

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1080 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of January, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those three (3) tracts of land situate, lying and being along the Southeastern side of the State Highway leading from Taneytown to Littlestown, in Germany Township, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

TRACT NO. 1:

BEGINNING at a point along the Southeastern side of the aforesaid State Road leading from Taneytown to Littlestown at corner of lands now or formerly of W. B. Shryock, which said point is two hundred fifty (250) feet in a Northeastern direction along the Southeastern side of the aforesaid State Road from an iron pin located at corner of lands now or formerly of Jacob Bucher and the original tract of land containing three (3) acres and seventy-one and three-tenths (71.3) perches, formerly owned by the said W. B. Shryock, of which said original tract this lot of ground was a part; thence along the Southeastern side of the aforesaid State Road, North thirty-nine (39) degrees, four (4) minutes East, one hundred thirty (130) feet to a point along the Southeastern side of the aforesaid State Road at corner of lands now or formerly of the said W. B. Shryock; thence along said last mentioned lands, South fifty-seven (57) degrees forty-two (42) minutes East, two hundred forty-six and eight-tenths (246.8) feet to lands now or formerly of Israel Crouse; thence along said last mentioned lands, South thirty-nine (39) degrees four (4) minutes West, one hundred (100) feet to corner of other lands now or formerly of W. B. Shryock; thence along said last mentioned lands, North sixty-four (64) degrees eight (8) minutes West, two hundred fifty-two (252) feet to a point along the Southeastern side of the aforesaid State Road, the place of BEGINNING.

CONTAINING one hundred seven (107) perches, more or less.

The above description is obtained from a draft of survey made by LeRoy H. Winebrenner, County Surveyor, on September 23, 1938.

TRACT NO. 2:

ALL that lot of land situate on the Southeast side of Pennsylvania Route No. 194 and fronting ninety (90) feet on

said Pennsylvania Route No. 194 and extending in a Southeasterly direction two hundred forty-five (245) feet to the rear of said lot.

TRACT NO. 3:

BEGINNING at a steel pin on the Southeastern side of Pennsylvania State Route No. 194 at the Northwestern corner of lands now or formerly of Herbert Nichols; thence North 39 degrees 4 minutes East, 50 feet to a steel pin at lands now or formerly of James Duttera; thence by said last mentioned lands, South 64 degrees 8 minutes East, 235.25 feet to a steel pin at lands now or formerly of Ivan Huff; thence by said last mentioned lands, South 39 degrees 4 minutes West, 50 feet to a steel pin at lands now or formerly of Herbert Nichols; thence by said last mentioned lands, North 64 degrees 8 minutes West, 235.25 feet to a steel pin, the place of BEGINNING.

CONTAINING 0.2629 acres.

The above description was taken from a draft of survey prepared by J. H. Rife, R. E. dated June 19, 1962.

TITLE TO SAID PREMISES IS VESTED IN Jason S. Williams and Chatrese Williams, husband and wife, as tenants of an estate by the entireties, by Deed from John Raymond Long and Sharon Long, husband and wife, dated 11/16/2006, recorded 11/21/2006, in Deed Book 4649, page 208.

Premises being: 1184 Frederick Pike, Littlestown, PA 17340

Tax Parcel No. (15) I 17-0125-000

SEIZED and taken into execution as the property of **Jason S. Williams & Chatrese Williams** and to be sold by me.

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 15, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/21, 28 & 1/4

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 business corporation to be organized under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as amended.

The name of the corporation is KIME'S CIDER MILL, INC.

Puhl, Eastman & Thrasher  
220 Baltimore Street  
Gettysburg, PA 17325

12/21

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN pursuant to the provisions of Sec. 311 of the Act of Assembly of December 16, 1982, 54 PA C.S.A. 311, that an application for registration of a fictitious name was filed on November 26, 2007 with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, for the conducting of a business under the fictitious name of MMPi with its principal office or place of business at 105 Skylark Trail, Fairfield, PA 17320. The names and addresses of all persons owning or interested in said business are: Mark Maas of 105 Skylark Trail, Fairfield, PA 17320.

Matthew R. Battersby, Esq.  
Battersby Law Office  
20 W. Main St., P.O. Box 215  
Fairfield, PA 17320  
Attorney for Applicant

12/21

**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 EMOLAH V. ARNOLD, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Gwyn M. Pfautz a/k/a Gwyn M. Williams, c/o Randall K. Miller, Esq., 1255 South Market Street, Suite 102, Elizabethtown, PA 17022

Attorney: Randall K. Miller, Esq., 1255 South Market Street, Suite 102, Elizabethtown, PA 17022

**ESTATE OF MARJORIE C. BARNES, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executor: John A. Barnes, P.O. Box 62, Cashtown, PA 17310

Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

**ESTATE OF GLENNA G. BOYER, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Executors: Kenneth R. Boyer, 285 Montclair Road, Gettysburg, PA 17325; Anna C. Kessel, 136 North Stratton Street #6, Gettysburg, PA 17325

Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

**ESTATE OF MARIE M. McCULLOUGH, DEC'D**

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrices: Deborah A. Riddlemoser, 28 Fiohrs Church Road, Biglerville, PA 17307; Kathleen E. Motter a/k/a Kathleen E. Cook, 212 E. Middle Street, Gettysburg, PA 17325

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF MARY A. WALKER a/k/a MARY ALICE WALKER, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: John H. Deatrick, Jr., c/o Alan M. Cashman, Esq., 141 Broadway, Suite 230, Hanover, PA 17331

Attorney: Alan M. Cashman, Esq., 141 Broadway, Suite 230, Hanover, PA 17331

**SECOND PUBLICATION****ESTATE OF WILLIAM E. BOWERS, DEC'D**

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Sandra L. Bowers, 66 Crouse Park, Littlestown, PA 17340

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

**ESTATE OF MILDRED M. DEWEES a/k/a M. MILDRED DEWEES, DEC'D**

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Co-Executors: Ronald R. Dewees, P.O. Box 228, Biglerville, PA 17307; Donna M. Asper, 2574 Biglerville Road, Gettysburg, PA 17325; Barry F. Dewees, 201 Fair Avenue, Hanover, PA 17331

Attorney: John R. White, Campbell & White, P.C., 112 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF WILLIAM B. LEPPRO, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Personal Representative: Allen W. Leppo, 1245 N. Moulstown Rd., Hanover, PA 17331

Attorney: G. Steven McKonly, Esq., 119 Baltimore Street, Hanover, PA 17331

**ESTATE OF CLYDE E. ORNER, DEC'D**

Late of Menallen Township, Adams County, Pennsylvania

Executor: Steven C. Knouse, 500 Excelsior Road, Biglerville, PA 17307

Attorney: John R. White, Esq., Campbell & White, P.C., 112 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF LORRINE M. ROHRBAUGH a/k/a LORRAINE M. ROHRBAUGH, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Co-Executors: Sandra L. Warner and Gerald M. Warner, 66 Oak Hills Drive, Hanover, PA 17331

Attorney: Douglas H. Gent, Esq., Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

**THIRD PUBLICATION****ESTATE OF RACHEL C. LAWVER a/k/a RACHAEL C. LAWVER, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Executor: Mr. Richard L. Lawver, 1547 Fairview Avenue, Chambersburg, PA 17202

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF THOMAS L. PHILLIPS, JR., DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Thomas R. Phillips, 4953 Gloucester Dr., Doylestown, PA 18902

Attorney: Phillips & Phillips, 101 W. Middle St., Gettysburg, PA 17325

**ESTATE OF DOROTHY A. SCHUCHART, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Executor: Earl J. Schuchart, Jr., 67 N. Water St., Spring Grove, PA 17362

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

**ESTATE OF LEROY EDWARD STARNER, DEC'D**

Late of Huntington Township, Adams County, Pennsylvania

Leroy E. Stamer, Jr., 640 Shippensburg Road, Biglerville, PA 17307

Attorney: David K. James, III, Esq., 234 Baltimore St., Gettysburg, PA 17325



# Adams County Legal Journal

Vol. 49

December 28, 2007

No. 32, pp. 202-207

## ***NEW ADVERTISING RATES EFFECTIVE 1/1/08***

Decedent's Estate Notice	\$50.00
Corporation Notice	50.00
Fictitious Name	50.00
Change of Name	50.00
Guardianship Account	50.00
Trust Account	50.00

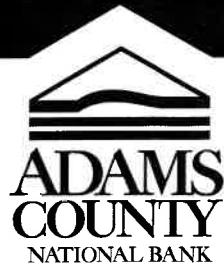
THE ABOVE FIXED PRICE LEGAL ADVERTISING RATES INCLUDE ONE PROOF OF PUBLICATION AND **MUST BE PAID FOR IN ADVANCE**. ALL OTHER LEGAL ADVERTISING WILL BE BILLED IN THE SAME AMOUNT CHARGED BY THE GETTYSBURG TIMES PLUS \$5.00 FOR PROOF OF PUBLICATION.

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## ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published weekly by Adams County Bar Association, John W. Phillips, Esq., Editor and Business Manager.

Subscribers within Adams County should send subscriptions direct to the business office. Subscribers outside of Adams County should send subscriptions to Wm. W. Gaunt & Sons, Inc., 3011 Gulf Drive, Holmes Beach, FL 34217-2199. Postmaster: Send address changes to Adams County Legal Journal, 111 Baltimore Street, Room 305, Gettysburg, PA 17325.

Business Office – 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 337-9812

Periodicals postage paid at Gettysburg, PA 17325.

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-641 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of January, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain parcel of land lying and being situate in the Borough of Bonneauville, County of Adams, and Commonwealth of Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a point on the Southeastern right-of-way line of Carole Court (fifty (50) feet in width) at Lot No. 17 of the hereinafter referred to subdivision plan; thence along said Lot No. 17, South sixty-two (62) degrees eight (8) minutes East, one hundred (100) feet to a point at Lot No 21; thence along said Lot No. 21 and continuing further along Lot No. 20, South twenty-seven (27) degrees fifty-two (52) minutes West, seventy-five (75) feet to a point at Lot No. 19; thence along said Lot No. 19, North sixty-two (62) degrees eight (08) minutes West, one hundred one and five hundredths (101.05) feet to a point on the Southeastern right-of-way line for the aforementioned line of said Carole Court by a curve to the left whose radius is seven hundred twenty-one and four-tenths (721.4) feet, the long chord bearing of which is North twenty-nine (29) degrees twenty-four (24) minutes eighteen (18) seconds East and chord length of thirty-nine and one-tenth (39.1) feet to a point; thence along same North twenty-seven (27) degrees fifty-two (52) minutes East, thirty-five and ninety-two hundredths (35.92) feet to the point and place of BEGINNING, CONTAINING 7,513.7 square feet, more or less, and designated as Lot No. 18 on a plan of lots of Bonniefield, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 9, at Page 24, and subject to all legal highways, easements, right-of-way and restrictions of record.

PARCEL No. (6)9-32

BEING known and numbered as 4 Carole Court, Gettysburg, PA 17325.

BEING the same premises which Davidine Sirk, now Davidine Cool, by Deed dated April 7, 1995 and recorded April 17, 1995 in and for Adams County, Pennsylvania, in Deed Book Volume 1017, Page 99, granted and conveyed unto Davidine Cool and Howard H. Cool, Sr., her husband as tenants by the entireties.

SEIZED and taken into execution as the property of **Howard H. Cool, Sr. & Davidine Cool** and to be sold by me.

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 15, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/14, 21 & 28

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1099 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of January, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

The following described real property situate in the Borough of Carroll Valley, County of Adams, and Commonwealth of Pennsylvania, to wit:

ALL that certain tract of land situated, lying and being in Carroll Valley Borough, (formerly Liberty Township), Adams County, Pennsylvania, being Lot No. 64 in Section RH, bounded and described as follows:

BEGINNING at a point in the center of Mile Trail at Lot No. 63; thence by said

Lot South 2 degrees 37 minutes 20 seconds West, 225 feet to Lot No. 44; thence by said lot North 87 degrees 2 minutes 40 seconds West, 100 feet to Lot No. 65; thence by said lot North 2 degrees 37 minutes 20 seconds East, 225 feet to a point in the center of said Mile Trail; thence in said Mile Trail South 87 degrees 22 minutes 40 seconds East, 100 feet to the point and place of BEGINNING.

By fee simple deed from Charles H. Mort and Agnes Mort, husband and wife as set forth in Deed Book 1224, Page 0278 and recorded on 7/10/1996, Adams County records.

The source deed as stated above is the last record of vesting filed for this property. There have been no vesting changes since the date of the above referenced source.

TITLE TO SAID PREMISES IS VESTED IN Christopher C. Mart and Julie A. Mart, husband and wife, as tenants of an estate by the entireties, by Deed from Charles H. Mart and Agnes Mart, husband and wife, dated 07/11/1996, recorded 07/11/1996, in Deed Book 1224, Page 278.

Premises being: 57 Mile Trail, Fairfield, PA 17320

Tax Parcel No. (43) 041-0137-000

SEIZED and taken into execution as the property of **Christopher C. Mort & Julie A. Mort** and to be sold by me.

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 15, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/21, 28 & 1/4

## BOYD VS. NATIONAL RV, INC. ET AL

1. When personal injuries to a person and damages to his property arise from the same cause and the same tortious act, the person who has sustained such personal injuries and property damage *must* seek recovery for both in a single action and, if separate actions are instituted for each category of damages and a judgment is rendered in one of such actions, the entry of such judgment has the effect of *res judicata* and bars recovery in the other action.

2. A subrogee derives his right to recovery from the injured party; the prohibition against splitting of actions is no less binding where the interest of a subrogee is involved.

3. Insurer and insured cannot bring separate actions without running afoul of our rules on joinder as well as the doctrine of *res judicata*.

4. When the defendant improperly raises the statute of limitations as a defense in a preliminary objection, then plaintiff's proper response should be to object to the use of raising this defense as a preliminary objection.

5. The State of Pennsylvania follows the Uniform Commercial Code (U.C.C.) for the sale of goods. According to the U.C.C., the limitations period for a breach of implied warranty claim is four years, and the period begins at the tender of delivery.

6. Pennsylvania has historically adhered to the doctrine of *depechage*, which allows the Court to apply the law of different jurisdictions to different issues within the same case.

7. *Depechage* is defined as "the process whereby different issues in a single case arising out of a single set of facts are decided according to the law of different states." It follows from the principle of *depechage* that a Court's application of one state's law to one issue in a case does not preclude the Court from deciding that another state's law governs another issue in the same case.

8. Because the suit is being brought in Pennsylvania, Pennsylvania has procedural power to determine the choice of law. Therefore, the Court will apply Pennsylvania's choice of law rules to determine what state's laws should be applied to the issue.

9. Pennsylvania's choice of law analysis consists of two parts. First, the court must look to see whether a false conflict exists. If there is no false conflict, the court determines which state has the greater interest in the application of its law.

10. A false conflict exists where the accident is fortuitous and the state where the accident occurred has no interest in the regulatory standard at issue. Where the site of an accident is not fortuitous, the place of injury assumes much greater importance, and in some instances may be determinative.

11. Because the issue is one of tort law the place of contracting becomes virtually irrelevant.

12. This Court does find it necessary to draw a distinction between the claims for the loss of deductible and unpaid loan and the claims to "other property" because such a distinction is made in the objection itself.

13. One situation in which the economic loss doctrine will not be applied is when the plaintiff has sustained personal injury or property damage resulting from a "sudden or dangerous" occurrence.

14. Recovery in tort is barred in product liability actions between commercial enterprises where the only damage alleged is to the product itself, whether or not the defect posed a risk of other damage or injury or manifested itself in a sudden and calamitous occurrence.

15. Specific claims for loss of deductible and unpaid loan will not be permitted in a strict liability action.

16. Where a plaintiff avers the existence of a written agreement and relies upon it to establish his cause of action; a defendant may properly annex that agreement without creating an impermissible speaking demurrer since the agreement is a factual matter arising out of the complaint.

In the Court of Common Pleas of Adams County, Pennsylvania,  
Civil No. 06-S-720, JAMES BOYD AND DESIREE BOYD VS.  
NATIONAL RV, INC., INTERMOUNTAIN SPORTS, INC.,  
WYOMING MACHINERY COMPANY, AND AL-MAR RV, INC.,  
D/B/A KEYSTONE RV CENTER

Girard E. Rickards, Esq., for Plaintiff

Avrum Levicoft, Esq., Joseph F. Butcher, Esq., Keith R. Mason,  
Esq., Intermountain Sports, Inc., for Defendants

Bigham, J., December 15, 2006

## OPINION

### STATEMENT OF FACTS

James and Desiree Boyd (“Plaintiffs”) purchased a new 2001 National RV Tradewinds motor home (“RV”) from Intermountain Sports in Salt Lake City, Utah for \$176,770.48 on July 17, 2001. The RV was manufactured by National RV, Inc. (“NRV”), the power train and engine were manufactured by Freightliner Custom Chassis Corporation, and NRV modified the exhaust system and replaced a section of rigid exhaust pipe with a section of flexible exhaust pipe. Between October 2001 and October 2003, Plaintiffs took the RV to Al-Mar RV, Inc. d/b/a Keystone RV Center (“Keystone”) on seven different occasions for service. In July 2003, Plaintiffs were vacationing in Wyoming and upon experiencing engine trouble took it to Wyoming Machinery Co. (“Wyoming”) for repair. On July 2, 2004, Plaintiffs’ RV caught fire approximately eight miles from their home. Plaintiffs’ RV and all of its contents were destroyed by the fire. Whereby Plaintiffs seek to recover damages for uninsured damages, loss of their deductible, as well as an unpaid loan on the RV under the contract law theories of Breach of Warranties (both express and implied) as well as the tort law theories of Strict Products Liability and Negligence.

Plaintiffs commenced this action on June 29, 2006, by filing a Writ of Summons with the Prothonotary’s office against NRV,

Intermountain Sports, Inc., Wyoming, and Keystone (collectively "Defendants"). Defendants by and through NRV filed a Praecipe for Rule to File Complaint with the Prothonotary's office and a Rule was granted on July 19, 2006. On August 18, 2006 a complaint was filed.

Defendant NRV filed Preliminary Objections on September 6, 2006 and filed their Supporting Brief concurrently therewith. The Preliminary Objections raised are:

1. Plaintiffs improperly split their causes of action against NRV; or
2. Plaintiffs' complaint is Legally Insufficient or is barred by the Pendency of a Prior Action; and
3. claims founded upon Implied Warranties are Barred by the Statute of Limitations;
4. tort claims for economic loss are barred by Pennsylvania's Economic Loss Doctrine; and
5. failure to state a claim under NRV's Express Limited Warranty.

Defendant Keystone filed Preliminary Objections on September 7, 2006 incorporating by reference NRV's Preliminary Objections and Brief in Support as their own.<sup>1</sup> On September 11, 2006, Defendant Wyoming filed Preliminary Objections and Brief in Support also incorporating by reference NRV's Preliminary Objections and Brief in Support as their own. On October 4, 2006, Plaintiffs filed a Brief in Opposition to Preliminary Objections and Defendants subsequently filed a Reply to Plaintiffs Brief on October 16, 2006.

## DISCUSSION

### IMPROPERLY SPLIT THEIR CAUSES OF ACTION

Defendants argue that the Plaintiffs have improperly split their causes of action against Defendants because Plaintiffs' insurance carrier (Nationwide) has brought two actions seeking recovery from Defendants and now Plaintiffs have brought a subsequent action asserting identical causes of action however, seeking different portions of damages. Defendants argue that the rule against splitting

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<sup>1</sup>Keystone had two preliminary objections of their own, but because they were the same as NRV's they were also incorporated together.

causes of action is no less applicable in the subrogor-subrogee context. Defendants also argue that Plaintiffs do not offer any legal authority of their own but instead only try to disprove Defendants' argument claiming that *Spinelli v. Maxwell*, 243 A.2d 425 (1968) deals only with *res judicata* and not with splitting causes of action. However, Defendants assert the distinction made by Plaintiffs between *res judicata* and splitting causes of action is impractical.

Plaintiffs argue they have not split their causes of action because Plaintiffs are not parties to the other actions against Defendants but instead that their insurance carrier (Nationwide) is the Plaintiff in the other actions. Plaintiffs argue that Defendants' cited cases are distinguishable from the case at hand on the basis that those cases were limited to *res judicata*.

A plaintiff's failure to join a cause of action that arises from the *same transaction or occurrence* that gives rise to the cause of action upon which the plaintiff is suing and that involves the same person, will be deemed by a court to be a waiver of that cause of action as against all parties to the suit.

2 Goodrich-Anram 2d, § 1020(d):5 (emphasis added).

The rule against splitting causes of action is practical because it safeguards defendants from being subjected to multiple suits by the same person for a single tort; it avoids a multiplicity of suits; and it provides a simple and direct method of determining all the claims of an individual arising from the same tortious act. *Spinelli v. Maxwell*, 243 A.2d 425, 427 (1968).

When personal injuries to a person and damages to his property arise from the same cause and the same tortious act, the person who has sustained such personal injuries and property damage *must* seek recovery for both in a single action and, if separate actions are instituted for each category of damage and a judgment is rendered in one of such actions, the entry of such judgment has the effect of *res judicata* and bars recovery in the other action. Such is the view of a substantial majority of jurisdictions in the United States, and to this view Pennsylvania has long adhered.

*Spinelli* at 427, emphasis added.

“[T]he rule prohibiting the splitting of a cause of action [is] unaffected by the presence of the insurance carrier in the action as ‘subrogee’.” *Id* at 428. “A subrogee derives his right to recovery from the injured party; the prohibition against splitting of actions is no less binding where the interest of a subrogee is involved.” *Travelers Ins. Co. v. Hartford Accident & Indemnity Co.*, 294 A.2d 913, 915 (1972) citing to *Moltz, to Use of Royal Indem. Co. v. Sherwood Bros. Inc.*, 276 A.82 (Pa. Super. 1935). Insurer and insured cannot bring separate actions without “running afoul of our rules on joinder as well as the doctrine of *res judicata*.” *Allstate Ins. Co. v. Clarke*, 527 A.2d 1021, 1026 (Pa. Super. 1987). Because a subrogee derives his or her right to recovery from an injured party, the prohibition against splitting up actions is no less binding where the interest of a subrogee is involved., 2 Goodrich-Anram 2d, § 1020(d):5, citing to *Nationwide Ins. Co. v. Montefour*, 36 Pa. D.&C. 3d 225, (1985).

The Court agrees with Defendants and hold that Plaintiffs have improperly split their causes of action. Therefore, the Court will sustain Defendants’ preliminary objection for improperly splitting causes of action.

### **Prior Pending Action**

Defendants have pleaded in the alternative to improperly splitting causes of action that the claims should be dismissed due to a prior pending action. Because the Court has determined that there has been an improper splitting of causes of action, the issue of prior pending action becomes moot and therefore will be dismissed.

### **STATUTE OF LIMITATIONS**

Defendants argue that Plaintiffs’ claim under the theory of an implied warranty must fail because the statute of limitations period to bring such a claim has passed.

Plaintiffs argue that the statute of limitations is an affirmative defense and was improperly raised by Defendants as a preliminary objection. “The defense of the bar of the statute of frauds or statute of limitations can be asserted only in a responsive pleading as new matter under Rule 1030.” Pa.R.C.P. 1028(4), Note. Plaintiffs argue that the reason for not resolving the issue of statute of limitations by preliminary objection is the time period may be tolled by the discov-

ery rule or fraudulent concealment and that these doctrines apply in this case.

At the outset, this Court recognizes that the statute of limitations defense should be raised as “new matter” in a responsive pleading, rather than being raised as a preliminary objection. Pa.R.C.P. 1030(a). When the Defendant improperly raises the statute of limitations as a defense in a preliminary objection, then Plaintiff’s proper response should be to object to the use of raising this defense as a preliminary objection. *Farinacci v. Beaver County Industrial Dev. Auth.*, 511 A.2d 757, 759 (Pa. 1986)(citations omitted). However, this Court will determine the merits of the statute of limitations defense when raised as a preliminary objection because the issue has already been briefed and considered by the Court. See *Lamp v. Heyman*, 366 A.2d 882 (Pa. 1976); *Farinacci v. Beaver County Industrial Dev. Auth.*, 511 A.2d 757 (Pa.1986); *Cooper v. Dowingtown School Dist.*, 357 A.2d 619, 621 (Pa. Super.1976).

Both the State of Pennsylvania and the State of Utah follow the Uniform Commercial Code (U.C.C.) for the sale of goods. According to the U.C.C., the limitations period for a breach of implied warranty claim is four years, and the period begins at the tender of delivery. 13 Pa.C.S. § 2725; Utah Code Ann § 70 A-2-725. Here, delivery took place on or about July 17, 2001 and the limitations period would therefore begin to run on that day. The limitations period would then end on or about July 17, 2005. Because Plaintiffs did not file a Writ of Summons commencing suit until June 29, 2006, after the limitations period had already expired, Plaintiffs’ claims under the theory of breach of implied warranty are barred by the statute of limitations.

*Continued to next issue (1/4/2008)*

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-980 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of January, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot, piece or parcel of land, with the buildings and improvements thereon erected situate, lying and being in the Township of Tyrone, County of Adams and Commonwealth of Pennsylvania, as follows:

BEGINNING at a stone in or at the Western edge of the E Co. Road (T-564); thence in and along said E Co. Road North 27 degrees 12 minutes 04 seconds West 185.49 feet to a railroad spike in said E Co. Road; thence crossing said E Co. Road, through an iron pin set 25 feet from the beginning of this course and along Lot B in and upon the below-mentioned draft of survey and subdivision plan, North 82 degrees 58 minutes 32 seconds East, 561.03 feet to an iron pin (see note 5. in the below-mentioned draft of survey and subdivision plan) at corner of Lots B and C in and upon the below-mentioned draft of survey and subdivision plan; thence along Lot C in and upon the below-mentioned draft of survey and subdivision plan South 20 degrees 43 minutes 24 seconds East, 130.00 feet to an iron pin at corner of said Lot C and lands now or formerly of Andrew E. Burgess and Patricia A. Curtis; thence continuing along said lands of Burgess and Curtis South 77 degrees 48 minutes 02 seconds West, 530.00 feet to a stone in or at the Western edge of said E Co. Road (T-564), the point and place of BEGINNING.

BEING the same premises which Ronald L. Harris, Jr. and Sandra M. Smith, n/k/a, Sandra M. Harris by deed from dated 12/26/02 recorded 1/8/03 in Deed Book 2932 Page 307. Granted and conveyed unto Ronald L. Harris, Jr. and Sandra M. Harris their heirs and assigns.

Parcel ID # (40) H06-3A

Being Known As: 829 Company Farm Road, (Tyrone Township), Aspers, PA 17304.

SEIZED and taken into execution as the property of **Ronald L. Harris, Jr. & Sandra M. Harris** and to be sold by me.

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 15, 2008,

and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/14, 21 & 28

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1120 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of January, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in the Borough of Gettysburg, Adams County, Pennsylvania, as shown as Lot No. 9 on that certain 'Corrective As-Built Subdivision Plat' prepared by Robert A. Sharrah, PLS, for Frederick Douglass Townhouses, dated June 29, 1996, bearing Drawing Number E-293 (the 'Corrective Plat'), and recorded on or about July 16, 1996, in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Plat Book 69 at page 54, which Corrective Plat is herein incorporated by reference, and bounded and described as follows:

FROM a 3/4 inch steel rod in the Northern line of a twelve (12) foot wide pave alley known as Pape Alley and located at or near the Northeast corner of the intersection of Pape Alley and South Franklin Street, continues South 83 degrees 49 minutes 01 seconds East along said Northern line of Pape Alley a distance of 131.00 feet to a second 3/4 inch steel rod in the Northern line of Pape Alley, and then from said steel rod continue North 05 degrees 45 minutes 00 seconds East, a distance of 110.98 feet to a point, the place of beginning, thence from said point at the place of beginning, North 05 degrees 45 minutes 00 seconds East, a distance of 20.00 feet to a point at the dividing line between Lot No. 8 and Lot No. 9 on said Corrective Plat; thence along said dividing line between Lot Nos. 8 and 9, North 84 degrees 15 minutes 00 seconds West, a distance of 65.50 feet to a point at the dividing line between Lot No. 4 and Lot No. 9 as shown on the Corrective Plat; thence along said dividing line between Lot No. 4 and Lot No. 9, South 05 degrees 44

minutes 58 seconds West, a distance of 20.00 feet to a point on the dividing line between Lot No. 10 and Lot No. 9 shown on said Corrective Plat; thence along said dividing line between Lot No. 10 and Lot No. 9, South 84 degrees 15 minutes 00 seconds East, a distance of 65.50 feet to a point, the place of BEGINNING.

TITLE TO SAID PREMISES IS VESTED IN Melinda L. Jaworskyj, by Deed from Mark E. Hughbanks, Single, dated 07/30/2004, recorded 08/02/2004, in Deed Book 3658, page 44.

Premises being: 140 West High Street, Gettysburg, PA 17325

Tax Parcel No. (16) 010-0217 I - 000

SEIZED and taken into execution as the property of **Melinda L. Jaworskyj** and to be sold by me.

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 15, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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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.

12/14, 21 & 28

## LEGAL NOTICE--ANNUAL MEETING

The annual meeting of the policyholders of the Protection Mutual Insurance Company of Littlestown will be held at the office located at 101 South Queen Street in Littlestown, PA, between the hours of 1:00 and 2:00 p.m., on January 12th, 2008 to elect directors and to transact any other business property presented.

Attest: Marilyn Q. Butt  
President & Treasurer; Director

12/7, 14, 21 & 28



## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1080 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of January, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those three (3) tracts of land situate, lying and being along the Southeastern side of the State Highway leading from Taneytown to Littlestown, in Germany Township, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

## TRACT NO. 1:

BEGINNING at a point along the Southeastern side of the aforesaid State Road leading from Taneytown to Littlestown at corner of lands now or formerly of W. B. Shryock, which said point is two hundred fifty (250) feet in a Northeastern direction along the Southeastern side of the aforesaid State Road from an iron pin located at corner of lands now or formerly of Jacob Bucher and the original tract of land containing three (3) acres and seventy-one and three-tenths (71.3) perches, formerly owned by the said W. B. Shryock, of which said original tract this lot of ground was a part; thence along the Southeastern side of the aforesaid State Road, North thirty-nine (39) degrees, four (4) minutes East, one hundred thirty (130) feet to a point along the Southeastern side of the aforesaid State Road at corner of lands now or formerly of the said W. B. Shryock; thence along said last mentioned lands, South fifty-seven (57) degrees forty-two (42) minutes East, two hundred forty-six and eight-tenths (246.8) feet to lands now or formerly of Israel Crouse; thence along said last mentioned lands, South thirty-nine (39) degrees four (4) minutes West, one hundred (100) feet to corner of other lands now or formerly of W. B. Shryock; thence along said last mentioned lands, North sixty-four (64) degrees eight (8) minutes West, two hundred fifty-two (252) feet to a point along the Southeastern side of the aforesaid State Road, the place of BEGINNING.

CONTAINING one hundred seven (107) perches, more or less.

The above description is obtained from a draft of survey made by LeRoy H. Winebrenner, County Surveyor, on September 23, 1938.

## TRACT NO. 2:

ALL that lot of land situate on the Southeast side of Pennsylvania Route No. 194 and fronting ninety (90) feet on

said Pennsylvania Route No. 194 and extending in a Southeasterly direction two hundred forty-five (245) feet to the rear of said lot.

## TRACT NO. 3:

BEGINNING at a steel pin on the Southeastern side of Pennsylvania State Route No. 194 at the Northwestern corner of lands now or formerly of Herbert Nichols; thence North 39 degrees 4 minutes East, 50 feet to a steel pin at lands now or formerly of James Duttera; thence by said last mentioned lands, South 64 degrees 8 minutes East, 235.25 feet to a steel pin at lands now or formerly of Ivan Huff; thence by said last mentioned lands, South 39 degrees 4 minutes West, 50 feet to a steel pin at lands now or formerly of Herbert Nichols; thence by said last mentioned lands, North 64 degrees 8 minutes West, 235.25 feet to a steel pin, the place of BEGINNING.

CONTAINING 0.2629 acres.

The above description was taken from a draft of survey prepared by J. H. Rife, R. E. dated June 19, 1962.

TITLE TO SAID PREMISES IS VESTED IN Jason S. Williams and Chatarese Williams, husband and wife, as tenants of an estate by the entireties, by Deed from John Raymond Long and Sharon Long, husband and wife, dated 11/16/2006, recorded 11/21/2006, in Deed Book 4649, page 208.

Premises being: 1184 Frederick Pike, Littlestown, PA 17340

Tax Parcel No. (15) 117-0125-000

SEIZED and taken into execution as the property of **Jason S. Williams & Chatarese Williams** and to be sold by me.

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 15, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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12/21, 28 & 1/4

## 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 7, 2008, at 9:00 a.m.

**WORLEY**—Orphans' Court Action Number OC-129-07. The First and Final Account of Mariam G. Gladfelter and James D. Worley, Co-Executors of the Estate of George S. Worley, deceased, late of Union Township, Adams County, Pennsylvania.

**ROHRBAUGH**—Orphans' Court Action Number OC-131-07. The First and Final Account of Mae Louise Wentz, George W. Rohrbaugh, Jr., and Mary Katie Strausbaugh, Executors of the Estate of Edna M. Rohrbaugh, deceased, late of Oxford Township, Adams County, Pennsylvania.

Kelly A. Lawver  
Clerk of Courts

12/28 & 1/4

## INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Nonprofit Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of obtaining a Certificate of Incorporation under the Nonprofit Corporation Law of 1988.

The name of the proposed nonprofit corporation is WILLIAMS FIELD HOMEOWNERS ASSOCIATION, INC.

The purpose for which it will be organized is: To exercise the rights and duties of the Association designated to operate the Williams Field Subdivision, a Planned Community, under the provisions of the PA Planned Community Act, situated in Germany Township, Adams County, Pennsylvania.

Robert L. McQuaide  
McQuaide Law Office  
Suite 204  
18 Carlisle Street  
Gettysburg, PA 17325

12/28

## 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 CHARLES F. KLINGER  
a/k/a CHARLES FRAZIER KLINGER,  
DEC'D

Late of Tyrone Township, Adams  
County, Pennsylvania

Executrix: Martha E. Klinger, 365 Five  
Points Road, New Oxford, PA 17350

Attorney: Gary J. Heim, Esq., Mette,  
Evans & Woodside, 3401 North  
Front Street, Harrisburg, PA 17110

ESTATE OF MAE E. KUHN, DEC'D

Late of the Borough of Bendersville,  
Adams County, Pennsylvania

Wanda L. Helwig, 1917 North 2nd  
Street, Harrisburg, PA 17102

Attorney: John A. Wolfe, Esq., Wolfe &  
Rice, LLC, 47 West High Street,  
Gettysburg, PA 17325

ESTATE OF ROBERT D. LEE, JR.,  
DEC'D

Late of Cumberland Township, Adams  
County, Pennsylvania

Administratrix: Nancy D. Lee, 44 Apple  
Avenue, Gettysburg, PA 17325

Attorney: Puhl, Eastman & Thrasher,  
Attorneys at Law, 220 Baltimore  
Street, Gettysburg, PA 17325

ESTATE OF YVONNE CRABTREE NITZ  
a/k/a YVONNE NITZ, DEC'D

Late of Cumberland Township, Adams  
County, Pennsylvania

Executor: Dwight Van Nitz, 7 Heth  
Street, Gettysburg, PA 17325

Attorney: Barbara Jo Entwistle, Esq.,  
Pyle and Entwistle, 66 West Middle  
Street, Gettysburg, PA 17325

ESTATE OF MARY ROBERTA STALB,  
DEC'D

Late of Cumberland Township, Adams  
County, Pennsylvania

Executrices: Donna Lee Burrell, P.O.  
Box 430, Winnie, TX 77665; Sandra  
K. Deckert, 2020 Goldenville Road,  
Gettysburg, PA 17325

Attorney: Andrea M. Singley, Esq., 63  
West High Street, Gettysburg, PA  
17325

## SECOND PUBLICATION

ESTATE OF EMOLAH V. ARNOLD,  
DEC'D

Late of Oxford Township, Adams  
County, Pennsylvania

Executrix: Gwyn M. Pfautz a/k/a Gwyn  
M. Williams, c/o Randall K. Miller,  
Esq., 1255 South Market Street,  
Suite 102, Elizabethtown, PA 17022

Attorney: Randall K. Miller, Esq., 1255  
South Market Street, Suite 102,  
Elizabethtown, PA 17022

ESTATE OF MARJORIE C. BARNES,  
DEC'D

Late of Franklin Township, Adams  
County, Pennsylvania

Executor: John A. Barnes, P.O. Box  
62, Cashtown, PA 17310

Attorney: Teeter, Teeter & Teeter, 108  
W. Middle St., Gettysburg, PA 17325

ESTATE OF GLENNA G. BOYER, DEC'D

Late of Straban Township, Adams  
County, Pennsylvania

Executors: Kenneth R. Boyer, 285  
Montclair Road, Gettysburg, PA  
17325; Anna C. Kessel, 136 North  
Stratton Street #6, Gettysburg, PA  
17325

Attorney: Teeter, Teeter & Teeter, 108  
W. Middle St., Gettysburg, PA 17325

ESTATE OF MARIE M. McCULLOUGH,  
DEC'D

Late of the Borough of Gettysburg,  
Adams County, Pennsylvania

Executrices: Deborah A. Riddlemoser,  
28 Flohrs Church Road, Biglerville,  
PA 17307; Kathleen E. Motter a/k/a  
Kathleen E. Cook, 212 E. Middle  
Street, Gettysburg, PA 17325

Attorney: Puhl, Eastman & Thrasher,  
220 Baltimore Street, Gettysburg,  
PA 17325

ESTATE OF MARY A. WALKER a/k/a  
MARY ALICE WALKER, DEC'D

Late of Oxford Township, Adams  
County, Pennsylvania

Executor: John H. Deatrick, Jr., c/o  
Alan M. Cashman, Esq., 141  
Broadway, Suite 230, Hanover, PA  
17331

Attorney: Alan M. Cashman, Esq., 141  
Broadway, Suite 230, Hanover, PA  
17331

## THIRD PUBLICATION

ESTATE OF WILLIAM E. BOWERS,  
DEC'D

Late of the Borough of Littlestown,  
Adams County, Pennsylvania

Executrix: Sandra L. Bowers, 66  
Crouse Park, Littlestown, PA 17340  
Attorney: Elinor Albright Rebert, Esq.,  
515 Carlisle Street, Hanover, PA  
17331

ESTATE OF MILDRED M. DEWEES  
a/k/a M. MILDRED DEWEES, DEC'D

Late of the Borough of McSherrystown,  
Adams County, Pennsylvania

Co-Executors: Ronald R. Dewees,  
P.O. Box 228, Biglerville, PA 17307;  
Donna M. Asper, 2574 Biglerville  
Road, Gettysburg, PA 17325; Barry  
F. Dewees, 201 Fair Avenue,  
Hanover, PA 17331

Attorney: John R. White, Campbell &  
White, P.C., 112 Baltimore Street,  
Gettysburg, PA 17325

ESTATE OF WILLIAM B. LEPPA, DEC'D

Late of Conewago Township, Adams  
County, Pennsylvania

Personal Representative: Allen W.  
Leppo, 1245 N. Moulstown Rd.,  
Hanover, PA 17331

Attorney: G. Steven McKonly, Esq.,  
119 Baltimore Street, Hanover, PA  
17331

ESTATE OF CLYDE E. ORNER, DEC'D

Late of Menallen Township, Adams  
County, Pennsylvania

Executor: Steven C. Knouse, 500  
Excelsior Road, Biglerville, PA 17307

Attorney: John R. White, Esq.,  
Campbell & White, P.C., 112  
Baltimore Street, Gettysburg, PA  
17325

ESTATE OF LORRINE M. ROHRBAUGH  
a/k/a LORRAINE M. ROHRBAUGH,  
DEC'D

Late of Conewago Township, Adams  
County, Pennsylvania

Co-Executors: Sandra L. Warner and  
Gerald M. Warner, 66 Oak Hills  
Drive, Hanover, PA 17331

Attorney: Douglas H. Gent, Esq., Law  
Offices of Douglas H. Gent, 1157  
Eichelberger Street, Suite 4,  
Hanover, PA 17331

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-426 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of February, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT lot of ground situate in the Borough of Littlestown, Adams County, Pennsylvania, as shown on the Subdivision Plan for "Lakeview Village - Phase Two" prepared by Donald E. Worley, Registered Surveyor, of Worley Surveying, dated April 21, 1989, revised September 11, 1989 recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Plat Book 54, Page 65 (2 pages) and designated as Lot No. 49 thereon, more particularly bounded and described as follows:

BEGINNING at a steel pin on the Northern Right-of-Way line of Starlite Drive at corner of Lot No. 50 on the Plan of Lots hereinabove identified; thence by said Lot No. 50, North forty-four (44) degrees twenty-two (22) minutes thirty-two (32) seconds West, one hundred twenty-six and fifty-one hundredths (126.51) feet to a steel pin on land of Pennsylvania Classics, Inc.; thence by said land of Pennsylvania Classics, Inc., North fifty-five (55) degrees forty-three (43) minutes thirty-six (36) seconds East, thirty-five and fifty-five hundredths (35.55) feet to a steel pin at corner of Lot No. 48; thence by said Lot No. 48, South forty-four (44) degrees twenty-two (22) minutes thirty-two (32) seconds East, one hundred twenty and twenty-seven hundredths (120.27) feet to a steel pin on the Northern Right-of-Way line of Starlite Drive, thence by said Northern Right-of-Way line of Starlite Drive, South forty-five (45) degrees thirty-seven (37) minutes twenty-eight (28) seconds West, thirty-five (35.00) feet to the above described place of BEGINNING.

CONTAINING 4,319 square feet.

TOGETHER with and subject to a fifty (50) feet Right-of-Way in, through along the streets known as Crescent Lane and Starlite Drive to be used in common with other owners of lots in "Lakeview Village - Phase Two," as shown on the Subdivision Plan above referenced.

Tax Parcel # (27) 011-0129

TITLE TO SAID PREMISES IS VESTED IN Ryan M. Glover by Deed from Garry L. Miller, unmarried, dated 11/28/2001 and recorded 12/10/2001 in Record Book 2491 Page 255.

PREMISES BEING: 31 Starlite Drive, Littlestown, PA 17340

SEIZED and taken into execution as the property of **Ryan M. Glover** and to be sold by me.

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 29, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/28, 1/4 & 11

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-829 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of February, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

Tract No. 1:

BEGINNING at a point in the center of the public highway (formerly known as the Waynesboro Turnpike) intersecting with lands of Mrs. Verna Sanders; thence by said public highway, 123 feet to a point intersecting the Jack's Mountain Road; thence by said Jack's Mountain Road, 90 1/3 feet to a point intersecting with the line of Verna Sanders; thence by said line of Verna Sanders 84 7/12 feet in a Southeasterly direction to the place of BEGINNING.

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

Tract No. 2:

BEGINNING at a rock at lands now or formerly of Paul Seabrook and an old grave yard; thence by said grave yard South 37 3/4 degrees East 6.2 perches to stones at lands now or formerly of James Kime; thence by said lands North 62 1/4 degrees East 13.95 perches to a stake in the public road; thence by said public road North 17 3/4 degrees West 7.5 perches to a stone; thence South

49 1/4 degrees West 15.5 perches to a rock; the place of BEGINNING. CONTAINING 107.35 perches, more or less.

Tax Parcel No: (25) B 17-72

Premises Being: 1396 Jacks Mountain Road, Fairfield, PA 17320

SEIZED and taken into execution as the property of **Thomas S. Lease** and to be sold by me.

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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 29, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/28, 1/4 & 11

## INCORPORATION NOTICE

COMPLETE FAMILY FOOT CARE CENTER, P.C. has been incorporated under the provisions of the Business Corporation Law of 1988.

Gibbel Kraybill & Hess LLP  
Attorneys

12/28

## NAME CHANGE NOTICE

IN RE: SIBEL ANN CARON

Suzette M. Mara has filed a Petition to change the name of her daughter, Sibel Ann Caron, to Sibel Ann Mara. The Court will hear the Petition on February 11, 2008, at 9:00 a.m., in Courtroom 2 of the Adams County Courthouse, 111-117 Baltimore Street in Gettysburg, Pennsylvania. All interested parties may appear and show cause, if any, why the request of the Petitioner should not be granted.

12/28