

Adams County Legal Journal

Vol. 45

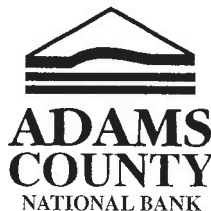
May 7, 2004

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Adams County National Bank's commitment to its communities is more than a fleeting promise. It is a tradition founded upon our more than 130 years of service to the individuals, businesses and organizations in these communities.



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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-1290 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of June, 2004, 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 the following tract of land, situate, lying and being in the Borough of New Oxford, Adams County, Pennsylvania, bounded and limited as follows, to-wit:

BEGINNING for a point on the Southern side of Sunset Avenue at Lot No. 9; thence along said Lot No. 9 South fifty-two (52) degrees sixteen (16) minutes East, one hundred thirty-two and ninety one-hundredths (132.90) feet to a point; thence continuing along the same South thirty-eight (38) degrees one (1) minute West sixty-one (61) feet to a point at Lot No. 11, thence along and with said Lot No. 11 North fifty-two (52) degrees sixteen (16) minutes West one hundred thirty-two and sixty-seven one-hundredths (132.67) feet to the point in the Southern side of Sunset Avenue; thence along and with the Southern side of Sunset Avenue North thirty-seven (37) degrees forty-four (44) minutes East sixty-one (61) feet to the point and place of BEGINNING. Being known as Lot No. 10 on a plot or plan of lots laid out by William H. Mummert and Edna M. Mummert, his wife, as per survey of J. H. Rife, Registered Surveyor, bearing date of November 29, 1955.

TITLE TO SAID PREMISES IS VESTED IN Frederick D. Wentz and Elaine L. Wentz, husband and wife by Deed from Cecil A. Palm and Eleanor J. Palm, husband and wife dated 10/21/1983 and recorded 10/21/1983, in Deed Book 371, Page 344.

Premises being: 13 Sunset Avenue, New Oxford, PA 17350

Tax Parcel No. 48 Map 8

SEIZED and taken into execution as the property of **Frederick L. Wentz & Elaine D. Wentz** and to be sold by me.

Raymond W. Newman-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 July 12, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/23, 30 & 5/7

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-123 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of June, 2004, 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 tract of land situate on the Westerly right of way line of Abbots Drive in the Borough of Abbottstown, Adams County, PA known and numbered as Lot No. 47 on a plan of lots for Abbots Manor, Phase III, recorded in the Office of the Recorder of Deeds in and for Adams County, PA in Subdivision Plan Book 76, page 99, more fully bounded and described as follows, to wit;

BEGINNING at a point on the Westerly right of way line of Abbots Drive, at a corner of Lot No. 48 on said plan; thence extending along the said right of way line South 47 degrees 16 minutes 34 seconds East 33.85 feet to a point; thence continuing on a line curving to the right having a radius of 175 feet, an arc distance of 52.05 with a chord bearing South 38 degrees 45 minutes 17 seconds East 51.86 feet to a point; thence extending along Lot No. 46 on a plan of lots for Abbots Manor Phase II, Plan Book 73, page 43 South 59 degrees 46 minutes 00 seconds West 246.01 feet to a point; thence extending along Lot No. 43 on a plan of lots for

Abbots Manor Phase II, Plan Book 73, page 43 North 30 degrees 14 minutes 00 seconds West 52.06 feet to a point at a corner of Lot No. 48 on said plan; thence extending along the said Lot No. 48 North 51 degrees 56 minutes 06 seconds East 232.54 feet to the point and place of BEGINNING.

CONTAINING 16,579 Sq. Ft.

BEING the same premises which Garland Construction, Incorporated, by Deed dated November 2, 1999 and recorded in the Office of the Recorder of Deeds of Adams County on November 19, 1999, in Deed Book Volume 1956, Page 21, granted and conveyed unto David L. Rohrer and Laurie A. Rohrer.

Grenen & Birsic, P.C.
By: /s/Kristine M. Anthou, Esq.,
Attorney for Plaintiff
One Gateway Center, Ninth Floor
Pittsburgh, PA 15222
(412) 281-7650

DBV 1956

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Parcel No. #5-43

SEIZED and taken into execution as the property of **David L. Rohrer & Laurie A. Rohrer** and to be sold by me.

Raymond W. Newman-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 July 12, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/23, 30 & 5/7

STAKE VS. FREEDOM TOWNSHIP

1. When a court does not receive additional evidence in a zoning appeal, its review of a decision of a zoning hearing board is limited to whether the board committed an abuse of discretion or an error of law. An abuse of discretion can only be found when a board's findings are not supported by substantial evidence. "Substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support the zoning board's conclusions.

2. The only way a landowner can contest an asserted violation of a municipal (zoning) ordinance is by way of an appeal to the zoning hearing board. A landowner cannot merely defend the charge when the municipality seeks ordinance violation fines in a civil action before a district justice. The failure of the landowner to timely file an appeal of a zoning officer's determination to the zoning hearing board results in a "conclusive determination of violation."

3. A special exception is a conditionally permitted use, legislatively allowed where the specific standards and conditions detailed in an ordinance are met. An applicant for a special exception carries the burden of proving that a proposed use is of a type permitted by the special exception and also that the proposed use meets the specific criteria and requirements of the relevant ordinance.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 02-S-589, KENNETH E. STAKE VS. FREEDOM TOWNSHIP ZONING HEARING BOARD.

Bernard A. Yannetti, Esq., for Plaintiff

James T. Yingst, Esq., for Defendant

Linus E. Fenicle, Esq., for Freedom Township

George, J., June 4, 2003

OPINION

This appeal stems from the Freedom Township Zoning Hearing Board's (hereinafter referred to as "Board") decision denying the Appellant, Kenneth E. Stake's (hereinafter referred to as "Stake") application for relief. In that application, Stake sought a special exception; an interpretation of the Freedom Township Zoning Ordinance; and challenged the Freedom Township Zoning Officer's enforcement notice. For the reasons set forth below, the Board's decision is affirmed.

Stake is the owner of property located at 3600 Emmitsburg Road, Freedom Township, Adams County, Pennsylvania. According to the Freedom Township Zoning Ordinance and map, this property is located in a Commercial Corridor Zoning District (CC). The property is unimproved and adjoins property owned by the Gettysburg Auto Exchange, LLC.

Stake is in the business of selling automobiles. As part of that business, he transports vehicles to be sold at the Gettysburg Auto Auction. These vehicles are transported by car carriers pulled by tractor trailers. While delivering these vehicles, Stake acknowledges that the car carriers are parked on the subject property overnight. Even if not delivering vehicles to the Gettysburg Auto Exchange, carriers will occasionally stop at the subject property to “get off the road” while on their way to the other locations. *See* Hearing Transcript, Apr. 22, 2002, p. 34. In the course of transporting vehicles, Stake uses the property for carriers approximately twice a week. *Id.* at p. 35. On occasion, Stake leaves one carrier on the property while he picks up another. *Id.* Neighboring property owners indicated that there are at least one or two vehicles on the property at all times with the greatest number of vehicles being on the property Thursday evening through Friday. *Id.* at pp. 42-43. These are the days that the auto auction is normally operating. On those days, as many as four to seven car carriers will be located on the property. *Id.* at p. 45.

By letter dated October 3, 2001, Dean Shultz, the Freedom Township Zoning Officer, advised Stake that the use of his property for the outside storage of vehicles was not a permitted use in the CC District. The letter indicated that Stake could appeal the decision of the Zoning Officer by making an application for a hearing before the Board within thirty (30) days of the date of the letter. Dean Shultz Letter, Oct. 3, 2001, p. 1. After the time period for the filing of an appeal with the Board had expired, the Township initiated a Civil Complaint against Stake with the local District Justice’s office. After the hearing before the District Justice¹, Stake filed an appeal with the Board on January 31, 2002. He challenged the Zoning Officer’s decision that his property was being used for the outside storage of vehicles in violation of the Zoning Ordinance. Additionally, Stake sought a special exception in order to store vehicles on the subject property. Finally, he requested an interpretation of the Zoning Ordinance in regard to the meaning of the term “outside storage of vehicles”. After hearing, the Board held that the challenge to the Zoning Officer’s decision was untimely. Bd. Conclusions of Law, ¶ 5, p. 3. Additionally, the Board denied Stake’s request for a special

¹ Although the record is not clear in this regard, both counsel acknowledged at argument that Stake’s application to the Board was filed subsequent to the hearing before the District Justice on the Township’s Civil Complaint.

exception and concluded that Stake failed to identify any specific sections for which he requested an interpretation. *Id.* at ¶¶ 1-4, p. 3. Stake appealed to this Court for review of the Board's decision.

When a court does not receive additional evidence in a zoning appeal, its review of a decision of a zoning hearing board is limited to whether the board committed an abuse of discretion or an error of law. *Larson v. Zoning Bd. of Adjustment of the City of Pittsburgh*, 672 A.2d 286, 288-89 (Pa. 1996). An abuse of discretion can only be found when a board's findings are not supported by substantial evidence. *Hertzberg v. Zoning Bd. of Adjustment of the City of Pittsburgh*, 721 A.2d 43, 46 (Pa. 1998). "Substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support the zoning board's conclusions. *Valley View Civic Ass'n v. Zoning Bd. of Adjustment*, 462 A.2d 637, 640 (Pa. 1983).

Stake initially argues that the Board committed an error of law in refusing to consider his appeal of the Zoning Officer's decision due to its untimeliness. Pennsylvania statutory law and case law, however, contradicts this argument. When it appears to a municipality that a violation of a zoning ordinance has occurred, the municipality, if it chooses to initiate enforcement proceedings, must forward an enforcement notice to the property owner. PA. STAT. ANN. tit. 53, § 10616.1(a) (West 1997). Following receipt of the notice, the property owner has a right to appeal the decision of the zoning officer by filing an appeal to the zoning hearing board within the time period set forth in the zoning ordinance. *See generally* PA. STAT. ANN. tit. 53, § 10616.1(c)(5) (West 1997). The Freedom Township Zoning Ordinance sets forth that an appeal from the zoning officer's decision shall take place within thirty (30) days after notice of the determination. Freedom Township Zoning Ordinance § 1608. The Municipalities Planning Code is clear that the only way a landowner can contest an asserted violation of a municipal ordinance is by way of an appeal to the zoning hearing board. A landowner cannot merely defend the charge when the municipality seeks ordinance violation fines in a civil action before a district justice. *City of Erie v. Freitas*, 681 A.2d 840, 841 (Pa. Commw. Ct. 1996). Thus, the Pennsylvania Municipalities Planning Code dictates that the failure of the landowner to timely file an appeal of a zoning officer's determination to the zoning hearing board results in a "conclusive determination of violation". *Borough of Latrobe v. Pohland*, 702 A.2d 1089,

1095 (Pa. Commw. Ct. 1997). Our appellate courts have consistently stated “that such a failure to appeal renders the zoning officer’s determination of [a] violation unassailable under Section 616.1(c)(6) of the . . . MPC . . .” *Id.*

Although Stake acknowledges the controlling law in this area, he argues that the enforcement notice from the Zoning Officer was not adverse to him and, therefore, did not trigger the time period within which to file an appeal to the Board. He cites a portion of the enforcement notice that directed him to “bring this property into compliance by November 5, 2001.” *See* Dean Shultz Letter, Oct. 3, 2001, p. 1. He reaches this conclusion based upon his belief that his property was in compliance with the Zoning Ordinance at the time the notice was forwarded to him. I disagree with this reasoning.

The enforcement notice forwarded to Stake on October 3, 2001, specifically references the nature of the violation and the means by which he may appeal the Zoning Officer’s decision. Adopting Stake’s rationale under these circumstances would essentially make the time limitations applicable to an appeal nonexistent. The argument that “I didn’t appeal because the Zoning Officer cited a nonexistent violation” is essentially an argument that an appeal was unnecessary because the Zoning Officer’s determination was factually incorrect. Acceptance of such an argument would wreak havoc to the appellate process and the finality of judgments. The more rational approach, which our appellate courts have adopted, prescribes that a failure to appeal a zoning officer’s determination renders the zoning officer’s determination unassailable. *Pohland*, 702 A.2d at 1095. The Board did not commit an error of law in determining that Stake’s appeal from the Zoning Officer’s decision was untimely.

Stake next alleges that the Board committed an error of law in failing to grant a special exception authorizing the use of his property for the commercial storage of vehicles.²

²Stake raises this issue as follows: “Whether the Board committed an error of law or an abuse of discretion in concluding that Appellant was using his property for the commercial storage of vehicles in violation of the Ordinance, or, in the alternative, failing to grant a special exception for the same.” Stake Br., p. 3. As previously noted, the Zoning Officer provided Stake with an enforcement notice advising him that his property was illegally being used for the outside storage of vehicles. He failed to file a timely appeal from the enforcement notice. Accordingly, the portion of the appeal challenging the conclusion that Stake was using his property for the commercial storage of vehicles is waived. *See Pohland*, supra.

A special exception is a conditionally permitted use, legislatively allowed where the specific standards and conditions detailed in an ordinance are met. *Lafayette College v. Zoning Hearing Bd. of the City of Easton*, 588 A.2d 1323, 1325 (Pa. Commw. Ct. 1991). An applicant for a special exception carries the burden of proving that a proposed use is of a type permitted by the special exception and also that the proposed use meets the specific criteria and requirements of the relevant ordinance. *Shamah v. Hellan Township Zoning Hearing Bd.*, 648 A.2d 1299, 1303 (Pa. Commw. Ct. 1994). The applicant has both the burden of proof and the burden of persuasion in establishing that the proposed use complies with the express terms of an ordinance. *Szewczyk v. Zoning Bd. of Adjustment*, 654 A.2d 218, 221-22 (Pa. Commw. Ct. 1995).

The standards and conditions for permitted uses by special exception in a “commercial corridor district” are found in Section 903 of the Freedom Township Zoning Ordinance. In support of his request for a special exception, Stake does not rely on any of the ten itemized permitted uses in the Zoning Ordinance but, rather, argues that each of the itemized permitted uses is commercial in nature.³ As such, each would require the parking of vehicles on the property. He reasons, therefore, that the parking of vehicles on his property is permitted as a special exception.

The evidence presented to the Board indicated that Stake’s use of the property was something more than that commonly associated with the permitted uses in a commercial corridor district under the Zoning Ordinance. For instance, the Board found that Stake hauls vehicles and temporarily stores them on the subject property as part

³ Section 903 provides the following uses are permitted by special exception:

- A. Financial establishments with drive through service.
- B. Restaurants with drive through service.
- C. Convenience stores, including fuel sales.
- D. Planned shopping centers.
- E. Outdoor storage and display when accessory to a permitted use.
- F. Hotels and motels, exceeding twenty (20) guest rooms.
- G. Any retail business whose principle activity is the sale of merchandise in an enclosed building, where the sales area exceeds five thousand (5,000) square feet.
- H. Antennas.
- I. Public utility facilities.
- J. Indoor recreational facility.

Freedom Township Zoning Ordinance § 903.

of his business of buying and selling cars. Bd. Findings of Fact, ¶ 9, p. 2. Vehicles are most frequently hauled to the property on Thursdays and removed on Fridays, however, some cars remain on the property throughout the weekend and a minimum of one to two cars are parked on the property at all times. *Id.* at ¶ 11, p. 2. The record supports these findings of fact, thus, the Board has not committed an abuse of discretion in reaching its conclusions.

The fallacy of Stake's theory is clearly evident when one considers that the property at issue is a vacant lot. There is no other commercial entity on the property that requires the parking of vehicles on the premises. Testimony presented at the Board essentially reflected that vehicles, including car carriers, are stored on the property while they are in transit to other locations. There is no indication anywhere in the record that the property serves any use other than the storage of vehicles. Therefore, the Board's action in denying the request for a special exception constituted neither an error of law nor an abuse of discretion.⁴

Finally, Stake takes exception to the Board's conclusion that he did not provide the Board with the specific sections of the Zoning Ordinance for which he was requesting an interpretation. In his application to the Board, Stake asks for an "interpretation of the [O]rdinance", Application at ¶ 8, p. 1, stating that he "believes he has the right to park his cars on the property at least on a temporary basis." *Id.* During the hearing, Stake's counsel indicated that Stake sought "a definition of what is the outside storage of vehicles?" Hearing Transcript, p. 27, Apr. 22, 2002. This phrase apparently derives from the October 3, 2001, enforcement notice the Zoning Officer forwarded to Stake⁵ and is not defined in the Ordinance. In

⁴Stake has specifically tailored his appeal as a challenge to the Board's action in considering a special exception under Section 903 of the Freedom Township Zoning Ordinance. The Court, therefore, will not address the applicability, or lack thereof, of other sections of the Zoning Ordinance.

⁵The October 3, 2001, correspondence contains the following language:

The property is now being used for outside storage of vehicles. Dave Burke of Gettysburg Auto Exchange stated these vehicles are not part of their operation and he was not sure who placed them on your property. The outside storage of vehicles is not a permitted use in the CC Zoning District. Article 9 - §902 of the Zoning Ordinance identifies permitted uses in this district.

Dean Shultz Letter, p. 1, Oct. 3, 2001.

effect, Stake is challenging the Zoning Officer's language in his enforcement notice and, indirectly, his determination of a violation. As previously indicated, a zoning officer's determination of a violation is unassailable if not otherwise raised in a timely appeal. *Pohland*, supra. Stake's request for an interpretation of verbiage in the Zoning Officer's enforcement notice is nothing more than a back door attempt to circumvent this rule. Accordingly, the Board did not commit an error of law or abuse its discretion in failing to legislate a definition for this term.

Although I sympathize with Stake in his efforts to obtain guidance in this area, I also recognize that his lack of guidance is due to his failure to timely raise the issue before the Board.

For the foregoing reasons, the Board's decision is affirmed.

ORDER OF COURT

AND NOW, this 4th day of June, 2003, the Freedom Township Zoning Hearing Board's decision is affirmed. The Appellant is to pay the costs.

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 M. RITA AXWORTHY a/k/a MARIE RITA AXWORTHY a/k/a RITA M. AXWORTHY, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Enid Rose Axworthy nka Enid R. Franko, 18 Brentwood Court, Hanover, PA 17331

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

ESTATE OF DAVID ASHLEY BARTLETT, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Wendy L. Dutterer, 180 Knight Road, Gettysburg, PA 17325

Attorney: Robert L. McQuaide, Esq., Suite 204, 18 Carlisle Street, Gettysburg, PA 17325

ESTATE OF ALVIN L. MOUL, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Shirley J. Mitzel, P. O. Box 303, East Berlin, PA 17316; Larry R. Moul, 6030 Old Hanover Road, Spring Grove, PA 17362

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

SECOND PUBLICATION

ESTATE OF ROSA C. LENTZ, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Debra S. Flickinger, 1270 Hilltown Road, Biglerville, PA 17307

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

ESTATE OF PEARL S. PLANK, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Harold J. Plank, 1540 Old Harrisburg Road, Gettysburg, PA 17325

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

ESTATE OF LEROY D. RINEHART, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Co-Executors: Florence M. Grove & Gala A. Lutz, c/o 29 North Duke Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 29 North Duke Street, York, PA 17401

ESTATE OF TERRY R. SITES, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administrator: Timothy J. Weaver, 3117 Carlisle Road, Gardners, PA 17324

Attorney: Jeremy D. Frey, Esq., Barley, Snyder, Senft & Cohen, LLC., 14 Center Square, Hanover, PA 17331

ESTATE OF CLYDE H. SPANGLER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Clyde H. Spangler, Jr., c/o 29 North Duke Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 29 North Duke Street, York, PA 17401

ESTATE OF MARY ANNA C. WAGNER, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executor: Lawrence O. Wagner, 716 Bon-Ox Rd., Gettysburg, PA 17325

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

THIRD PUBLICATION

ESTATE OF LILLIAN L. HANSFORD, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Sandy L. Baker, 911 Five Points Road, New Oxford, PA 17350

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

ESTATE OF DONALD F. HELWIG, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Mary A. Helwig, c/o Jeffrey C. Marshall, Esq., 46 East Philadelphia Street, York, PA 17401

Attorney: Jeffrey C. Marshall, Esq., 46 East Philadelphia Street, York, PA 17401

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 Thursday, May 20, 2004, at 9:00 a.m.

MYERS—Orphans' Court Action Number OC-29-04. The First and Final Account of Patricia Anthony and Jean Anthony, Executrices of Mary Eva Myers, deceased, late of Mt. Pleasant Township, Adams County, Pennsylvania.

HULL—Orphans' Court Action Number OC-30-04. The First and Final Account of Mayetta Becker, Sherman Krall and Mary Krall, Co-Executors of the Estate of Anna K. Hull, deceased, late of Oxford Township, Adams County, Pennsylvania.

CARTER—Orphans' Court Action Number OC-31-04. The First and Final Account of Frances B. Peifer, Executrix of the Estate of Jay D. Carter, deceased, late of Menallen Township, Adams County, Pennsylvania.

Lisa K. Grubbs
Clerk of Courts

5/7 & 14

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW NO. 04-S-152 Action to Quiet Title

NORA EDNA STARRY, widow, a/k/a NORA E. STARRY, by her Attorneys-in-Fact, STANLEY L. STARRY and BETTY F. WARNER, Plaintiff
vs.

GEORGE E. DEARDORFF and his heirs at law, JOHN W. DEARDORFF, GRAYSON O. DEARDORFF, and G. WILMER DEARDORFF, their respective heirs, executors, administrators, successors, and assigns, Defendants

TO: George E. Deardorff and his heirs at law, John W. Deardorff, Grayson O. Deardorff, and G. Wilmer Deardorff, their respective heirs, executors, administrators, successors, and assigns

YOU ARE NOTIFIED that an Order has been entered on April 23, 2004, directing that within thirty (30) days after this publication, you shall commence an Action in Ejectment or other appropriate action against the Plaintiff above to assert any claim you may have in and to the lands described or be forever barred

from asserting any right, lien, title or interest inconsistent with the interest or claim set forth in the Plaintiff's Complaint with respect to the land herein described.

BEGINNING at a point in the centerline of Township Route T-530 leading from Center Mills to Route 234 at corner of land now or formerly of the Biglerville Grange; thence running in the centerline of Township Route T-530 North 6 degrees 55 minutes 0 seconds West, 296.03 feet to a railroad spike; thence by land now or formerly of Roy D. Guise South 89 degrees 0 minutes 20 seconds East, 528.53 feet to an iron pin; thence South 2 degrees 28 minutes 20 seconds West, 324.54 feet to the center of a 14 inch concrete post at the cemetery; thence by said cemetery South 8 degrees 59 minutes 40 seconds East, 169.73 feet to the center of a 14 inch concrete post; thence South 82 degrees 52 minutes 0 seconds West, 268.59 feet to an iron pin; thence by land now or formerly of the Biglerville Grange North 9 degrees 31 minutes 10 seconds West, 272.90 feet to an iron pin; thence by the same South 81 degrees 36 minutes 0 seconds West, 195.80 feet to a point in the centerline of Township Road T-530, the point and place of BEGINNING. CONTAINING 4.690 Acres.

The description is taken from a draft of survey by Penn Forestry Company, Richard W. Boyer, R.S., dated June 28, 1971.

Puhl, Eastman & Thrasher
Harold A. Eastman, Jr., Esq.
220 Baltimore Street
Gettysburg, PA 17325
(717) 334-2159
Attorneys for Plaintiff

5/7

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that on March 30, 2004, Articles of Incorporation-Domestic Nonprofit Corporation were filed with the Secretary of the Commonwealth of Pennsylvania for THE ARK FOUNDATION, a corporation organized under the Nonprofit Corporation Law of 1988 for the following purpose:

This corporation is created exclusively for charitable, scientific, literary and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. The corporation may also undertake such other activities as the Board of Directors shall approve so long as such activities are within the purposes permitted by these Articles.

Wolf, Block, Schorr and Solis-Cohen LLP
Solicitors
1650 Arch Street, 22nd Floor
Philadelphia, PA 19103-2097

5/7

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, in compliance with the requirements of Section 311, of Act 1982 - 295 (54 Pa. C.S. 311), the undersigned entity (ies) announce their intention to file in the Office of the Secretary of the Commonwealth of Pennsylvania, on approximately March 22, 2004, a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of B ROCK PRODUCTIONS, with its principal place of business at 870 Natural Dam Road, Gettysburg, PA 17325. The names and addresses of the persons owning or interested in said business are Brock T. Smith, residing at 870 Natural Dam Road, Gettysburg, PA 17325.

5/7

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, in compliance with the requirements of Section 311, of Act 1982 - 295 (54 Pa. C.S. 311), the undersigned entity (ies) announce their intention to file in the Office of the Secretary of the Commonwealth of Pennsylvania, on approximately February 19, 2004, a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of BIG ROCK ALPACA FARM, with its principal place of business at 186 Big Rock Road, East Berlin, PA 17316. The names and addresses of the persons owning or interested in said business are Allen Stoner, residing at 186 Big Rock Road, East Berlin, PA 17316. The character or nature of the business is breed and raise registered alpaca.

5/7

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on or about March 9, 2004, for the incorporation of CUT & TRIM BY SANDY & JIM, INC., under the Pennsylvania Business Corporation Law of 1988. The corporation shall engage in the business of lawn care and snow removal, together with any legal function of a corporation under PA law. The initial registered office of the corporation is 245 Bowers Road, Littlestown, PA 17340.

Gary E. Hartman, Esq.
Hartman & Yannetti
Solicitors

5/7

Adams County Legal Journal

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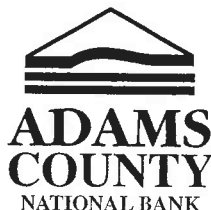
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FREEDOM TOWNSHIP

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



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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-434 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of June, 2004, 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 Franklin Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a railroad spike found 3 feet North of the centerline of Hilltown Road (T-355) at corner of Lot No. 6B on the hereinafter described subdivision plan; thence North 67 degrees 00 minutes 10 seconds West 35.00 feet to a railroad spike set 3 feet North of the centerline of Hilltown Road (T-355) at corner of Lot No. 6A; thence by said lot and passing through a 5/8" rebar set 25.00 feet from the beginning of this course, North 22 degrees 59 minutes 50 seconds East, 372.83 feet to a 5/8" rebar set; thence by said lot North 67 degrees 00 minutes 10 seconds West 115.00 feet to a 5/8" rebar set on line of lands now or formerly of SPECO; thence by lands now or formerly of SPECO, North 22 degrees 59 minutes 50 seconds East, 77.17 feet to a 5/8" rebar found at corner of lands now or formerly of SPECO; thence by same, North 67 degrees 00 minutes 10 seconds West 115.00 feet to a 5/8" rebar found at corner of lands now or formerly of SPECO; thence by same, North 22 degrees 59 minutes 50 seconds East, 230.00 feet to a 5/8" rebar found; thence by same, South 67 degrees 00 minutes 10 seconds East, 380.00 feet to a 5/8" rebar found; thence by same, South 22 degrees 59 minutes 50 seconds West, 307.17 feet to a 5/8" rebar set at corner of Lot No. 6B; thence by same, North 67 degrees 00 minutes 10 seconds West, 115.00 feet to a 5/8" rebar set at corner of Lot No. 6B; thence by same and passing through a 5/8" rebar set 25.00 feet from the end of this course, South 22 degrees 59 minutes 50 seconds West, 372.83 feet to a railroad spike set 3 feet North of the centerline of Hilltown Road (T-355), the point and place of BEGINNING.

BEING KNOWN AS 1355 Hilltown Road, Biglerville (Franklin Twp.), PA 17307

PROPERTY ID NO: D-10-2

TITLE TO SAID PREMISES IS VESTED IN Pamela J. Howery by deed from Richard A. Hutchinson dated 03/15/96, recorded 03/15/96, in Deed Book 1159, Page 207.

SEIZED and taken into execution as the property of **Pamela J. Howery** and to be sold by me.

Raymond W. Newman-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 July 12, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/14, 21 & 28

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania on March 16, 2004, for the purpose of obtaining a Certificate of Incorporation. The name of the corporation organized under the provisions of the Commonwealth of Pennsylvania Business Corporation Law of 1988 is ARBOR HOUSE AT GETTYSBURG, INC.

J. Dennis Guyer, Esq.
Wertime & Guyer LLP
50 Eastern Avenue
Greencastle, PA 17225

5/14

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-710 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of June, 2004, 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, known and designated as Lot No. 62 on a certain plan of lots entitled "Breckenridge Village", made by D. P. Raffensperger Associates, Engineers and Surveyors, dated May 7, 1971, which plan is of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 1 at page 90.

Vested by: Special Warranty Deed dated 5/30/97, given by Albert H. Oussoren and Stacy L. Oussoren, husband and wife, to Christopher P. Richardson and Candy M. Richardson, husband and wife, as tenants of an estate by the entireties, recorded 6/3/97 in Book: 1382 Page: 200

Premises being: 279 West Street, Gettysburg, PA 17325

Tax Parcel No. 16-009-0186

SEIZED and taken into execution as the property of **Christopher P. Richardson & Candy M. Richardson** and to be sold by me.

Raymond W. Newman-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 July 12, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/14, 21 & 28

GETTYSBURG AUTO EXCHANGE VS. FREEDOM TOWNSHIP

1. Section 10616.1(c) of the Municipalities Planning Code requires an enforcement notice to specify the violation by describing the requirements that have not been met and citing the applicable provisions of the Zoning Ordinance. A specific numerical reference to the ordinance section alleged to have been violated is required. A municipality's failure to comply with this section precludes it from seeking penalties under Section 617.2.

2. Fundamental fairness requires that the enforcement notice can act as a conclusive determination only as to those activities specifically mentioned as being unlawful in the notice.

3. A special exception is not an exception to the zoning ordinance, but rather a use to which an applicant is entitled unless the proposed use adversely affects the community. It is the concern about the general health, safety and welfare of the community that allows a zoning board to place reasonable conditions on the grant of a special exception.

4. A zoning board not only has the power to impose conditions restricting a use but also is obligated to reduce the impact of an adverse effect to an acceptable level, if it can, by imposing reasonable conditions rather than denying the special exception request.

5. The right to expand a nonconforming use to provide for the natural expansion and accommodation of increased trade "is a constitutional right protected by the due process clause."

6. A nonconforming use cannot be limited to the precise magnitude of business which exists at the date of the ordinance. Additionally, it is not essential that exercise of the nonconforming use utilize the entire tract upon which the business is being conducted.

7. Neither the extent, quantity nor quality of a business operation in and of itself triggers an expansion requiring special exception approval.

8. Where a nonconforming use is expanded to the extent that it exceeds the dimensional barriers applicable in a zoning district, the right of a nonconforming user to expend its operation is limited to the same ordinance provisions applicable to any landowner seeking expansion beyond a dimensional barrier.

9. A use entitled to recognition as a nonconforming use does not lose that protection unless the use is "abandoned." Abandonment requires proof of the intent to abandon and actual abandonment. Although disuse and disrepair may indicate an abandonment, more is required to show an actual and intentional abandonment. The burden of establishing abandonment lies with the municipality.

10. Qualifying words or phrases are to be applied to the words, phrases, or clauses before them, but they do not extend to or include other words, phrases or clauses more remote, unless such extension or inclusion is clearly required by the intent or meaning of the context or required by an examination of the entire statute. This rule not only applies to antecedent modifiers, but preceding modifiers as well.

11. All parts of an ordinance are to have meaning in ascertaining the drafters' intention. If, in doing so, there is a conflict between the special provision and a general provision, the two shall be construed, if possible, so that effect may be given to both. The punctuation of a sentence in a statute is not controlling and does not require the Court to ignore obvious legislative intent or reach an absurd result.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 02-S-714, GETTYSBURG AUTO EXCHANGE LLC VS.
FREEDOM TOWNSHIP ZONING HEARING BOARD.

Bernard A. Yannetti, Jr., Esq., for Plaintiff
James T. Yingst, Esq., for Defendant
Linus E. Fenicle, Esq., for Freedom Township
George, J., June 4, 2003

OPINION

This appeal stems from the Freedom Township Zoning Hearing Board's (hereinafter referred to as "Board") decision denying the land use appeal of the Appellant, Gettysburg Auto Exchange, LLC (hereinafter referred to as "Auto Exchange"). In its appeal to the Board, Auto Exchange raised the following issues: 1) relief from the determination of the Zoning Officer; 2) an interpretation of the Freedom Township Zoning Ordinance (hereinafter referred to as "Zoning Ordinance"); and 3) a request for a special exception for the expansion of an existing nonconforming use. After a hearing, the Board issued a written decision denying the challenge to the Zoning Officer's determination as being untimely. However, the Board granted Auto Exchange a special exception to expand a pre-existing nonconforming use subject to conditions. In this appeal, Auto Exchange raises two specific issues for consideration by the Court:

- 1) Whether the Board committed an error of law or an abuse of discretion in concluding that it filed an untimely appeal of the Zoning Officer's determination; and
- 2) Whether the Board committed an error of law or an abuse of discretion by imposing unreasonable conditions and restrictions in its grant of a special exception.

Auto Exchange Notice of Appeal, ¶ 9. For the reasons set forth below, the Board's decision is affirmed in part and overturned in part.

Auto Exchange is the owner of a tract of land located at 3580 Emmitsburg Road, Gettysburg, Pennsylvania, 17325, (hereinafter referred to as "property"). According to the Zoning Ordinance and map, the property is located in a Commercial Corridor Zoning District (CC). The property is improved with a building which houses offices and eating facilities. Portions of the property are paved or stoned and there is a fence around an area in the southwest

corner of the property. Since the early 1980's, the property has been used for the sale of automobiles primarily through auctions. Subsequent to the establishment of this business, Freedom Township enacted its Zoning Ordinance on June 27, 1996. Auto Exchange took over operation of the auction business in 1999.

In April 1999, after assuming control of the business, Auto Exchange submitted an application to Freedom Township for a building permit. The application included a plan showing the area of the property used for auction purposes. Township Ex. 1. On October 4, 2001, the Zoning Officer, apparently in response to observations he believed to be an expansion of the use of the property since its condition in April 1999, forwarded a certified letter to Auto Exchange. Dean Shultz Letter, Oct. 4, 2001. The letter essentially summarized discussions held between the Zoning Officer and a representative of the Gettysburg Auto Exchange. It specifically referenced that a sign on the property was in violation of Section 1504 of the Zoning Ordinance and that lighting on the property violated Section 1303D(1) of the Zoning Ordinance.¹ The correspondence further

¹Because the language of the letter is pivotal to my decision, it will be set forth at length as follows:

On May 2, 1999, a permit was issued for work to be done on your property known as Gettysburg Auto Exchange. The permit clearly defined the work to be done and the area to be used for an auto auction. As you are aware, this area is zoned Commercial Corridor and the Zoning Ordinance does not permit vehicle sales in this Zoning District. Because auto auctions had been held on this property prior to the adoption of the Zoning Ordinance it was considered an existing non-conforming use. A plan attached to the permit showed the area we both agreed would be used for the Auto Auction. The permit further stated that if you wish to extend the area of use, approval must be secured from the Freedom Township Zoning Hearing Board.

Sam Brewer, Freedom Township Supervisor, Dorothy Shaffer and myself of Gettysburg Engineering Company, Inc. met with you and Dave Burke on October 1, 2001 in regard to several issues regarding the auto auction. We also spoke, by phone, with your Attorney Anthony Carrozza. A summary of our discussion with your representative David Burke is as follows:

1. We informed Mr. Burke that the Zoning Ordinance did not permit the storage of vehicles on the property where the house was recently removed. He stated that Kenneth Stake owns the property where the house was recently removed and vehicles are being stored. He further stated he was not sure how the vehicles got there.

(footnote 1 continued to next page)

advised Auto Exchange that they had the right to file an appeal within thirty (30) days of the date of the letter challenging its conclusion. Dean Shultz Letter, Oct. 4, 2001.

Auto Exchange did not file an appeal from the decision of the Zoning Officer within the designated time period. Rather, on February 3, 2002, Auto Exchange filed the application that is the subject of this appeal.

We stated that we would contact the owner of the property regarding this use.

2. We walked the site with Mr. Burke and pointed out the increase in use over what was shown on the plan that was submitted when you secured your use and building permit.

Mr. Burke stated that vehicles, located on the grass area next to the Choronister property, had just been moved but people bring them in and park them there. He is going to keep them from being parked there in the future.

3. We also pointed out to Mr. Burke other areas where vehicles were now being stored over and above where they were shown to be stored on the plan.
4. We showed Mr. Burke on the plan how the entrance to the parking lot was to be constructed. Our letter of March 2, 2000 also makes reference to the need to construct this entrance. Mr. Burke stated that he was not aware of the need to construct this entrance.
5. On May 28, 1999, we issued you Permit #99-6 for the erection of signs. A 3'x8' free standing sign was to be erected at the entrance. This sign has been erected but another sign is located under it. This additional sign is not permitted under Section 1504 of the Zoning Ordinance.
6. The Township has received a complaint regarding the glare of lights onto an adjoining property. Section 1303.D.1 of the Zoning Ordinance addresses direct and indirect glare onto adjoining properties. Please bring the lights into compliance with this section of the Ordinance. Mr. Burke stated that he would have this problem corrected.
7. Our March 2, 2000 letter to you should be referred to if you wish to request Special Exception Approval from the Zoning Hearing Board to expand your non-conforming use.

It will be necessary for you to bring this property into compliance by November 5, 2001. Failure to comply with the terms hereof by November 5, 2001, unless extended by an appeal to the Freedom Township Zoning Hearing Board, constitutes a violation of the Zoning Ordinance which may subject you to the following sanctions:

- a. Civil enforcement proceedings resulting in a possible judgment of up to \$500.00, plus all court costs, including reasonable attorney fees incurred by the Township.

(footnote 1 continued to next page)

When, as here, a court does not receive additional evidence in a zoning appeal, its review of a decision of a zoning hearing board is limited to whether the board committed an abuse of discretion or an error of law. *Larson v. Zoning Bd. of Adjustment of the City of Pittsburgh*, 672 A.2d 286, 288-89 (Pa. 1996). An abuse of discretion can only be found when a board's findings are not supported by substantial evidence. *Hertzberg v. Zoning Bd. of Adjustment of the City of Pittsburgh*, 721 A.2d 43, 46 (Pa. 1998). "Substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support the zoning board's conclusions. *Valley View Civic Ass'n v. Zoning Bd. of Adjustment*, 462 A.2d 637, 640 (Pa. 1983).

Auto Exchange initially argues that the Board committed an error of law in refusing to consider its appeal of the Zoning Officer's decision due to its untimeliness. Pennsylvania law, however, contradicts this argument. When it appears to a municipality that a violation of a zoning ordinance has occurred, the municipality, if it chooses to initiate enforcement proceedings, must forward an enforcement notice to the property owner. PA. STAT. ANN. tit. 53, § 10616.1(a) (West 1997). Following receipt of the notice, the property owner has a right to appeal the decision of the zoning officer by filing an appeal to the zoning hearing board within the time period set forth in the zoning ordinance. See generally PA. STAT. ANN. tit. 53, § 10616.1(c)(5) (West 1997).² The Municipalities Planning Code is clear that the only way a landowner can contest an asserted violation of a municipal ordinance is by way of an appeal to the zoning hearing board. Moreover, the Pennsylvania Municipalities Planning Code dictates that the failure of a landowner to file a timely appeal

-
- b. Equitable action seeking an order directing the cessation of violations of Township Ordinances on the property, together with an award of court costs, including reasonable attorney fees incurred by the Township.

You may appeal this decision by making application for a Zoning Hearing with the Freedom Township Zoning Hearing Board, within 30 days of the date of this letter. Please contact Joyce Shindledecker, Township Secretary at 334-7970 if you wish to make application for a Zoning Hearing or review or secure a copy of all Township Ordinances.

Dean Shultz Letter, Oct. 4, 2001.

²The Zoning Ordinance sets forth that an appeal from the Zoning Officer's decision shall take place within thirty (30) days after notice of the determination. Freedom Township Zoning Ordinance § 1608.

of a zoning officer's determination to the zoning hearing board results in a "conclusive determination of violation". *Borough of Latrobe v. Pohland*, 702 A.2d 1089, 1095 (Pa. Commw. Ct. 1997). Our appellate courts have consistently stated "that such a failure to appeal renders the zoning officer's determination of [a] violation unassailable under Section 616.1(c)(6) of the . . . MPC . . ." *Id.*

Although Auto Exchange acknowledges the controlling law in this area, it argues that the enforcement notice from the Zoning Officer was not adverse to it and, therefore, did not trigger the time period within which to file an appeal to the Board. It cites a portion of the enforcement notice that directed them to "bring this property into compliance by November 5, 2001." *See* Dean Shultz Letter, p. 2, Oct. 4, 2001. Auto Exchange argues that the property was in compliance with the Zoning Ordinance at the time the notice was forwarded to it and, therefore, reasons that there was no need to file an appeal. I disagree with this reasoning.

The enforcement notice at issue specifically references violations of Sections 1504 and 1303D(1) of the Zoning Ordinance and the means by which Auto Exchange may appeal the Zoning Officer's decision. Adopting Auto Exchange's rationale under these circumstances would essentially make the time limitations applicable to an appeal nonexistent. The argument that "I didn't appeal because the Zoning Officer cited a nonexistent violation" is essentially an argument that an appeal was unnecessary because the Zoning Officer's determination was factually incorrect. Acceptance of such an argument would wreak havoc to the appellate process and the finality of judgments. The more rational approach, which our appellate courts have adopted, prescribes that a failure to appeal a zoning officer's determination renders the zoning officer's determination unassailable. *Pohland*, 702 A.2d at 1095. The Board did not commit an error of law in determining that Auto Exchange's appeal from the Zoning Officer's decision was untimely.

Although the Board acted appropriately in reaching this conclusion concerning the time limits of the appeal, a critical question arises as to which determinations by the Zoning Officer are unassailable because of Auto Exchange's failure to file a timely appeal. Resolution of this issue is dependent upon a thorough review of the statutory requirements found in the Municipalities Planning Code.

The Municipalities Planning Code provides that an enforcement notice shall state, at a minimum, the name of the property owner; the location of the property; the specific violation with a description of the requirements that have not been met including a citation to the applicable provisions of the Zoning Ordinance; the date by which compliance must be accomplished; notice to the recipient of the right to file an appeal; and notice that failure to comply with the enforcement notice will constitute a violation with possible sanctions. PA. STAT. ANN. tit. 53, § 10616.1(c)(1)-(6) (West 1997). All six factors required by Section 10616.1(c) must appear in the enforcement notice. The primary purpose of the statute is to alert a defendant to the possibility of legal action, the adverse consequences of failing to comply and the subsequent procedure to be followed. *Conewago Township v. Ladd*, 15 Pa. D & C.4th 138, 141 (C.C.P. of York County 1992). This section requires an enforcement notice to specify the violation by describing the requirements that have not been met and citing the applicable provisions of the Zoning Ordinance. *Township of Lower Milford v. Britt*, 799 A.2d 965, 969 (Pa. Commw. Ct. 2002). A specific numerical reference to the ordinance section alleged to have been violated is required. *Township of Maiden Creek v. Stutzman*, 642 A.2d 600, 602 (Pa. Commw. Ct. 1994). A municipality's failure to comply with this section precludes it from seeking penalties under Section 617.2 of the Municipalities Planning Code. *City of Erie v. Freitus*, 681 A.2d 840, 842 (Pa. Commw. Ct. 1996).

Applying this guidance to the matter before the Court allows me to frame the procedural posture under which the remaining issues must be considered. Although at this stage of the proceedings the Zoning Officer's determination is unassailable, *see Pohland*, *supra*, it can be only unassailable as to those issues on which the enforcement notice provided appropriate warning to the landowner of the adverse consequences of failing to file an appeal. Fundamental fairness requires that the enforcement notice can act as a conclusive determination only as to those activities specifically mentioned as being unlawful in the notice.

A review of the Zoning Officer's enforcement notice to Auto Exchange shows that Auto Exchange was sufficiently placed on notice that the 3' x 8' free-standing sign and the lights on the property violated specific and identified sections of the Zoning Ordinance. *See Dean Shultz Letter*, ¶¶ 5-6, p. 2, Oct. 4, 2001. As to these items, the language of the enforcement notice should have alerted Auto Exchange as to the

need to appeal the notice to the Board. As such, I conclude that Auto Exchange's failure to appeal the notices on these particular issues mandates a conclusive determination that both the 3' x 8' free-standing sign and the lighting on the property are illegal under the Zoning Ordinance.

Auto Exchange argues that use of the sign, and to some extent the lighting, pre-existed adoption of the Zoning Ordinance and, therefore, is permitted as a matter of law. Auto Exchange fails to recognize, however, that the Zoning Officer, by his enforcement notice, determined that the sign in question was not entitled to the protections provided by state law for a pre-existing nonconforming use. Inexplicably, Auto Exchange did not appeal this determination. Notwithstanding Auto Exchange's argument, the issue is conclusively determined and the Board properly denied Auto Exchange's appeal as to these issues.³ *See Pohland.*

On the other hand, with exception to the two violations specifically enumerated in the enforcement notice, the remaining discussion in the notice fails to reference any specific violations. In fact, the remainder of the notice appears to do nothing more than attempt to confirm oral discussions that may have taken place between the parties. I find this information to be insufficient to alert Auto Exchange to the possibility of legal action or the adverse consequences of failing to comply with the notice. Accordingly, the enforcement notice does not act as a conclusive determination to issues other than the two issues specifically raised and discussed hereinabove.

Continued to next issue (5/21/2004)

³Perhaps in recognition of the conclusiveness of the Zoning Officer's determination concerning the free-standing sign, Auto Exchange sought a special exception from the Board. The Board granted a special exception on other issues, but as a condition of the special exception, directed that the 3' x 8' free-standing sign be removed. Because of the procedural posture of the matter before the Board, the Board never completely addressed the issue of whether the sign was a pre-existing use. Limited references in the record, however, indicate that the Zoning Officer's determination of a violation in October, 2002, is not a clear miscarriage of justice. For instance, a review of Township Exhibit #6 indicates that Auto Exchange filed a permit in April of 1999 to erect new signs to replace a previous sign. *See Township Ex. 6, ¶ 10.* Attached to that permit application is a sketch that is noticeably absent of any reference to the portable sign. Rather, the sketch indicates landscaping in the area where the portable sign is currently located. Had the issue properly been raised on a timely appeal to the Board, it appears the current record is sufficient to establish the legally permitted nonconforming use had been abandoned. *See Kuhl v. Zoning Hearing Bd. of Green Township*, 415 A.2d 954 (Pa. Commw. Ct. 1980) (prior nonconforming use not permissible if abandoned).

ESTATE NOTICES

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

FIRST PUBLICATION

ESTATE OF DOROTHY K. BORROR a/k/a DOROTHY VIRGINIA BORROR, DEC'D

Late of the Borough of East Berlin, Adams County, Pennsylvania

Executrix: Wanda L. Elicker, 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

ESTATE OF RUPERT F. CHISHOLM, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Virginia E. Schein, 1008 Hilltown Road, Biglerville, PA 17307

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

ESTATE OF ROBERT A. EICHELBERGER, DEC'D

Late of the Borough of East Berlin, Adams County, Pennsylvania

Executor: Adams County National Bank, c/o 106 Harrisburg Street, East Berlin, PA 17316

Attorney: Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 106 Harrisburg Street, East Berlin, PA 17316

ESTATE OF ROY E. GROVE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Adams County National Bank, c/o 106 Harrisburg Street, East Berlin, PA 17316

Attorney: Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 106 Harrisburg Street, East Berlin, PA 17316

ESTATE OF H. CATHERINE HARTMAN, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executors: Harry Lee Hartman & John Hunter Hartman, c/o Robert Clofine, Esq., 120 Pine Grove Commons, York, PA 17403

Attorney: Robert Clofine, Esq., 120

Pine Grove Commons, York, PA 17403

ESTATE OF MARJORIE L. RUTHERFORD, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Janet M. Zeigler, 53 Walker Avenue, Gettysburg, PA 17325

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore St., Gettysburg, PA 17325

ESTATE OF JULIA R. SLOTHOUR, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executor: M & T Trust Company, 13 Baltimore Street, Hanover, PA 17331

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore St., Gettysburg, PA 17325

ESTATE OF GEORGE MORRELL WILDASIN, DEC'D

Late of the Borough of Abbotstown, Adams County, Pennsylvania

Executor: G. Michael Wildasin, c/o William W. Hafer, Esq., 215 Baltimore Street, Hanover, PA 17331

Attorney: William W. Hafer, Esq., 215 Baltimore Street, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF M. RITA AXWORTHY a/k/a MARIE RITA AXWORTHY a/k/a RITA M. AXWORTHY, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Enid Rose Axworthy nka Enid R. Franko, 18 Brentwood Court, Hanover, PA 17331

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

ESTATE OF DAVID ASHLEY BARTLETT, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Wendy L. Dutterer, 180 Knight Road, Gettysburg, PA 17325

Attorney: Robert L. McQuaide, Esq., Suite 204, 18 Carlisle Street, Gettysburg, PA 17325

ESTATE OF ALVIN L. MOUL, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Shirley J. Mitzel, P. O. Box 303, East Berlin, PA 17316; Larry R. Moul, 6030 Old Hanover Road, Spring Grove, PA 17362

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

THIRD PUBLICATION

ESTATE OF ROSA C. LENTZ, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Debra S. Flickinger, 1270 Hilltown Road, Biglerville, PA 17307

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

ESTATE OF PEARL S. PLANK, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Harold J. Plank, 1540 Old Harrisburg Road, Gettysburg, PA 17325

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

ESTATE OF LEROY D. RINEHART, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Co-Executors: Florence M. Grove & Gala A. Lutz, c/o 29 North Duke Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 29 North Duke Street, York, PA 17401

ESTATE OF TERRY R. SITES, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administrator: Timothy J. Weaver, 3117 Carlisle Road, Gardners, PA 17324

Attorney: Jeremy D. Frey, Esq., Barley, Snyder, Senft & Cohen, LLC., 14 Center Square, Hanover, PA 17331

ESTATE OF CLYDE H. SPANGLER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Clyde H. Spangler, Jr., c/o 29 North Duke Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 29 North Duke Street, York, PA 17401

ESTATE OF MARY ANNA C. WAGNER, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executor: Lawrence O. Wagner, 716 Bon-Ox Rd., Gettysburg, PA 17325

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-230 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of June, 2004, 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 IMPROVED lot of ground situate on the West side of Friendly Drive, in Conewago Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point on the West side of Friendly Drive at lands now or formerly of Gary W. Hubbard and Patricia A. Hubbard, also known as Lot No. 15, Block A; thence along the West side of Friendly Drive, North 30 degrees 55 minutes 20 seconds East, 100 feet to a point on the West side of Friendly Drive at corner of lot now or formerly of Richard J. Neiderer and Barbara A. Neiderer, Lot No. 1, Phase I, Chapel View; thence by lands now or formerly of Richard J. Neiderer and Barbara A. Neiderer, Lot No. 1, Phase I, Chapel View, North 59 degrees 4 minutes 40 seconds West, 175 feet to a point at lands now or formerly of Ronald C. Kerrigan, Lot No. 11, Block A; thence by lands now or formerly of Ronald C. Kerrigan, Lot No. 11, Block A, South 30 degrees 55 minutes 20 seconds West, 100 feet to a point at Lot No. 15, Block A lands now or formerly of Gary W. Hubbard and Patricia A. Hubbard aforesaid; thence by lands now or formerly of Gary W. Hubbard and Patricia A. Hubbard, Lot No. 15, Block A, South 59 degrees 4 minutes 40 seconds East, 175 feet to a point on the West side of Friendly Drive, the place of BEGINNING. CONTAINING 17,500 square feet.

SEIZED and taken into execution as the property of **Aaron Mellinger** and to be sold by me.

Raymond W. Newman-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 July 12, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/14, 21 & 28

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 Thursday, May 20, 2004, at 9:00 a.m.

MYERS—Orphans' Court Action Number OC-29-04. The First and Final Account of Patricia Anthony and Jean Anthony, Executrices of Mary Eva Myers, deceased, late of Mt. Pleasant Township, Adams County, Pennsylvania.

HULL—Orphans' Court Action Number OC-30-04. The First and Final Account of Mayetta Becker, Sherman Krall and Mary Krall, Co-Executors of the Estate of Anna K. Hull, deceased, late of Oxford Township, Adams County, Pennsylvania.

CARTER—Orphans' Court Action Number OC-31-04. The First and Final Account of Frances B. Peifer, Executrix of the Estate of Jay D. Carter, deceased, late of Menallen Township, Adams County, Pennsylvania.

Lisa K. Grubbs
Clerk of Courts

5/7 & 14

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-64 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of June, 2004, 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 Union Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a bolt along Township Road T-455, Clouser Road, at a corner of land now or formerly of Preston L. Bentzel; thence in and along Township Road T-455, Clouser Road, South 35 degrees 32 minutes 14 seconds East, 150.00 feet to a railroad spike in Township Road T-455, Clouser Road, and at a corner of Lot No. 2 on the hereinafter referred to draft of survey; thence by Lot No. 2 and passing through a steel pin set 20.00 feet from the last-mentioned point, South 76 degrees 22 minutes 53 seconds West, 149.27 feet to a steel pin set; thence by the same, South 44 degrees 51 minutes 21 seconds

West, 162.43 feet to a steel pin set on line of Lot No. A on the hereinafter referred to draft of survey; thence by Lot No. A, South 44 degrees 51 minutes 21 seconds West, 162.43 feet to a steel pin set on line of Lot No. A on the hereinafter referred to draft of survey; thence by Lot No. A South 44 degrees 51 minutes 21 seconds West, 41.37 feet to a steel pin set; thence by same, North 35 degrees 32 minutes 14 seconds West, 160.81 feet to a steel pin set on line of land now or formerly of Preston L. Bentzel; thence by said land of Bentzel and passing through an iron pipe 40.98 feet from the last-mentioned point, North 59 degrees 56 minutes 9 seconds East, 340.98 feet, and passing through a steel pin found 20.00 feet from the end of this course, to a bolt along Township Road T-455, Clouser Road, the place of BEGINNING.

THE ABOVE DESCRIPTION was taken from a draft of survey prepared by Worley Surveying, dated May 5, 1989 and being a perimeter description of Lot 1 and Lot 8 thereon, and as recorded in Adams County, Plat Book 53, Page 6.

UNDER AND SUBJECT to restrictions and conditions as now appear of record.

BEING the same premises which Charles W. Weidner, Jr. and Tina M. Wagman, now through marriage known as Tina M. Stevens, joint by Robert M. Stevens, II, her husband, by Deed dated February 21, 2002 and recorded in Adams County on May 7, 2002 at Deed Book Volume 2651, Page 1999, granted and conveyed to Charles W. Weidner, Jr. and James Weidner

Weltman, Weinberg & Reis, Co., L.P.A.
Kimberly J. Hong, Esq.
Attorney for Plaintiff
2718 Koppers Building
436 Seventh Avenue
Pittsburgh, Pennsylvania 15219

Parcel No: (41) K-18-16A

SEIZED and taken into execution as the property of **Charles W. Weidner, Jr. & James Weidner** and to be sold by me.

Raymond W. Newman-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 July 12, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/14, 21 & 28

Adams County Legal Journal

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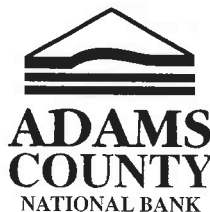
IN THIS ISSUE

GETTYSBURG AUTO EXCHANGE VS.
FREEDOM TOWNSHIP

This opinion continued from last issue (5/14/2004)

Commitment:

The philosophy upon which
Adams County National Bank is
founded and upon which we are planning
for your future financial needs today.



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-434 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of June, 2004, 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 Franklin Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a railroad spike found 3 feet North of the centerline of Hilltown Road (T-355) at corner of Lot No. 6B on the hereinafter described subdivision plan; thence North 67 degrees 00 minutes 10 seconds West 35.00 feet to a railroad spike set 3 feet North of the centerline of Hilltown Road (T-355) at corner of Lot No. 6A; thence by said lot and passing through a 5/8" rebar set 25.00 feet from the beginning of this course, North 22 degrees 59 minutes 50 seconds East, 372.83 feet to a 5/8" rebar set; thence by said lot North 67 degrees 00 minutes 10 seconds West 115.00 feet to a 5/8" rebar set on line of lands now or formerly of SPECO; thence by lands now or formerly of SPECO, North 22 degrees 59 minutes 50 seconds East, 77.17 feet to a 5/8" rebar found at corner of lands now or formerly of SPECO; thence by same, North 67 degrees 00 minutes 10 seconds West 115.00 feet to a 5/8" rebar found at corner of lands now or formerly of SPECO; thence by same, North 22 degrees 59 minutes 50 seconds East, 230.00 feet to a 5/8" rebar found; thence by same, South 67 degrees 00 minutes 10 seconds East, 380.00 feet to a 5/8" rebar found; thence by same, South 22 degrees 59 minutes 50 seconds West, 307.17 feet to a 5/8" rebar set at corner of Lot No. 6B; thence by same, North 67 degrees 00 minutes 10 seconds West, 115.00 feet to a 5/8" rebar set at corner of Lot No. 6B; thence by same and passing through a 5/8" rebar set 25.00 feet from the end of this course, South 22 degrees 59 minutes 50 seconds West, 372.83 feet to a railroad spike set 3 feet North of the centerline of Hilltown Road (T-355), the point and place of BEGINNING.

BEING KNOWN AS 1355 Hilltown Road, Biglerville (Franklin Twp.), PA 17307

PROPERTY ID NO. D-10-2

TITLE TO SAID PREMISES IS VESTED IN Pamela J. Howery by deed from Richard A. Hutchinson dated 03/15/96, recorded 03/15/96, in Deed Book 1159, Page 207.

SEIZED and taken into execution as the property of **Pamela J. Howery** and to be sold by me.

Raymond W. Newman-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 July 12, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/14, 21 & 28

NONPROFIT ARTICLES OF INCORPORATION

NOTICE IS HEREBY GIVEN that Nonprofit Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on March 01, 2004, for the purpose of obtaining a Certificate of Incorporation under the provisions of the Nonprofit Corporation Law of 1988. The name of the proposed nonprofit corporation is: CENTENARY UNITED METHODIST CHURCH BIGLERVILLE. The purpose for which it will be organized is: Church services within United Methodist Church denomination and the teachings of the Holy Bible and Evangelism.

Law Office Forest N. Myers
137 Park Pl W
Shippensburg, PA 17257

5/21

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-710 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of June, 2004, 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, known and designated as Lot No. 62 on a certain plan of lots entitled "Breckenridge Village", made by D. P. Raffensperger Associates, Engineers and Surveyors, dated May 7, 1971, which plan is of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 1 at page 90.

Vested by: Special Warranty Deed dated 5/30/97, given by Albert H. Oussoren and Stacy L. Oussoren, husband and wife, to Christopher P. Richardson and Candy M. Richardson, husband and wife, as tenants of an estate by the entireties, recorded 6/3/97 in Book: 1382 Page: 200

Premises being: 279 West Street, Gettysburg, PA 17325

Tax Parcel No. 16-009-0186

SEIZED and taken into execution as the property of **Christopher P. Richardson & Candy M. Richardson** and to be sold by me.

Raymond W. Newman-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 July 12, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/14, 21 & 28

GETTYSBURG AUTO EXCHANGE VS.
FREEDOM TOWNSHIP

Continued from last issue (5/14/2004)

Auto Exchange also appeals the Board's decision granting a special exception subject to certain conditions. Auto Exchange argues that the conditions and restrictions placed on the grant of the special exception are unreasonable.⁴

Special exceptions are conditionally permitted uses, legislatively allowed where specific standards detailed in a zoning ordinance are

⁴The Board's decision provides that the "grant of the special exception is subject to the Applicant complying with all of the conditions set forth in the Conclusions of Law, including, but not limited to the specific conditions set forth in Paragraphs 9(a) through 9(i). The special exception granted hereby is based on the days and hours of operation and type of use stipulated by the Applicant at the hearing of this matter." Bd. Findings of Fact and Conclusions of Law, p. 8. Paragraphs 9(a) through 9(i) of the Board's Conclusions of Law read as follows:

- a) The driveway entrance to the Property is improved in accordance with the plan submitted by the Applicant to the Township in 1999 and said entrance upgraded to meet all Pennsylvania Department of Transportation specifications.
- b) Automobiles parked on the Property, whether for customers or for sale, shall be setback from property lines in accordance with the setback regulations set forth in Section 905.B of the Ordinance.
- c) Impervious lot coverage shall not exceed 65%. No new stones shall be added to the existing grass area at the northern end of the property and no existing stoned area, including that on the northeastern side of the Property shall be expanded.
- d) A loading/unloading area for automobiles delivered to the site shall be provided. The location and dimensions of said area shall be submitted to the Township Code Enforcement Officer for his review and approval.
- e) No trucks or other vehicles shall back into or out of the Property on to [sic] Emmitsburg Road.
- f) All lighting on the Property shall be shielded such as to direct it onto the Property and away from adjoining properties and public roads.
- g) Parking for all customers shall be provided on-site and in accordance with the standards set forth in the Freedom Township Subdivision and Land Development Ordinance, with no parking permitted along Emmitsburg Road. The [A]pplicant is obligated to provide sufficient parking on-site and to enforce the requirement that its customers not park on adjacent properties or along the Emmitsburg Road right-of-way. All areas of the Property may be used to handle customer parking on the busiest auction nights, including those areas with no pavement or stones. If necessary, the Applicant shall limit automobiles displayed for sale to accommodate customer parking and prevent such parking along Emmitsburg Road. The failure to provide for customer parking on-site presents a nuisance or hazard to vehicles and pedestrians which, if not addressed, would result in Applicant's request for a special exception being denied.

(footnote 4 continued to next page)

met. *Mann v. Lower Makefield Township*, 634 A.2d 768, 770 (Pa. Commw. Ct. 1993). Thus, a special exception is not an exception to the zoning ordinance, but rather a use to which an applicant is entitled unless the proposed use adversely affects the community. *Blancett-Maddock v. City of Pittsburgh Zoning Bd. of Adjustment*, 640 A.2d 498, 500-01 (Pa. Commw. Ct. 1994). It is the concern about the general health, safety and welfare of the community that allows a zoning board to place reasonable conditions on the grant of a special exception. *Butler v. Derr Flooring Co.*, 285 A.2d 538, 542 (Pa. Commw. Ct. 1971); *see generally* PA. STAT. ANN. tit. 53, § 10912.1 (West 1997). In fact, Pennsylvania courts have held that a zoning board not only has the power to impose conditions restricting a use but also is obligated to reduce the impact of an adverse effect to an acceptable level, if it can, by imposing reasonable conditions rather than denying the special exception request. *Edgmont Township v. Springton Lake Montessori Sch., Inc.*, 622 A.2d 418, 420 n.4 (Pa. Commw. Ct. 1993).

Instantly, Auto Exchange's request for a special exception is directly related to the use of the property as a pre-existing nonconforming lot. Auto Exchange seeks a special exception pursuant to Section 305 of the Zoning Ordinance that allows for the expansion of a nonconforming use upon the grant of such an exception. Under the Zoning Ordinance, however, the grant of a special exception is subject to the requirements that the expansion conform to the height, yard and coverage regulations of the applicable district, Freedom Township Zoning Ordinance § 305A(1), and that the expansion be provided with all required off-street parking and loading spaces as set forth in the Zoning Ordinance. Freedom Township Zoning Ordinance § 305A(2). The gist of Auto Exchange's argument is that the conditions placed on the special exception by the Board essentially restricted the rights that Auto Exchange previously enjoyed under a pre-existing nonconforming use.

-
- h) The signage for the property is limited to the existing wall sign(s), the sign along Route 15 and the free-standing sign permitted along Emmitsburg Road. The portable sign cannot be used unless an application is submitted and a permit obtained to therefore under Township requirements.
 - i) An updated site plan must be filed with the Township Code Enforcement Officer showing the dimensions of the building, existing paved and stoned areas and the location and size of other relevant features (e.g. signs, driveways and lights). Such a site plan must be submitted within 60 days of the date of this decision.

Bd. Conclusions of Law, pp. 6-7.

The Board reviewed undisputed evidence that indicated the property in question is entitled to protection as a pre-existing nonconforming use. Indeed, the Board properly concluded that the use of the property “for conducting automobile auctions is a valid, non-conforming use as defined in the Ordinance”. Bd. Conclusions of Law, ¶ 4, p. 5. As discussed above, the October 4, 2001, enforcement notice did not, in any way, limit the use status enjoyed by Auto Exchange. The initial issue, therefore, is whether the activities of Auto Exchange at the property constitute the expansion of the property’s use thereby triggering the need for a special exception pursuant to Section 305 of the Zoning Ordinance.⁵ If, in fact, an expansion had occurred triggering the need for a special exception, then my inquiry will focus upon whether the conditions placed upon the Board’s grant of the special exception were reasonable. On the other hand, if a special exception is unnecessary then the Board’s placement of any conditions that restrict Auto Exchange’s rights as a nonconforming use are, by action of law, invalid. For the reasons set forth below, I find that Auto Exchange is not required to seek a special exception for its current use of the property. Accordingly, the Board mandated conditions placed on Auto Exchange’s use of the property are unreasonable and an abuse of discretion since they unjustly restrict Auto Exchange’s enjoyment of its pre-existing rights.

In considering this issue, it is important to understand the factual background developed before the Board. The record indicates that Auto Exchange is seeking neither to enlarge any structures on the property, *compare with Lower Yoder Township v. Weinzierl*, 276 A.2d 579 (Pa. Commw. Ct. 1971), nor to expand onto an adjacent lot that had previously been unused under the nonconforming use, *compare with Schaffer v. Zoning Hearing Bd. of Upper Darby Township*, 378 A.2d 1054 (Pa. Commw. Ct. 1977). Rather, the Township claims vehicle traffic on the lot has increased due to a larger volume of business at the property and that the impervious coverage on the lot has increased due to Auto Exchange placing new stone in certain areas on the property. I disagree that either of these scenarios constitutes an expansion triggering the need for a special exception.

⁵Section 305 of the Freedom Township Zoning Ordinance allows for the expansion of a nonconforming structure, use or land area provided the expansion has been approved as a special exception and has complied with the restrictions set forth in that section.

Significant to this discussion are a number of findings which the Board reached.⁶ For instance, the Board determined that the number of vehicles displayed for sale at the property fluctuates. Bd. Findings of Fact ¶ 28, p. 5. Although the number of vehicles on display has significantly increased since Auto Exchange purchased the business in 1999, it represents only a slight increase from the mid-1980's pre-ordinance use of the property. *See Id.* Additionally, the Board determined as a matter of fact that large portions of the lot had previously been stoned for use as parking areas. *See Id.* at ¶¶ 25, 27, pp. 4-5.

Although case law is scarce in this area, Pennsylvania is fairly generous to landowners in its treatment of nonconforming use issues. *See generally* ROBERT S. RYAN, PENNSYLVANIA ZONING LAW AND PRACTICE, CHAPTER 7 (2003). The reasoning for such an approach was best summed up by the Pennsylvania Supreme Court when it noted:

The continuance of nonconforming uses under zoning ordinances is countenanced because it avoids the imposition of a hardship upon the property owner and because refusal of the continuance of a nonconforming use would be of doubtful constitutionality

Hanna v. Bd. of Adjustment of Borough of Forest Hills, 183 A.2d 539, 543 (Pa. 1962). Thus, the right to expand a nonconforming use to provide for the natural expansion and accommodation of increased trade "is a constitutional right protected by the due process clause". *Silver v. Zoning Bd. of Adjustment*, 255 A.2d 506, 507 (Pa. 1969). Because of the significance of this right, "a municipality cannot prohibit per se the natural expansion of a nonconforming use." *Id.* at 508.

The issue before the Court is not really a challenge to the settled law concerning the rights of a nonconforming use but, rather, questions the point at which the degree of expansion triggers the ordinance requirements relating to special exceptions. Indeed, the Pennsylvania Supreme Court has held that the right of expansion is not unlimited and a municipality may impose reasonable restrictions on the expansion of a nonconforming use. *Id.* at 507.

The early case of *Haller Baking Co.'s Appeal*, 145 A. 77 (Pa. 1928), provides instruction in this regard. In *Haller*, an ordinance

⁶My review of the record indicates that these findings are reasonably supported by the testimony.

addressing the capacity of a stable was at issue. The ordinance distinguished between a “minor stable” (housing four or less animals) and a “major stable” (capacity to house more than four animals). Based upon this distinction, the municipality revoked a certificate of occupancy previously enjoyed by the landowner. The landowner challenged this revocation on the basis that his use of the property as a stable was a nonconforming use predating the artificial distinctions set forth in the ordinance. The Supreme Court’s opinion in favor of the landowner provides insight to our current issue as it instructed:

Neither the extent, quantity nor quality of the use is mentioned [in the ordinance], but only that it must exist. Neither the act, the ordinance, nor the law generally requires the court to speculate as to the number of acts or business transactions necessary to constitute an existing use.

Id. at 79. Thus, a nonconforming use cannot be limited to the precise magnitude of business which exists at the date of the ordinance. Additionally, it is not essential that exercise of the nonconforming use utilize the entire tract upon which the business is being conducted. *In re Gilfillan’s Permit*, 140 A. 136, 138 (Pa. 1927). Later cases are in accord with these basic tenets. *See Cheswick Borough v. Bechman*, 42 A.2d 60 (Pa. 1945); *Chartiers Township v. William H. Martin, Inc.*, 542 A.2d 985 (Pa. 1988).

In *Chartiers Township v. William H. Martin, Inc.*, the Pennsylvania Supreme Court considered Chartiers Township’s request for an injunction due to what the township perceived to be an illegal expansion of a pre-existing use. The township was seeking to enjoin a landfill operator from expanding the quantity of landfill operations on a 160-acre lot. Although the landfill had historically operated on 30 acres of this lot, the owners expanded their landfill operations into 50 additional acres. The municipality sought an injunction based upon the landowners’ failure to obtain relief under the ordinance prior to expansion. In rejecting the municipality’s claim, the Court opined:

Thus, once it has been determined that a nonconforming use is in existence, an overly technical assessment of that use cannot be utilized to stunt its natural development and growth. As Mr. Justice Musmano aptly stated, “[a]n

ordinance which would allow the housing of a baby elephant cannot evict the animal when it has grown up, since it is generally known that a baby elephant eventually becomes a big elephant.”

Id. at 998-99, quoting *Upper Darby Township Appeal*, 138 A.2d 99, 102 (Pa. 1958).

Given this guidance, it would seem, as a matter of zoning law, that neither the extent, quantity nor quality of a business operation in and of itself triggers an expansion requiring special exception approval. To hold otherwise would allow municipalities to unfairly infringe upon acquired rights protected by nonconformance status based solely upon an increase in sales or inventory.

Instantly, the Board relies upon such an increase in placing conditions upon the grant of special exception. *See* Bd. Findings of Fact, ¶ 28, p. 5. This finding reflects that the peaks and valleys of commercial activity at the property weighed in the Board’s decision. However, this is exactly the type of consideration that our Supreme Court rejected in *Haller*, *supra*. Accordingly, I find that a slight increase in the number of vehicles displayed for sale does not trigger the need for a special exception.

The Board also found, however, that Auto Exchange intends to stone the property to a degree greater than it had been stoned in 1999. The Board found that in 1999 the impervious coverage on the lot was approximately 54% and that the requested use would increase that percentage beyond the 65% allowed by the Zoning Ordinance. *See* Bd. Findings of Fact, ¶¶ 22-23, p. 4. The Board concludes that prohibiting the placement of additional stones is reasonable since the placement of additional stones violates the dimensional requirements of the Zoning Ordinance.⁷

Where a nonconforming use is expanded to the extent that it exceeds the dimensional barriers applicable in a zoning district, the right of a nonconforming user to expand its operation is limited to the same ordinance provisions applicable to any landowner seeking

⁷The Board imposed this requirement as a condition on their grant of a special exception to Auto Exchange. Since I have found in this Opinion that Auto Exchange is not required to obtain a special exception, the discussion of any conditions placed upon that special exception is moot. Further discussion of this issue is warranted, however, in order to avoid future litigation between the parties.

expansion beyond a dimensional barrier. *Appeal of Horsham Township*, 520 A.2d 1226, 1228 (Pa. Commw. Ct. 1987). Thus, the issue before the Court, more narrowly focused, is whether the use of the lot prior to the adoption of the Zoning Ordinance exceeded the impervious coverage limits of the Zoning Ordinance. If so, the landowner is entitled to maintain the lot as was previously used to the extent that it does not exceed the extent of the previous nonconformance. On the other hand, if the use of the lot has been expanded from its previous use to encroach upon barriers in the Zoning Ordinance, then the Board acted reasonably in holding the landowner to those standards. On this issue, I find that the Board committed an abuse of discretion.

Undisputed evidence produced before the Board shows that the landowner previously stoned the area in question prior to the effective date of the Zoning Ordinance. *See* Hearing Transcript, pp. 17, 38, 46, 57-58, May 14, 2002. Although acknowledging this, the Board argues that because some grass has grown over this area, the addition of stone to this area will cause an expansion of a nonconforming use. In support of its reasoning, the Board relies upon a 1999 building permit to conclude that this area was not intended for the storage or display of automobiles. *See generally* Bd. Findings of Fact, ¶ 27, p. 4. There is no basis in the record to support this conclusion. Moreover, this interpretation is contrary to law.

Since the origination of zoning, Pennsylvania courts have consistently held that a use entitled to recognition as a nonconforming use does not lose that protection unless the use is "abandoned". *Appeal of Assoc. Contractors, Inc.*, 138 A.2d 99, 100-01 (Pa. 1958); *Haller Baking Co.'s Appeal*, *supra*. Abandonment requires proof of the intent to abandon and actual abandonment. *See Latrobe Speedway, Inc. v. Zoning Hearing Bd. of Unity Township*, 720 A.2d 127, 131-32 (Pa. 1998). Although disuse and disrepair may indicate abandonment, more is required to show an actual and intentional abandonment. *Id.* The burden of establishing abandonment lies with the municipality. *Broad Acres Constr., Inc. v. Zoning Hearing Bd. of N. Coventry Township*, 454 A.2d 675, 676 (Pa. Commw. Ct. 1983). The record is completely absent of any such proof. Thus, the unrefuted testimony in the record indicates that the area in question had been stoned for parking prior to the adoption of the Zoning Ordinance and

has since not been abandoned. Stripping Auto Exchange of this right under the guise of expansion is an abuse of discretion.⁸

More importantly, even if we presume Auto Exchange is expanding into a previously unused area and that this expansion triggers the need for a special exception, the Board committed an error of law in determining that Auto Exchange's proposal to stone the property would exceed the percentage of impervious coverage permitted by the Zoning Ordinance. *See* Bd. Findings of Fact, ¶ 23, p. 4. More specifically, the Board has misinterpreted the definition of impervious coverage under the Zoning Ordinance.

The Zoning Ordinance defines impervious material as “[a]ny substance placed on a lot which covers the surface in such fashion as to prevent natural absorption of surface water by the earth so covered”. Freedom Township Zoning Ordinance § 202. The Zoning Ordinance goes on to state that the “following items shall be deemed to be impervious material: buildings, concrete sidewalks, driveways and parking areas, swimming pools and other nonporous structures or materials.” *Id.* Apparently, it is this portion of the definition in the Zoning Ordinance upon which the Board relied in finding that Auto Exchange exceeded the 65% impervious coverage limitation in the Zoning Ordinance.

Initially, I note that the Board's interpretation of “impervious material” contradicts its own finding. Specifically, if the Board is concluding that all driveways and parking areas are considered impervious areas regardless of whether they allow for the natural absorption of surface water, then the Board's condition considering parking is inconsistent and, therefore, unreasonable. Specifically, condition 9(g) reads:

The [A]pplicant is obligated to provide sufficient parking on-site and to enforce the requirement that its customers not park on adjacent properties or along the Emmitsburg Road right-of-way. All areas of the Property may be used to handle customer parking on the busiest auction nights, including those areas with no pavement or stones.

⁸My review of the record has failed to reveal any evidence that Auto Exchange ever agreed to be limited by the designation of the 1999 plan indicating a portion of the property as “grass area”. In fact, the record reveals that designations were placed on the documents by the Township Zoning Officer on his own initiative. *See* Hearing Transcript, p. 19, May 14, 2002.

Bd. Conclusions of Law, ¶ 9(g), p. 6. If, as the Board has interpreted, driveways and parking areas are to be considered impervious material then the Board has permitted, and in fact required, a condition that exceeds the limitations of their own Zoning Ordinance. Such a result is nonsensical.

Perhaps the language of the Zoning Ordinance itself causes this contradiction in the Board's interpretation. Specifically, at first glance, the first portion of the definition of "impervious material" appears to be contradicted by its clarification.

Although the Statutory Construction Act, 1 PA. CONS. STAT. ANN. §§ 1501-1991 is not expressly applicable to a local ordinance, *Council of Middletown Township v. Benham*, 523 A.2d 311, 315 (Pa. 1987), the principles contained in the Act are to be followed in construing a municipal ordinance. *Id.*; *Patricca v. Zoning Bd. of Adjustment of the City of Pittsburgh*, 590 A.2d 744, 747 (Pa. 1991). Therefore, portions of the Statutory Construction Act provide guidance in addressing this issue.

Initially, 1 PA. CONS. STAT. ANN. § 1903 (West 1995) provides that words and phrases shall be construed according to the rules of grammar and according to their common and approved usage. Our appellate courts have instructed that qualifying words or phrases are to be applied to the words, phrases, or clauses before them, but they do not extend to or include other words, phrases or clauses more remote, unless such extension or inclusion is clearly required by the intent or meaning of the context or required by an examination of the entire statute. *Smiley v. Ohio Cas. Ins. Co.*, 455 A.2d 142, 147 (Pa. Super. Ct. 1983). Concerning this principle, the Supreme Court stated:

The rule is but another aid to discovery of intent or meaning, however, and not an inflexible and uniformly binding rule. Where the sense of the entire act requires that a qualifying word or phrase apply to several preceding or even succeeding sections, the word or phrase will not be restricted to its immediate antecedent. . . . When several words are followed by a [modifying phrase] which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the [modifying phrase] be read as applicable to all.

Commonwealth v. Rosenbloom Fin. Corp., 325 A.2d 907, 909 (Pa. 1974) (citations omitted). As indicated, this rule not only applies to antecedent modifiers, but preceding modifiers as well.

A second provision of the Statutory Construction Act that sheds light on my analysis is the rule that all parts of an ordinance are to have meaning in ascertaining the drafters' intention. *See generally* 1 PA. CONS. STAT. ANN. § 1922 (West 1995); *Cooley v. E. Norriton Township*, 466 A.2d 765, 768 (Pa. Commw. Ct. 1983); *City of Allentown v. Pennsylvania Pub. Util. Comm'n*, 96 A.2d 157, 158 (Pa. Super. Ct. 1953). If, in doing so, there is a conflict between the special provision and a general provision, the two shall be construed, if possible, so that effect may be given to both. *See* 1 PA. CONS. STAT. ANN. § 1933 (West 1995).

Finally, I am mindful in considering this issue that the punctuation of a sentence in a statute is not controlling and does not require the Court to ignore obvious legislative intent or reach an absurd result. *Cooley*, 466 A.2d at 768; *In Re Change of Rd. in Towamensing Township*, 18 A.2d 468, 471-72 (Pa. Super. Ct. 1941); *Commonwealth v. Bienkowski*, 9 A.2d 169, 172 (Pa. Super. Ct. 1939); *see also* 1 PA. CONS. STAT. ANN. § 1923 (West 1995).

In reading the Zoning Ordinance definition for “**impervious material**”, I find that the qualifying word “concrete” applies not only to sidewalks but to driveways and parking areas as well. I reach this conclusion for several reasons. First, defining grass or stone driveways and parking areas as impervious material contradicts the first sentence in the definition and renders that sentence meaningless. However, interpreting the qualifier “concrete” as being applicable to driveways and parking areas gives consistent meaning to both sentences in the definition.

Secondly, including grass and stoned driveways within the definition of impervious material contradicts the common understanding and dictionary definition of the word “impervious”.⁹ Such an interpretation is certain to lead to absurd results. *See* 1 PA. CONS. STAT. ANN. § 1922(1) (West 1995) (in construing statutes, legislature presumably did not intend absurd result). An example of such an absurd result is the Board's decision. As previously indicated, the Board

⁹ Impervious is defined as: “not allowing entrance or passage . . . not capable of being damaged or harmed.” MERRIAM WEBSTER COLLEGIATE DICTIONARY 581 (10th ed. 2000).

determined that Auto Exchange may use portions of the lot as parking areas, however, may not stone that area. Since there is no distinction in the Zoning Ordinance between grass parking areas and stone parking areas, it is improper for the Township to artificially create one. The critical distinction in the Zoning Ordinance is whether the surface prevents the natural absorption of surface water. There is nothing in the current record to indicate that Auto Exchange's plans to stone the parking area will prevent the natural absorption of surface water.

In light of the foregoing, I find that there was no need for Auto Exchange to apply for a special exception. As such, any restrictions placed on Auto Exchange's use of the property by the conditions contained in the Board's decision is contrary to law and, therefore, vacated.¹⁰

For the foregoing reasons, the attached Order is entered.¹¹

ORDER OF COURT

AND NOW, this 4th day of June, 2003, the Freedom Township Zoning Hearing Board's decision is affirmed in part and vacated in part. The failure of Auto Exchange to file a timely appeal from the Zoning Officer's determination of the violations of Sections 1504 and 1303D(1) of the Zoning Ordinance has been conclusively determined and the Board's decision affirming this determination is affirmed. However, any other conditions placed upon Auto Exchange by the Freedom Township Zoning Hearing Board are vacated. Auto Exchange may exercise its rights as a nonconforming use to utilize its entire lot for auto auction purposes subject to dimensional boundaries set forth in the Zoning Ordinance. Placing stone on the property that does not prevent the natural absorption of surface water does not violate the impervious coverage limitations set forth in the Zoning Ordinance.

¹⁰This, of course, does not relieve Auto Exchange of the obligation to comply with Section 1303D(1) of the Zoning Ordinance (relating to light glare). Nor does it grant Auto Exchange the authority to use a temporary sign contrary to the conclusive determination of the Zoning Officer that the temporary sign violates Section 1504 of the Zoning Ordinance.

¹¹ Although I recognize the Township's concern over the safety issues created by parking along a roadway due to alleged overcrowding in Auto Exchange's lot, there are means for the Township to address this issue other than by infringing upon the protected rights of the landowner. For instance, the Township may aggressively enforce vehicle and parking statutes and ordinances against the offending vehicle operator.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-64 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of June, 2004, 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 Union Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a bolt along Township Road T-455, Clouser Road, at a corner of land now or formerly of Preston L. Bentzel; thence in and along Township Road T-455, Clouser Road, South 35 degrees 32 minutes 14 seconds East, 150.00 feet to a railroad spike in Township Road T-455, Clouser Road, and at a corner of Lot No. 2 on the hereinafter referred to draft of survey; thence by Lot No. 2 and passing through a steel pin set 20.00 feet from the last-mentioned point, South 76 degrees 22 minutes 53 seconds West, 149.27 feet to a steel pin set; thence by the same, South 44 degrees 51 minutes 21 seconds West, 162.43 feet to a steel pin set on line of Lot No. A on the hereinafter referred to draft of survey; thence by Lot No. A, South 44 degrees 51 minutes 21 seconds West, 162.43 feet to a steel pin set on line of Lot No. A on the hereinafter referred to draft of survey; thence by Lot No. A South 44 degrees 51 minutes 21 seconds West, 41.37 feet to a steel pin set; thence by same, North 35 degrees 32 minutes 14 seconds West, 160.81 feet to a steel pin set on line of land now or formerly of Preston L. Bentzel; thence by said land of Bentzel and passing through an iron pipe 40.98 feet from the last-mentioned point, North 59 degrees 56 minutes 9 seconds East, 340.98 feet, and passing through a steel pin found 20.00 feet from the end of this course, to a bolt along Township Road T-455, Clouser Road, the place of BEGINNING.

THE ABOVE DESCRIPTION was taken from a draft of survey prepared by Worley Surveying, dated May 5, 1989 and being a perimeter description of Lot 1 and Lot 8 thereon, and as recorded in Adams County, Plat Book 53, Page 6.

UNDER AND SUBJECT to restrictions and conditions as now appear of record.

BEING the same premises which Charles W. Weidner, Jr. and Tina M. Wagman, now through marriage known as Tina M. Stevens, joint by Robert M. Stevens, II, her husband, by Deed dated February 21, 2002 and recorded in Adams County on May 7, 2002 at Deed

Book Volume 2651, Page 1999, granted and conveyed to Charles W. Weidner, Jr. and James Weidner.

Wellman, Weinberg & Reis, Co., L.P.A.
 Kimberly J. Hong, Esq.
 Attorney for Plaintiff
 2718 Koppers Building
 436 Seventh Avenue
 Pittsburgh, Pennsylvania 15219

Parcel No: (41) K-18-16A

SEIZED and taken into execution as the property of **Charles W. Weidner, Jr. & James Weidner** and to be sold by me.

Raymond W. Newman-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 July 12, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/14, 21 & 28

NOTICE OF FILING OF FICTITIOUS NAME AMENDMENT, CANCELLATION OR WITHDRAWAL

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Pennsylvania's "Fictitious Names Act", 54 Pa. C.S.A. §§ 301 et seq., of the filing of an Application for Registration of Fictitious Name under the said Act. The fictitious name is "THE FLOWER SHOP" KOONTZ FLORIST & GREENHOUSE. The address of the principal office or place of business to be carried on under or through the fictitious name is 46 Prince Street, Littlestown, Pennsylvania 17340. The name and address of the person who is a party to the registration is Ira A. Bitner, of 46 Prince Street, Littlestown, Pennsylvania 17340, and the party deleted from the said registration is Jane E. Bitner, of the same address. An application for registration under the Fictitious Names Act of the said fictitious name was filed in the Office of the Secretary of the Commonwealth of Pennsylvania on April 15, 2004.

Campbell & White, P.C.
 112 Baltimore Street
 Gettysburg, PA 17325
 Attorneys for Applicant

5/21

NONPROFIT ARTICLES OF INCORPORATION

NOTICE IS HEREBY GIVEN that Nonprofit Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on March 01, 2004, for the purpose of obtaining a Certificate of Incorporation under the provisions of the Nonprofit Corporation Law of 1988. The name of the proposed nonprofit corporation is: IDAVILLE UNITED METHODIST CHURCH. The purpose for which it will be organized is: Church services within United Methodist Church denomination and the teachings of the Holy Bible and Evangelism.

Law Office Forest N. Myers
 137 Park Pl W
 Shippensburg, PA 17257

5/21

CONVERSION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Conversion were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on or about March 1, 2004 for the purpose of changing the status of BUELL RIDERS ADVENTURE GROUP, INC., 21 Cavalry Field Road, Gettysburg, PA 17325, from Domestic Nonprofit to Business Corporation.

Bernard A. Yannetti, Jr., Esq.
 Hartman & Yannetti
 Solicitors

5/21

FICTITIOUS NAME NOTICE

Pursuant to the provisions of the Fictitious Name Act of 1982, 54 Pa.C.S. Section 301, et seq, notice is hereby given that Billye Joyce Roberts, 401 York Street, 2nd Floor, Gettysburg, Pennsylvania 17325 intends to file an application for registration of a fictitious name: NIGHTWRITE, under which she intends to do business at 401 York Street, 2nd Floor, Gettysburg, Pennsylvania 17325.

5/21

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-230 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of June, 2004, 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 IMPROVED lot of ground situate on the West side of Friendly Drive, in Conewago Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point on the West side of Friendly Drive at lands now or formerly of Gary W. Hubbard and Patricia A. Hubbard, also known as Lot No. 15, Block A; thence along the West side of Friendly Drive, North 30 degrees 55 minutes 20 seconds East, 100 feet to a point on the West side of Friendly Drive at corner of lot now or formerly of Richard J. Neiderer and Barbara A. Neiderer, Lot No. 1, Phase I, Chapel View; thence by lands now or formerly of Richard J. Neiderer and Barbara A. Neiderer, Lot No. 1, Phase I, Chapel View, North 59 degrees 4 minutes 40 seconds West, 175 feet to a point at lands now or formerly of Ronald C. Kerrigan, Lot No. 11, Block A; thence by lands now or formerly of Ronald C. Kerrigan, Lot No. 11, Block A, South 30 degrees 55 minutes 20 seconds West, 100 feet to a point at Lot No. 15, Block A lands now or formerly of Gary W. Hubbard and Patricia A. Hubbard aforesaid; thence by lands now or formerly of Gary W. Hubbard and Patricia A. Hubbard, Lot No. 15, Block A, South 59 degrees 4 minutes 40 seconds East, 175 feet to a point on the West side of Friendly Drive, the place of BEGINNING. CONTAINING 17,500 square feet.

SEIZED and taken into execution as the property of **Aaron Mellinger** and to be sold by me.

Raymond W. Newman-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 July 12, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/14, 21 & 28

CONVERSION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Conversion were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on or about March 1, 2004 for the purpose of changing the status of BATTLEFIELD CHAPTER H. O. G., INC., 21 Cavalry Field Road, Gettysburg, PA 17325, from Domestic Nonprofit to Business Corporation.

Bernard A. Yannetti, Jr., Esq.
Hartman & Yannetti
Solicitors

5/21

HARRISBURG BASED
PERSONAL INJURY & WORKERS'
COMPENSATION LAW FIRM
SEEKING OFFICE SHARING
ARRANGEMENT IN GETTYSBURG

Harrisburg based Personal Injury & Workers' Compensation law firm is going to be opening an office in Gettysburg and needs to obtain location for the same. Interest is in entering into an office sharing arrangement with a general practice law firm, to be able to meet clients a few days per month at office, have a small sign with our law firm's name in the front of the office, and benefit from mutual referrals; no support staff or access to any office equipment necessary; no telephone answering necessary.

Contact Robert D. Hamilton, Esq.,
Freeburn & Hamilton, Personal Injury
& Workers' Compensation Attorneys,
Harrisburg, PA, Tel: (717) 671-1955
Ext. 4, Fax: (717) 671-1960, e-mail:
robhamilton@pa-injurylawyer.com.

5/21

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 JOHN C. BELLEW, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Personal Representative: Robert M. Bellew, 6013 Deer Park Road, Reisterstown, MD 21136

ESTATE OF EVELYN C. FROCK, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executors: Susan J. Frock, 376 Pine Grove Road, Hanover, PA 17331; Carolyn J. Frock, 376 Pine Grove Road, Hanover, PA 17331

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

ESTATE OF GEORGE F. HOCKEN-SMITH, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executors: Deborah A. Klunk, 524 Ridge Avenue, McSherrystown, PA 17344, Henry Stephen Edwards, 422 North Franklin Street, Hanover, PA 17331

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

ESTATE OF HERBERT KIESSLING, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Joanne Schmick, c/o Anthony J. Nestico, Esq., Nestico, Druby & Hildabrand LLP, 840 East Chocolate Avenue, Hershey, PA 17033

Attorney: Anthony J. Nestico, Esq., Nestico, Druby & Hildabrand LLP, 840 East Chocolate Avenue, Hershey, PA 17033

ESTATE OF CATHERINE E. MILLER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: James E. O'Brien, 9190 Wayne Highway, Waynesboro, PA 17268

Attorney: Timothy W. Misner, Esq., 39 South Broad Street, Waynesboro, PA 17268-1610

SECOND PUBLICATION

ESTATE OF DOROTHY K. BORROR a/k/a DOROTHY VIRGINIA BORROR, DEC'D

Late of the Borough of East Berlin, Adams County, Pennsylvania

Executrix: Wanda L. Elicker, 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

ESTATE OF RUPERT F. CHISHOLM, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Virginia E. Schein, 1008 Hilltown Road, Biglerville, PA 17307

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

ESTATE OF ROBERT A. EICHELBERGER, DEC'D

Late of the Borough of East Berlin, Adams County, Pennsylvania

Executor: Adams County National Bank, c/o 106 Harrisburg Street, East Berlin, PA 17316

Attorney: Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 106 Harrisburg Street, East Berlin, PA 17316

ESTATE OF ROY E. GROVE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Adams County National Bank, c/o 106 Harrisburg Street, East Berlin, PA 17316

Attorney: Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 106 Harrisburg Street, East Berlin, PA 17316

ESTATE OF H. CATHERINE HARTMAN, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executors: Harry Lee Hartman & John Hunter Hartman, c/o Robert Clofine, Esq., 120 Pine Grove Commons, York, PA 17403

Attorney: Robert Clofine, Esq., 120 Pine Grove Commons, York, PA 17403

ESTATE OF MARJORIE L. RUTHERFORD, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Janet M. Zeigler, 53 Walker Avenue, Gettysburg, PA 17325

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore St., Gettysburg, PA 17325

ESTATE OF JULIA R. SLOTHOUR, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executor: M & T Trust Company, 13 Baltimore Street, Hanover, PA 17331

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore St., Gettysburg, PA 17325

ESTATE OF GEORGE MORRELL WILDASIN, DEC'D

Late of the Borough of Abbottstown, Adams County, Pennsylvania

Executor: G. Michael Wildasin, c/o William W. Hafer, Esq., 215 Baltimore Street, Hanover, PA 17331

Attorney: William W. Hafer, Esq., 215 Baltimore Street, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF M. RITA AXWORTHY a/k/a MARIE RITA AXWORTHY a/k/a RITA M. AXWORTHY, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Enid Rose Axworthy nka Enid R. Franko, 18 Brentwood Court, Hanover, PA 17331

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

ESTATE OF DAVID ASHLEY BARTLETT, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Wendy L. Dutterer, 180 Knight Road, Gettysburg, PA 17325

Attorney: Robert L. McQuaide, Esq., Suite 204, 18 Carlisle Street, Gettysburg, PA 17325

ESTATE OF ALVIN L. MOUL, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Shirley J. Mitzel, P. O. Box 303, East Berlin, PA 17316; Larry R. Moul, 6030 Old Hanover Road, Spring Grove, PA 17362

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

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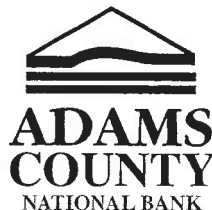
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In times like these,
you and your clients need
the experience and expertise
provided by a trust professional.



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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-434 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of June, 2004, 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 Franklin Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a railroad spike found 3 feet North of the centerline of Hilltown Road (T-355) at corner of Lot No. 6B on the hereinafter described subdivision plan; thence North 67 degrees 00 minutes 10 seconds West 35.00 feet to a railroad spike set 3 feet North of the centerline of Hilltown Road (T-355) at corner of Lot No. 6A; thence by said lot and passing through a 5/8" rebar set 25.00 feet from the beginning of this course, North 22 degrees 59 minutes 50 seconds East, 372.83 feet to a 5/8" rebar set; thence by said lot North 67 degrees 00 minutes 10 seconds West 115.00 feet to a 5/8" rebar set on line of lands now or formerly of SPECO; thence by lands now or formerly of SPECO, North 22 degrees 59 minutes 50 seconds East, 77.17 feet to a 5/8" rebar found at corner of lands now or formerly of SPECO; thence by same, North 67 degrees 00 minutes 10 seconds West 115.00 feet to a 5/8" rebar found at corner of lands now or formerly of SPECO; thence by same, North 22 degrees 59 minutes 50 seconds East, 230.00 feet to a 5/8" rebar found; thence by same, South 67 degrees 00 minutes 10 seconds East, 380.00 feet to a 5/8" rebar found; thence by same, South 22 degrees 59 minutes 50 seconds West, 307.17 feet to a 5/8" rebar set at corner of Lot No. 6B; thence by same, North 67 degrees 00 minutes 10 seconds West, 115.00 feet to a 5/8" rebar set at corner of Lot No. 6B; thence by same and passing through a 5/8" rebar set 25.00 feet from the end of this course, South 22 degrees 59 minutes 50 seconds West, 372.83 feet to a railroad spike set 3 feet North of the centerline of Hilltown Road (T-355), the point and place of BEGINNING.

BEING KNOWN AS 1355 Hilltown Road, Biglerville (Franklin Twp.), PA 17307

PROPERTY ID NO. D-10-2

TITLE TO SAID PREMISES IS VESTED IN Pamela J. Howery by deed from Richard A. Hutchinson dated 03/15/96, recorded 03/15/96, in Deed Book 1159, Page 207.

SEIZED and taken into execution as the property of **Pamela J. Howery** and to be sold by me.

Raymond W. Newman-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 July 12, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/14, 21 & 28

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on the 31st day of March, 2004, for the purpose of obtaining a Certificate of Incorporation for a proposed corporation organized under the Pennsylvania Nonprofit Corporation Law of 1988.

The name of the corporation is: THE GETTYSBURG BATTLEFIELD LAND PRESERVATION ASSOCIATION, INC.

John R. Fenstermacher, Esq.
Fenstermacher and Associates, P.C.
5115 East Trindle Road
Mechanicsburg, PA 17050

5/28

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-710 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of June, 2004, 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, known and designated as Lot No. 62 on a certain plan of lots entitled "Breckenridge Village", made by D. P. Raffensperger Associates, Engineers and Surveyors, dated May 7, 1971, which plan is of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 1 at page 90.

Vested by: Special Warranty Deed dated 5/30/97, given by Albert H. Oussoren and Stacy L. Oussoren, husband and wife, to Christopher P. Richardson and Candy M. Richardson, husband and wife, as tenants of an estate by the entireties, recorded 6/3/97 in Book: 1382 Page: 200

Premises being: 279 West Street, Gettysburg, PA 17325

Tax Parcel No. 16-009-0186

SEIZED and taken into execution as the property of **Christopher P. Richardson & Candy M. Richardson** and to be sold by me.

Raymond W. Newman-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 July 12, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/14, 21 & 28

COMMONWEALTH VS. KINNARD

1. A claim challenging the sufficiency of the evidence is a question of law. Evidence is sufficient to support a verdict where it establishes beyond a reasonable doubt each material element of the crime charged and the commission thereof by the accused. When reviewing a sufficiency claim the Court is required to view the evidence in the light most favorable to the verdict winner giving the Commonwealth the benefit of all reasonable inferences to be drawn from the evidence.

2. An attack on the weight of the evidence is addressed to the discretion of the trial court. The role of the trial judge is to determine that “notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice.”

3. To sustain a conviction for aggravated assault, the Commonwealth must prove beyond a reasonable doubt that a defendant attempted to cause or intentionally or knowingly caused bodily injury to any of the persons in the performance of their duty. Among those listed in subsection (c) are deputy sheriffs.

4. Under Pennsylvania law it is clear that where an accused raises the defense of self-defense, the burden is on the Commonwealth to prove beyond a reasonable doubt that the criminal act was not a justifiable act of self-defense. The use of force for self-defense purposes is justifiable when the person using the force reasonably believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by another person.

5. First, the defendant must have acted out of an honest, bonafide belief that he is in imminent danger. Secondly, the defendant’s belief must be reasonable in light of the facts as they appear to him. The first of these elements is entirely subjective; the second, however, is clearly objective.

6. Deputy Sheriffs are entitled to use force that is reasonably necessary in order to allow them to effectuate the rules and regulations of the prison.

In the Court of Common Pleas of Adams County, Pennsylvania, Criminal, No. CC-573-02, COMMONWEALTH OF PENNSYLVANIA VS. GREGORY SHANE KINNARD, JR.

Paul T. Dean, Esq., District Attorney, for Commonwealth
Steve Rice, Esq., for Defendant

George, J., June 9, 2003

OPINION PURSUANT TO PA. R. APP. P. 1925

Following a jury trial held on August 14, 2002, the Defendant, Gregory Shane Kinnard, Jr. (hereinafter referred to as “Kinnard”), was found guilty of two counts of aggravated assault as felonies of the second degree pursuant to Section 2702(a)(3) of the Pennsylvania Crimes Code and two counts of simple assault pursuant to Section 2701 of the Pennsylvania Crimes Code as misdemeanors of the second degree. During sentencing on March 13, 2003, the Court found that the simple assault counts merged with the aggravated assault

counts for the purpose of sentencing. Kinnard was sentenced to serve no less than eighteen (18) months and no more than ten (10) years in a state correctional institution on each count to run consecutive to each other. Kinnard, thereafter, filed a timely appeal to the Pennsylvania Superior Court. In his Concise Statement of Matters Complained of on Appeal, Kinnard challenges the sufficiency of the evidence and the weight of the evidence on each conviction.

In *Commonwealth v. Widmer*, 744 A.2d 745 (Pa. 2000), the Pennsylvania Supreme Court noted the distinction between a claim challenging the sufficiency of the evidence and a claim challenging the weight of the evidence. *Id.* at 751. A claim challenging the sufficiency of the evidence is a question of law. *Id.* Evidence is sufficient to support a verdict when it establishes beyond a reasonable doubt each material element of the crime charged and the commission thereof by the accused. *Commonwealth v. Karkaria*, 625 A.2d 1167, 1170 (Pa. 1993). When reviewing a sufficiency claim, the Court is required to view the evidence in the light most favorable to the verdict winner giving the Commonwealth the benefit of all reasonable inferences to be drawn from the evidence. *Commonwealth v. Chambers*, 599 A.2d 630, 633 (Pa. 1991).

On the other hand, a motion for a new trial based upon the grounds that the verdict was contrary to the weight of the evidence concedes that there is insufficient evidence to sustain a verdict. *Commonwealth v. Whiteman*, 485 A.2d 459, 462 (Pa. Super. Ct. 1984). An attack on the weight of the evidence is addressed to the discretion of the trial court. *Commonwealth v. Brown*, 648 A.2d 1177, 1189 (Pa. 1994). The role of the trial judge is to determine that “notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice”. *Widmer*, 744 A.2d at 752, quoting *Thompson v. City of Philadelphia*, 493 A.2d 669, 674 (Pa. 1985).

In order for the Commonwealth to sustain a conviction for aggravated assault under Section 2702(a)(3) of the Pennsylvania Crimes Code, the Commonwealth must prove beyond a reasonable doubt that a defendant attempted to cause or intentionally or knowingly caused bodily injury to any of the persons enumerated in subsection (c) in the performance of their duty. 18 PA. CON. STAT. ANN. § 2702(a)(3) (West 2003). Among those listed in subsection (c) are

deputy sheriffs. 18 PA. CON. STAT. ANN. § 2702(c)(7) (West 2003). In order to sustain a conviction for simple assault, the Commonwealth is required to prove beyond a reasonable doubt that the defendant attempted to cause or intentionally, knowingly or recklessly caused bodily injury to another. *See* 18 PA. CON. STAT. ANN. § 2701 (West 2003). Against this backdrop, the following testimony was elicited at trial.

On March 22, 2002, Deputy Sheriffs Whitmoyer and Swatsworth (hereinafter “Whitmoyer and Swatsworth”) went to the Adams County Prison in the performance of their duties as Deputy Sheriffs. Tr. pp. 83-84, 94-95. The purpose of their visit to the Adams County Prison was to transport Kinnard from the Adams County Prison to another correctional facility. *Id.* After handcuffing and shackling another defendant, Whitmoyer attempted to handcuff and shackle Kinnard. *Id.* at 84-85. Whitmoyer noticed that Kinnard’s sock was balled up and checked the sock for contraband and to straighten it out for Kinnard’s comfort. *Id.* at 85. In response to Whitmoyer’s interaction with his sock, Kinnard kicked at him and told him to “get the fuck off my sock.” *Id.* During the course of this interaction, Kinnard turned on Whitmoyer, pushed him, and put his fists up in a fighting stance. *Id.* at 85, 88. Whitmoyer thought that Kinnard was going to punch him and attempted to push Kinnard against the wall. *Id.* at 85. At this point, Kinnard punched Whitmoyer with a closed fist on the right side of his head. *Id.* at 85-86. Swatsworth testified that he observed the following: “[Kinnard] was backed up and it was kind of like a fighter, a boxer maybe, and I mean he just, he hit . . . Whitmoyer with about everything he had. It was a round-house blow to the side of the head.” *Id.* at 96. According to Swatsworth, it appeared that the blow stunned Whitmoyer and knocked him to the floor. *Id.* Swatsworth ran to the aid of Whitmoyer and attempted to push Kinnard against the wall for the purpose of getting him away from Whitmoyer. *Id.* at 96-97. During his efforts to intervene, Swatsworth testified: “I looked down at . . . Whitmoyer to check him and see if he was okay, and then Kinnard gave me the same type of hit along the left side of the head and that one staggered me but I didn’t go down, and then he hit me two more times and at that point I . . .”. *Id.* at 97. Further scuffle ensued until Kinnard was subdued by the Deputy Sheriffs and a number of correction officers. *Id.* at 98.

As a result of the scuffle, Whitmoyer suffered scrapes to his knees and an abrasion to his head. *Id.* at 86. Swatsworth had a left black eye and a cut on the right side of his head. *Id.* at 99. He suffered headaches for about a week, required treatment with pain-relieving medication, and used ice packs for a couple of days until the swelling relinquished. *Id.* Both Deputy Sheriffs were treated at the hospital for their injuries.

Throughout the course of the trial, the defense attempted to paint a picture of self-defense. In support of this claim, Kinnard called a fellow inmate, Chris Duttera, who indicated that when Kinnard turned on Whitmoyer, Whitmoyer placed his forearm against Kinnard's chest and grabbed Kinnard in his throat area. *See generally Id.* at 139-142. It was at this point that Kinnard punched Whitmoyer. However, prior to this exchange Duttera acknowledged that while Whitmoyer was attempting to shackle Kinnard, Kinnard kept moving his leg around and "wouldn't sit still for him to do it". *Id.* at 146. Additionally, Duttera acknowledged that Kinnard kicked at Whitmoyer during this period of time. *Id.* Duttera testified that as Whitmoyer attempted to unravel Kinnard's sock, Kinnard was using profanity and told Whitmoyer something like "get the fuck off my sock". *Id.* at 147.

Kinnard also called a second inmate, Chad Parson, who gave a slightly different version of the incident. Essentially, Parson described the incident as an assault by Whitmoyer. *Id.* at 167.

Finally, Kinnard testified. Kinnard indicated that he struck Whitmoyer out of fear because Whitmoyer grabbed his neck. *Id.* at 179-181. He claims to have struck Swatsworth because: "They was acting together. I know they was." *Id.* at 182. Later he indicated:

They are friends. If one thing happens to one of them they're going to support each other no matter what. So I know when he came towards me and I was fighting Mr. Whitmoyer, that Mr. Swatsworth was coming towards me. He had his fist balled up. He didn't come and step between us and say break it up.

Id. at 182-83.

Under cross-examination, he clarified his reason for striking Swatsworth as follows:

Actually I was already—me and Mr. Whitmoyer was already engaged in a fist fight. So by his partner running in my direction made me more alert that it wasn't just me and Mr. Whitmoyer's fight, that them two were indeed going to jump me because they are united as United States of America, for the people, by the people, as United States citizens. They work together for the law, so yes, I did think he was going to attack me too.

Id. at 193.

Clearly, the sole issue at trial centered upon whether Whitmoyer was attempting to properly restrain Kinnard or, on the other hand, whether Whitmoyer assaulted Kinnard, thus, entitling Kinnard to exercise self-defense.

Under Pennsylvania law it is clear that where an accused raises the defense of self-defense, the burden is on the Commonwealth to prove beyond a reasonable doubt that the criminal act was not a justifiable act of self-defense. *Commonwealth v. Morgan*, 625 A.2d 80, 82 (Pa. Super. Ct. 1993). The use of force for self-defense purposes is justifiable when the person using the force reasonably believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by another person. It is important to note that the requirement that the defendant be operating under the reasonable belief that he is in imminent danger of death involves two elements. *Commonwealth v. Light*, 326 A.2d 288, 291 (Pa. 1974). First, the defendant must have acted out of an honest, bona fide belief that he is in imminent danger. *Id.* Secondly, the defendant's belief must be reasonable in light of the facts as they appear to him. *Id.* The first of these elements is entirely subjective; the second, however, is clearly objective. *Id.*

In the context of this case, and in determining whether Kinnard was in immediate danger of unlawful force, it is important to note that the Deputy Sheriffs are entitled to use force that is reasonably necessary in order to allow them to effectuate the rules and regulations of the prison. *See generally* 18 PA. CON. STAT. ANN. § 509 (West 1998). Both Commonwealth and defense witnesses indicated that Kinnard was resisting being shackled and, in fact, had attempted to kick Whitmoyer. Moreover, taking the testimony in a light most favorable to the Commonwealth, Kinnard turned on Whitmoyer

in a position that caused Whitmoyer to fear being struck by Kinnard. Tr. pp. 85, 88. Whitmoyer and Swatsworth consistently described Whitmoyer's actions as being an effort to restrain Kinnard. *Id.* at 85, 92, 106. Whitmoyer indicated that any contact with Kinnard's neck was inadvertent. *Id.* at 87. It appears that the jury accepted this version of the events and rejected any theory of self-defense. Both Whitmoyer and Swatsworth appeared as credible witnesses to this Court. Accordingly, the record supports the jury's findings as to each of the elements of the crimes as well as the jury's rejection of Kinnard's claim of self-defense. Such a verdict does not shock the conscience of this Court.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-230 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of June, 2004, 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 IMPROVED lot of ground situate on the West side of Friendly Drive, in Conewago Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point on the West side of Friendly Drive at lands now or formerly of Gary W. Hubbard and Patricia A. Hubbard, also known as Lot No. 15, Block A; thence along the West side of Friendly Drive, North 30 degrees 55 minutes 20 seconds East, 100 feet to a point on the West side of Friendly Drive at corner of lot now or formerly of Richard J. Neiderer and Barbara A. Neiderer, Lot No. 1, Phase I, Chapel View, thence by lands now or formerly of Richard J. Neiderer and Barbara A. Neiderer, Lot No. 1, Phase I, Chapel View, North 59 degrees 4 minutes 40 seconds West, 175 feet to a point at lands now or formerly of Ronald C. Kerrigan, Lot No. 11, Block A; thence by lands now or formerly of Ronald C. Kerrigan, Lot No. 11, Block A, South 30 degrees 55 minutes 20 seconds West, 100 feet to a point at Lot No. 15, Block A lands now or formerly of Gary W. Hubbard and Patricia A. Hubbard aforesaid; thence by lands now or formerly of Gary W. Hubbard and Patricia A. Hubbard, Lot No. 15, Block A, South 59 degrees 4 minutes 40 seconds East, 175 feet to a point on the West side of Friendly Drive, the place of BEGINNING. CONTAINING 17,500 square feet.

SEIZED and taken into execution as the property of Aaron Mellinger and to be sold by me.

Raymond W. Newman-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 July 12, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/14, 21 & 28

WRIT OF SCIRE FACIAS

2004-NO-0000365

Adams County, ss.

The Commonwealth of Pennsylvania, To Kenneth J. Kluge Greeting:

Whereas, The Borough of Littlestown on the 16th day of July, 2003 filed its claim in our Court of Common Pleas of Adams County as No. 03-TL-309 for the sum of \$2,150.52 with interest from the 16th day of July, 2003 for unpaid water and sewer rentals due and owing, including penalty, interest and costs, plus additional water and sewer rentals, and penalty thereon.

against the following property situate in 107 South Queen Street, Littlestown, Adams County, PA, also known as Adams County Parcel No. 008-0333, Record Book 2236 at Page 10.

owned or reputed to be owned by you Kenneth J. Kluge

And Whereas, we have been given to understand that said claim is still due and unpaid, and remains a lien against the property;

Now, you are hereby notified to file your affidavit of defense to said claim, if defense you have thereto, in the office of the Prothonotary of our said Court within fifteen days after the service of this writ upon you.

If no affidavit of defense be filed within said time, judgment may be entered against you for the whole claim and the property described in the claim be sold to recover the amount thereof.

Witness the Honorable John D. Kuhn, President Judge of our said Court at Gettysburg, this 23rd day of April, A.D. 2004.

Patricia A. Funt, Prothonotary
By: Chris Dutrow
Deputy Prothonotary

5/28, 6/4 & 11

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania.

The name of the corporation is ABSOLUTE AIR, INC.

The corporation has been incorporated under the Pennsylvania Business Corporation Law of 1988.

Thomas R. Campbell
Campbell & White, P.C.
112 Baltimore Street
Gettysburg, PA 17325

5/28

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed by GRIFFITH AUTOMATION, INC. with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of incorporating under the Pennsylvania Business Corporation Law of 1988, Act of December 21, 1988, P.L. 1444, No. 177, as amended and supplemented.

Craig A. Diehl, Esq., CPA

5/28

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed on or about February 5, 2004, with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, for the purpose of obtaining a Certificate of Incorporation for a business corporation organized under the Business Corporation Law of 1988, Act of December 21, 1988, P.L. 1444, No. 177, as amended.

The name of the corporation is, D & M GRADING, INC. The registered office of the corporation is 584 Peak View Rd., York Springs, PA 17372.

This notice is given pursuant to Section 1307 of the Business Corporation Law of 1988.

John C. Zepp, III
Attorney At Law
P.O. Box 204

York Springs, PA 17372

5/28

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-64 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of June, 2004, 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 Union Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a bolt along Township Road T-455, Clouser Road, at a corner of land now or formerly of Preston L. Bentzel; thence in and along Township Road T-455, Clouser Road, South 35 degrees 32 minutes 14 seconds East, 150.00 feet to a railroad spike in Township Road T-455, Clouser Road, and at a corner of Lot No. 2 on the hereinafter referred to draft of survey; thence by Lot No. 2 and passing through a steel pin set 20.00 feet from the last-mentioned point, South 76 degrees 22 minutes 53 seconds West, 149.27 feet to a steel pin set; thence by the same, South 44 degrees 51 minutes 21 seconds West, 162.43 feet to a steel pin set on line of Lot No. A on the hereinafter referred to draft of survey; thence by Lot No. A, South 44 degrees 51 minutes 21 seconds West, 162.43 feet to a steel pin set on line of Lot No. A on the hereinafter referred to draft of survey; thence by Lot No. A South 44 degrees 51 minutes 21 seconds West, 41.37 feet to a steel pin set; thence by same, North 35 degrees 32 minutes 14 seconds West, 160.81 feet to a steel pin set on line of land now or formerly of Preston L. Bentzel, thence by said land of Bentzel and passing through an iron pipe 40.98 feet from the last-mentioned point, North 59 degrees 56 minutes 9 seconds East, 340.98 feet, and passing through a steel pin found 20.00 feet from the end of this course, to a bolt along Township Road T-455, Clouser Road, the place of BEGINNING.

THE ABOVE DESCRIPTION was taken from a draft of survey prepared by Worley Surveying, dated May 5, 1989 and being a perimeter description of Lot 1 and Lot 8 thereon, and as recorded in Adams County, Plat Book 53, Page 6.

UNDER AND SUBJECT to restrictions and conditions as now appear of record.

BEING the same premises which Charles W. Weidner, Jr. and Tina M. Wagman, now through marriage known as Tina M. Stevens, joint by Robert M. Stevens, II, her husband, by Deed dated February 21, 2002 and recorded in Adams County on May 7, 2002 at Deed

Book Volume 2651, Page 1999, granted and conveyed to Charles W. Weidner, Jr. and James Weidner.

Weltman, Weinberg & Reis, Co., L.P.A.
Kimberly J. Hong, Esq.
Attorney for Plaintiff
2718 Koppers Building
436 Seventh Avenue
Pittsburgh, Pennsylvania 15219

Parcel No: (41) K-18-16A

SEIZED and taken into execution as the property of **Charles W. Weidner, Jr. & James Weidner** and to be sold by me.

Raymond W. Newman-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 July 12, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/14, 21 & 28

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Commonwealth of Pennsylvania.

The name of the corporation is JARVIS LANDSCAPING, INC.

The corporation has been incorporated under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania Act of December 22, 1988.

Jarvis Landscaping, Inc.
2246 Hunterstown-Hampton Road
New Oxford, PA 17350

5/28

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 ROBERT E. ACHESON, DEC'D

Late of the Borough of Carroll Valley, Adams County, Pennsylvania
 Executor: David R. Acheson, 7 Lakeview Trail, Fairfield, PA 17320
 Attorney: Wendy Weikal-Beauchat, Esq., 63 West High Street, Gettysburg, PA 17325

ESTATE OF MIRIAM M. BECKER, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania
 Executrix: Beverly A. Boone, 605 Harvest Drive, York, PA 17404
 Attorney: James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF KATHRYN E. CLARKIN a/k/a KATHRYN M. CLARKIN, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
 Executor: Timothy Bollinger, 300 Table Rock Road, Gettysburg, PA 17325
 Attorney: Wendy Weikal-Beauchat, Esq., 63 West High Street, Gettysburg, PA 17325

ESTATE OF JANET L. ECKERT, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Executor: Nina M. Scott, 150 Russell Tavern Road, Gettysburg, PA 17325
 Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARTHA L. FORD, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania
 Executor: Jane A. Towers, 893 Stone Jug Road, Biglerville, PA 17307; Jeanne Louise Denny, 610 Mohican Trail, Wilmington, NC 28409
 Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF R. GUY LAIN, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Executor: Kevin A. Lain, 7085 Woodland Drive, Spring Grove, PA 17362
 Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF ELIZABETH S. MANUEL, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executor: James A. Manuel, 1401 Brighton Dam Road, Brookeville, MD 20833
 Attorney: Catherine J. Gault, Esq., 31 S Washington Street, Gettysburg, PA 17325-2112

ESTATE OF CHARLES E. ROTHEN-HOEFER, JR., DEC'D

Late of Huntington Township, Adams County, Pennsylvania
 Executor: George E. Miller, P.O. Box 250, York Springs, PA 17372
 Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

ESTATE OF LAWRENCE S. SCOTT, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
 Executrix: Jane W. Scott, c/o Michael N. Corr, Esq., Barnard, Mezzanotte and Pinnie, 218 West Front Street, Media, PA 19063
 Attorney: Michael N. Corr, Esq., Barnard, Mezzanotte and Pinnie, 218 West Front Street, Media, PA 19063

ESTATE OF EARL L. WEAVER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
 Executor: Darlene J. Koontz, 11104 Taneytown Pike, Emmitsburg, MD 21727
 Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF JOHN C. BELLEW, DEC'D

Late of Berwick Township, Adams County, Pennsylvania
 Personal Representative: Robert M. Bellew, 6013 Deer Park Road, Reisterstown, MD 21136

ESTATE OF EVELYN C. FROCK, DEC'D

Late of Union Township, Adams County, Pennsylvania
 Executors: Susan J. Frock, 376 Pine Grove Road, Hanover, PA 17331; Carolyn J. Frock, 376 Pine Grove Road, Hanover, PA 17331
 Attorney: Donald W. Dorr, Esq., 846 Broadway, Hanover, PA 17331

ESTATE OF GEORGE F. HOCKEN-SMITH, DEC'D

Late of Reading Township, Adams County, Pennsylvania
 Executors: Deborah A. Klunk, 524 Ridge Avenue, McSherrystown, PA 17344; Henry Stephen Edwards, 422 North Franklin Street, Hanover, PA 17331
 Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

ESTATE OF HERBERT KIESSLING, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Joanne Schmick, c/o Anthony J. Nestico, Esq., Nestico, Druby & Hildabrand LLP, 840 East Chocolate Avenue, Hershey, PA 17033
 Attorney: Anthony J. Nestico, Esq., Nestico, Druby & Hildabrand LLP, 840 East Chocolate Avenue, Hershey, PA 17033

ESTATE OF CATHERINE E. MILLER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania
 Executor: James E. O'Brien, 9190 Wayne Highway, Waynesboro, PA 17268
 Attorney: Timothy W. Misner, Esq., 39 South Broad Street, Waynesboro, PA 17268-1610

THIRD PUBLICATION

ESTATE OF DOROTHY K. BORROR a/k/a DOROTHY VIRGINIA BORROR, DEC'D

Late of the Borough of East Berlin, Adams County, Pennsylvania
 Executrix: Wanda L. Elicker, 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

(continued on page 6)

THIRD PUBLICATION (continued)**ESTATE OF RUPERT F. CHISHOLM,
DEC'D**

Late of Franklin Township, Adams
County, Pennsylvania

Executrix: Virginia E. Schein, 1008
Hilltown Road, Biglerville, PA 17307

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

**ESTATE OF GEORGE MORRELL
WILDASIN, DEC'D**

Late of the Borough of Abbottstown,
Adams County, Pennsylvania

Executor: G. Michael Wildasin, c/o
William W. Hafer, Esq., 215
Baltimore Street, Hanover, PA 17331

Attorney: William W. Hafer, Esq., 215
Baltimore Street, Hanover, PA 17331

**ESTATE OF ROBERT A. EICHELBERG-
ER, DEC'D**

Late of the Borough of East Berlin,
Adams County, Pennsylvania

Executor: Adams County National
Bank, c/o 106 Harrisburg Street,
East Berlin, PA 17316

Attorney: Sharon E. Myers, Esq., CGA
Law Firm, Countess Gilbert
Andrews, PC, 106 Harrisburg
Street, East Berlin, PA 17316

ESTATE OF ROY E. GROVE, DEC'D

Late of Oxford Township, Adams
County, Pennsylvania

Executor: Adams County National
Bank, c/o 106 Harrisburg Street,
East Berlin, PA 17316

Attorney: Sharon E. Myers, Esq., CGA
Law Firm, Countess Gilbert
Andrews, PC, 106 Harrisburg
Street, East Berlin, PA 17316

**ESTATE OF H. CATHERINE HARTMAN,
DEC'D**

Late of the Borough of Gettysburg,
Adams County, Pennsylvania

Executors: Harry Lee Hartman & John
Hunter Hartman, c/o Robert Clofine,
Esq., 120 Pine Grove Commons,
York, PA 17403

Attorney: Robert Clofine, Esq., 120
Pine Grove Commons, York, PA
17403

**ESTATE OF MARJORIE L. RUTHER-
FORD, DEC'D**

Late of Cumberland Township, Adams
County, Pennsylvania

Executor: Janet M. Zeigler, 53 Walker
Avenue, Gettysburg, PA 17325

Attorney: Bernard A. Yannetti, Jr.,
Esq., Hartman & Yannetti, Attorneys
at Law, 126 Baltimore St., Gettysburg,
PA 17325

**ESTATE OF JULIA R. SLOTHOUR,
DEC'D**

Late of Huntington Township, Adams
County, Pennsylvania

Executor: M & T Trust Company, 13
Baltimore Street, Hanover, PA
17331

Attorney: Gary E. Hartman, Esq.,
Hartman & Yannetti, Attorneys at
Law, 126 Baltimore St., Gettysburg,
PA 17325