

# Adams County Legal Journal

Vol. 47

March 3, 2006

No. 41, pp. 248-254

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1291 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of April, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain parcel of land situate on the North side of Conewago Creek, in Reading Township, County of Adams, Commonwealth of Pennsylvania, more particularly bounded and described as follows:

BEGINNING at an iron pin on the South side of a 20 foot private roadway at the Northwest corner of Lot No. 9 as shown on the plan of lots herelobed identified; thence by said Lot No. 9 South 7 degrees West 191.1 feet to an iron pin at the Southwest corner of said Lot No. 9; thence running parallel with Conewago Creek North 83 degrees West 75 feet to a point in the middle of the Southern boundary line of Lot No. 11 shown on said plan of plots; thence running in the middle of said Lot No. 11 of the lands now or formerly of Melvin J. Starner and Mary A. Starner, his wife, North 7 degrees East 188.85 feet to a point on the Southern side of said private roadway, which is located at the middle of the Northern boundary of said Lot No. 11; thence along the Southern side of said 20 foot private roadway South 84-1/4 degrees East 75 feet to the above described place of BEGINNING.

BEING all of Lot No. 10 and the Eastern half of Lot No. 11 on a plan of building lots of Melvin J. Starner, surveyed on August 8, 1944 by Leroy H. Winebrenner, registered surveyor.

TOGETHER with a perpetual right of way and privilege irrevocable in, over and upon lands now or formerly of Melvin J. Starner and wife lying between the tract of land hereby conveyed and Conewago Creek, unto the grantee herein, his heirs and assigns, as a means of ingress, egress and regress to and from Conewago Creek, which right of way and

privilege is to be exercised in common with Melvin J. Starner and wife, their heirs and assigns.

Further, together with a right of way, in common with Melvin J. Starner and wife, their heirs and assigns, over and upon a 20 foot roadway at the Northern end of said lot, as set forth on the plan of lots herelobed mentioned, from the tract hereby conveyed to the public road leading to Dicks Dam Bridge, as long as the right of way along Conewago Creek, aforesaid, is not laid out and opened as a public road, all rights, privileges and easements over the 20 foot private roadway, aforesaid, hereby granted, shall cease and terminate.

## Vesting Information

Vested by: Quit Claim Deed dated 9-7-77, given by Robert W. Sullivan and Mary A. Sullivan, his wife to Ronald W. Sullivan recorded 9-14-77 in Book: 333 Page 421.

Premises being: 304 South Hickory Lane, New Oxford, PA 17350

Tax Parcel No. J9-70F

SEIZED and taken into execution as the property of **Ronald W. Sullivan** and to be sold by me,

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 1, 2006, 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.

3/3, 10 & 17

## 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 21, 2006, a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of **MARTINS RENOVATION AND REMODELING**, with its principal place of business at 1936 Hilltown Road, Biglerville, PA 17307. The names and addresses of the persons owning or interested in said business are Martin G. Abbott, residing at 1936 Hilltown Road, Biglerville, PA 17307. The character or nature of the business is renovation and remodeling.

3/3

## 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 Tuesday, March 14, 2006, at 9:00 a.m.

**ELICKER**—Orphans' Court Action Number OC-8-06. The First and Final Account of Walter J. Chrimer and Joyce L. Hartlaub, Executors of the Last Will and Testament of Martha E. Elicker, deceased, late of Union Township, Adams County, Pennsylvania.

Kelly A. Lawver  
Clerk of Courts

3/3 & 10

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

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-179 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of April, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land situate, lying and being in the Borough of Carroll Valley, Adams County, Pennsylvania, being Lot No. 71 in Section E, Charnita, Inc., more particularly bounded and described as follows:

BEGINNING at a point in the center of Echo Trail at Lot No. 70; thence through the cul-de-sac of said Echo Trail and by Lot No. 70 South 13 degrees 3 minutes 40 seconds West, 155 feet to a point; thence North 72 degrees 24 minutes 20 seconds West, 166.16 feet to Lot No. 74; thence by said Lot North 11 degrees 47 minutes 40 seconds East 138.17 feet to Lot No. 72, thence by said lot South 78 degrees 12 minutes 20 seconds East, 168.4 feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section E Charnita", dated July 2, 1966 and revised August 8, 1966, prepared by Gordon L. Brown, R.S., recorded in Adams County, Miscellaneous Docket 5 at page 865.

BEING THE SAME by which from James M. Coward and Carla A. Coward, James M. Coward her attorney in fact Dated 12/16/88 and recorded: 12/30/88 in Book 511 page 214.

Tax Parcel No: 43-33-31

Premises Known As: 26 Echo Trail, Fairfield, PA 17320

SEIZED and taken into execution as the property of **Kathy A. Dick & Bryon D. Dick** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 1, 2006, 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.

3/3, 10 & 17

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1102 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of April, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point on the Northern edge of the dedicated right of way of Water Street at corner of Lot No. 2-B on the hereinafter referred to draft of survey; thence along the Northern edge of said dedicated right of way of Water Street, North 81 degrees 30 minutes 40 seconds West, 56.25 feet to a steel rod in the center of an existing driveway at corner of Lot No. 1-B on the hereinafter referred to draft of survey; thence by in said existing driveway, by Lot No. 1-B, and passing through an electric service pole, North 08 degrees 29 minutes 20 seconds East, 221.74 feet to a steel pin on line of land now or formerly of Carl R. Sturges; thence by said land of Carl R. Sturges, South 81 degrees 30 minutes 40 seconds East, 56.25 feet to a steel pin at corner of Lot No. 2-B on the hereinafter referred to draft of survey; thence by said Lot No. 2-B and for a portion of this course running through a party wall dividing Lot No. 2-A and 2-B, South 08 degrees 29 minutes 20 seconds West, 221.74 feet to a point on the Northern edge of the dedicated right of way of Water Street, the point and place of BEGINNING.

BEING the same premises which Bruce R. Vandyke and Dixie A. Vandyke, husband and wife, granted and conveyed unto James E. Caskey, Jr. by Deed dated November 15, 1993 and recorded November 16, 1993 at DBV 808, Page 24 in the Recorder of Deeds Office of Adams County.

Tax Parcel (18) C 15-0088

Premises known as: 120 Water Street, Fairfield, PA 17320

SEIZED and taken into execution as the property of **James E. Caskey, Jr.** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 1, 2006, 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.

3/3; 10 & 17

## NOTICE

NOTICE IS HEREBY GIVEN that Shane F. Crosby, Esq., intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 4th day of April, 2006, and that he intends to practice law as the Assistant District Attorney in the Office of the District Attorney, County of Adams, Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, Pennsylvania.

2/17, 24 & 3/3

LIBERTY DEVELOPMENT VS. LIBERTY TWP. ET AL

*Continued from last issue (2/24/2006)*

The issue of waiver raised by the Board and Intervenors is not waiver in its purest sense. It is undeniable that Liberty Development requested the Chairman to recuse himself prior to consummation of the evidentiary record. A copy of the letter forwarded to the Chairman by Liberty Development was made part of the record in this matter, without objection, as Applicant's Exhibit #12. The letter is rather thorough and outlines a number of potential issues which might, depending on the evidentiary record, require recusal. Accordingly, I find that the issue was properly raised before the Board.

The Board and Intervenors do not strenuously oppose this conclusion; rather, they argue that Liberty Development failed to develop the evidentiary record despite having the opportunity to do so. They suggest that Liberty Development cannot attempt to supplement the record for the first time while on appeal to this Court since Liberty Development was given the opportunity before the Board to be fully heard and offer whatever testimony they deemed appropriate on this issue. They reason that the failure to develop an evidentiary record before the Board has, in essence, resulted in a waiver of the claim of bias. Liberty Development counters this argument by asserting that once the Chairman chose to participate in the hearing despite Liberty Development's request for recusal, it would have been a fruitless exercise to develop the facts concerning recusal before that same board. The question before the Court, therefore, is to what extent must a complaining party develop the issue of bias, before the tribunal where recusal is sought, in order to preserve the issue for appeal.

The precise procedure for seeking the recusal of a board member in a land use proceeding has not been specifically delineated by our appellate courts. Guidance on this issue, however, is available in appellate decisions discussing the recusal of a trial judge in court proceedings. Applicable law in this area was first enunciated by our Supreme Court in *Reilly v. S.E.P.T.A.*, 489 A.2d 1291 (Pa. 1985):

The proper practice on a plea of prejudice is to address an application by petition to the judge before whom the proceedings are being tried. He may determine the question in the first instance, and ordinarily his disposition of it will not be disturbed unless there is an abuse of discretion. Due consideration should be given by him to the fact that the

administration of justice should be beyond the appearance of unfairness. . . . If the judge feels that he can hear and dispose of the case fairly and without prejudice, his decision will be final unless there is an abuse of discretion.

*Reilly*, 489 A.2d at 1299 (quoting *Crawford's Estate*, 160 A. 585, 587 (Pa. 1932)). Later in its opinion, the *Reilly* Court clarified the procedure a party should follow to raise recusal:

It is incumbent upon the proponent of a disqualification motion to allege facts tending to show bias, interest or other disqualifying events, and it is the duty of the judge to decide whether he feels he can hear and dispose of the case fairly and without prejudice because we recognize that our judges are honorable, fair and competent. Once this decision is made, it is final and the cause must proceed. The propriety of this decision is grounded in abuse of discretion and is preserved as any other assignment of error, should the objecting party find it necessary to appeal following the conclusion of the cause.

*Id.* at 1300.

On the same day that the Supreme Court issued the *Reilly* decision, they elaborated on the issue of recusal in *Mun. Publ'ns, Inc. v. Court of Common Pleas of Philadelphia County*, 489 A.2d 1286 (Pa. 1985). *Mun. Publ'ns, Inc.*, 489 A.2d at 1290. While *Reilly* set forth the procedure to initiate an issue of recusal, *Mun. Publ'ns, Inc.* set forth the test for determining when an evidentiary hearing is necessary:

[W]here fabricated, frivolous or scurrilous charges are raised against the presiding judge during the course of the proceeding, the court may summarily dismiss those objections without hearing where the judge is satisfied that the complaint is wholly without foundation. In such case the complaining party may assign the accusation as a basis for post-trial relief and, if necessary, a record can be developed at that stage and in that context. Where, as here, a judge concludes that the allegations justify an evidentiary hearing in which he will testify, it then becomes incumbent upon that judge to step aside for the appointment of another judge to hear and rule upon the issue of disqualification.

*Id.*

Finally, it is important to note that the *Reilly* Court, recognizing that “[w]aiver is indispensable to the orderly functioning of our judicial process,” concluded that issues relating to recusal are waived, absent a showing of after-discovered evidence, if not raised prior to the entry of a verdict. *Reilly*, 489 A.2d at 1300.

A reading of these cases, as well as subsequent case law interpreting these opinions, indicates that the Supreme Court has mandated a number of rules concerning recusal matters:

1. The issue of recusal must be raised to the tribunal hearing the matter by petition prior to the resolution of the issue at controversy;
2. The petition must contain sufficient factual allegations so that the tribunal may intelligently consider the issue;
3. If the allegations in the petition are facially insufficient or if the judge feels he can hear and dispose of the case fairly, he may deny the petition without a hearing. In such case, the issue may be explored on appeal subject to an abuse of discretion standard;
4. If the tribunal concludes, after considering the allegations in the petition, that an evidentiary hearing is necessary, the tribunal should step aside so that another tribunal may be appointed to rule upon the issue of disqualification; and
5. If the allegations justifying recusal are not raised prior to the disposition of the underlying dispute, the recusal claim is waived absent the application of the after-discovered evidence rule.

It is noteworthy that I have failed to find any appellate authority requiring the factual record to be fully developed in order to preserve recusal issues for appellate review.

The procedure enunciated by the Supreme Court concerning recusal does not conflict with appellate authority regarding opening the record for the presentation of additional evidence in a land use appeal. Rather, both exist to present an orderly and judicially economic procedural structure. For example, if a decision to deny recusal is entered by the tribunal, the issue is decided and properly preserved for appeal. Under such circumstances, the tribunal has determined that the allegations are insufficient to justify recusal and, therefore, further presentation of evidence on the matter is unnecessary. The

denial of a motion to recuse operates, in effect, as a denial of the opportunity to further develop the evidentiary record. To hold otherwise would lead to a number of absurd results.

For instance, requiring a moving party to develop an evidentiary record in support of allegations, which the tribunal has facially determined to be insufficient to justify recusal, results in nothing more than a waste of judicial resources. Additionally, since the board of supervisors, in a land use matter, is the fact-finder with exclusive province over matters of credibility and weight to be afforded the evidence, *Heritage Bldg. Group, Inc. v. Bedminster Twp. Bd. of Supervisors*, 742 A.2d 708, 710 (Pa.Cmwlth. 1999), the development of an evidentiary record before the board places the member, whose recusal is sought, in the position of making factual determinations concerning his own alleged bias. It takes little imagination to envision the futility of such a process. This futility is only magnified in circumstances where the development of the factual record requires calling the allegedly-biased member of the tribunal as a witness. In such a circumstance, the person whose recusal is sought not only has personal knowledge of the disputed facts, but is put in a position to rule on objections to his own testimony and assess his own credibility in light of conflicting evidence. It is precisely this danger that the Supreme Court recognized in requiring that credible allegations of bias be heard in an evidentiary hearing before a different body. See *Mun. Publ'ns, Inc.*, 489 A.2d at 1290.

The Board and Intervenors suggest, contrary to our Supreme Court's instruction, that the Chairman should have been called as a witness in order to preserve the recusal issue. However, I have been unable to find any such requirement in any statute or opinion. While it is true that a number of Commonwealth Court cases have included a factual record wherein examination of the party for whom recusal was sought occurred at the time of the land use hearing, those cases neither expressed an opinion as to the propriety of such a procedure nor imposed such a requirement.

In *Caln Nether Co.*, cited above, the Commonwealth considered the propriety of two township supervisors who refused to recuse themselves from a land use hearing because they resided in a residential development close to the property at issue. *Caln Nether Co.*, 840 A.2 at 496-97. Apparently, the factual issue before the

Commonwealth Court was developed through questions asked to each supervisor prior to the commencement of the hearings. *Id.* at 796. Without commenting on the procedure before the board, the Commonwealth Court relied on prior case law to conclude that the landowner failed to produce evidence that the supervisors exhibited bias. *Id.* at 497.

Similarly, in *Christman v. Zoning Hearing Bd.*, 854 A.2d 629 (Pa.Cmwth. 2004), the Commonwealth Court upheld the decision of zoning hearing board members not to recuse themselves even though they owned property in an area affected by a zoning amendment. *Christman*, 854 A.2d at 634. Once again, the factual record revealed that the zoning hearing board members were questioned concerning their bias at the time of the zoning board hearing. *Id.* However, the Commonwealth Court expressed no opinion as to whether such a procedure is acceptable.

Significantly, both *Calm Nether Co.*, cited above, and *Christman* involved tangential relationships between the tribunal member and the litigation, without evidence of bias, prejudice, capricious disbelief, or prejudgment. I find this significant because the factual matters at issue involved facts that were readily ascertainable, i.e., the ownership and location of property. As explained below, the current allegations in support of the recusal are not based upon tangential relationships, but rather are claims of actual bias and prejudgment. Under these circumstances, much more substantive testimony by the respective Board member is necessary. I conclude, therefore, that the cases cited by the Board and Intervenors neither require nor suggest that the only way that Liberty Development may avoid waiver is by conducting a full evidentiary hearing on the issue of bias before the very person whose recusal is sought.

Support for this interpretation is found in the recent Superior Court case of *Rohm & Haas Co. v. Continental Cas. Co.*, 732 A.2d 1236 (Pa.Super. 1999). In *Rohm & Haas Co.*, the Superior Court considered whether a judge's recusal was necessary based upon post-trial remarks made to a jury. *Rohm*, 732 A.2d at 1247. An evidentiary hearing was not conducted before the lower court because the trial judge indicated that he was "able to proceed with the litigation in a fair and unbiased manner." *Id.* at 1260. After reviewing the allegations in the motion to recuse, the Superior Court found that,

[I]t [was] obvious that the court should have provided the parties with a hearing on the recusal motion so that the facts could be explored and an informed decision made. The recusal motion clearly stated facts which would, if proven, call into question the impartiality of the court to continue in the proceeding.

*Id.* at 1261. The Superior Court further recognized that the trial judge “would, **under the proffered facts**, have almost certainly been a witness himself.” *Id.* at 1262 (emphasis added). Moreover, the *Rohm* Court noted that “it would be appropriate for the trial judge to step aside for the appointment of another judge to conduct the hearing.” *Id.* This Opinion exemplifies that appellate review is triggered where allegations of bias are alleged in petitions seeking recusal regardless of whether a factual hearing is held before the tribunal in question.

I recognize that the authority cited above has arisen in judicial proceedings where the matter may be readily assigned to another judge for consideration of the bias issue. I also recognize the threshold, which I discussed above, that must be established prior to a court’s acceptance of additional testimony on appeal in a land use matter. I find, however, that those distinctions are immaterial in light of the procedures mandated by the Supreme Court. If a petition for recusal is filed and the tribunal reasonably determines that the request for recusal was fabricated, frivolous or scurrilous, the petition may be summarily dismissed and the issue is thereafter preserved for appellate consideration. *Mun. Publ’ns, Inc.*, 489 A.2d at 1290. If the petition has merit, recusal is the appropriate response. If the petition is of arguable merit and additional testimony is necessary, including the testimony of the member or members at issue, the testimony may be presented, upon petition of either party, before another tribunal. In land use appeals, that tribunal is the Court of Common Pleas.

Interestingly, appellate courts have instructed that the Court of Common Pleas’ acceptance of additional evidence, related solely to the issue of a board member’s bias, “is not the type of additional evidence that requires the trial court...under the MPC to make its own findings of fact on the underlying merits.” See *Amerikhol Mining, Inc.*, 597 A.2d at 222. This ruling, in essence, provides aggrieved



parties with a procedural vehicle to explore and develop factual issues concerning recusal before the Court of Common Pleas without usurping the role of the Board in considering the merits of the land use matters.

In reaching this conclusion, it is important to focus on the issue before the Court. It is neither this Court's right, nor its obligation, to set forth the appropriate procedure when addressing issues of recusal before an agency board. That issue is properly left to the state legislature and appellate courts. Rather, I am concerned only with the issue of what satisfies the minimal threshold to preserve an issue of bias for appellate consideration. In this regard, I find that Liberty Development has satisfied the minimum requirements enunciated by our Supreme Court in order to preserve the issue for appellate review.<sup>6</sup>

Before resolving the issue of whether the presentation of additional evidence is appropriate, I will conduct a cursory review of the bias allegations, as raised before the Board, in order to determine whether the Chairman's decision not to recuse himself constituted an abuse of discretion. If the allegations raised by Liberty Development are insufficient or frivolous, they may be summarily dismissed by the Chairman. See *Mun. Publ'ns*, cited above. In such an instance, opening the record to present additional evidence is unnecessary.

*Continued to next issue (3/10/2006)*

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<sup>6</sup> The Board cites *Amerikohl*, cited above, for the proposition that Liberty Development's failure to develop a factual record before the Board constitutes waiver. I do not read *Amerikohl* as support for that proposition. In *Amerikohl*, the landowner not only failed to establish a factual record before the board but, importantly, it appears from a reading of the Opinion that the issue of recusal was never raised in any manner before the board. Accordingly, *Amerikohl* actually supports the reasoning in this Opinion, and that of the Supreme Court, which mandates that specific allegations of a bias claim must be raised before the tribunal at issue or waiver results.

## 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 LEON J. ELINE, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Richard D. Eline, 1466 Park Terrace Drive, Chambersburg, PA 17201

Attorney: David C. Smith, Esq., 754 Edgegrove Rd., Hanover, PA 17331

## ESTATE OF WILLIAM H. HUFF, DEC'D

Late of the Borough of York Springs, Adams County, Pennsylvania

Executrix: Angel R. Steele, c/o Brian C. Linsenbach, Esq., Schrack & Linsenbach PC, 124 West Harrisburg Street, P.O. Box 310, Dillsburg, PA 17019-0310

Attorney: Brian C. Linsenbach, Esq., Schrack & Linsenbach PC, 124 West Harrisburg Street, P.O. Box 310, Dillsburg, PA 17019-0310

## ESTATE OF ANN M. JUSTICE, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Geanine J. Roser, 1550 Water Street, Fairfield, PA 17320

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

## ESTATE OF MILDRED B. KEPNER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Diane K. Ley, 34 N. Miller St., Fairfield, PA 17320

Attorney: Wendy Weikal-Beauchat, Esq., 63 West High St., Gettysburg, PA 17325

## ESTATE OF EVELYN B. LEPPA, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Richard J. Smith and Janet L. Smith, 30 Oak Drive, Hanover, PA 17331

Attorney: David C. Smith, Esq., 754 Edgegrove Rd., Hanover, PA 17331

## ESTATE OF MARY E. SNYDER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Sara Ellen Mummert, 516 McMillan St., Gettysburg, PA 17325

Attorney: Chester G. Schultz, Esq., 145 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF DOLORES N. STALEY-WILSON, DEC'D

Late of the Borough of Bendersville, Adams County, Pennsylvania

William B. Wilson, 259 S. Main Street, P.O. Box 71, Bendersville, PA 17306

Attorney: Henry O. Heiser, III, Esq., 104 Baltimore Street, Gettysburg, PA 17325

## SECOND PUBLICATION

## ESTATE OF ANN L. KENDRICK, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executors: George A. O'Brien, Jr., George A. O'Brien, Sr. and Mary E. Nugent, c/o Andrew F. Kagen, Esq., 2675 Eastern Blvd., York, PA 17402

Attorney: Andrew F. Kagen, Esq., 2675 Eastern Blvd., York, PA 17402

## ESTATE OF DELPHINE V. SEIFRIT a/k/a DELPHINE W. SEIFRIT, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Co-Executors: Janet M. Smith, 115 Cottage Road, Shippensburg, PA 17257; Randall Sell, 3651 Carlisle Road, Gardners, PA 17324

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

## ESTATE OF JOAN MARIE SHERMAN, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executor: Lisa Marie Sherman a/k/a Lisa Marie Neeley, 905 Hoods Mill Road, Woodbine, MD 21797

Attorney: John J. Murphy III, Esq., Patrono & Associates, LLC, 30 West Middle Street, Gettysburg, PA 17325

## ESTATE OF GLENN R. TROSTLE, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Glenn R. Trostle, Jr., 589 Knoxlyn Rd., Gettysburg, PA 17325

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

## THIRD PUBLICATION

## ESTATE OF CARL W. ELICKER, II, DEC'D

Late of Highland Township, Adams County, Pennsylvania

Executrix: Tina M. Elicker, 725 Railroad Lane, Orrtanna, PA 17353

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

## ESTATE OF MARY L. HERR, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executrix: Sharon E. Bower, 195 Oak Hill Road, Biglerville, PA 17307

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

## ESTATE OF MICHAEL J. KLUNK, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administrators: Troy M. Klunk, 1103 North Walnut, Casa Grande, AZ 85222; Benjamin C. Klunk, 3 Shealer Rd., Gettysburg, PA 17325; Kara S. Klunk, 3 Shealer Rd., Gettysburg, PA 17325

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

## ESTATE OF RITA M. REAVER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Adams County National Bank, Christine R. Settle, Trust Officer, 2 Chambersburg Street, Gettysburg, PA 17325

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

## ESTATE OF ELWOOD A. ROHRBAUGH a/k/a ELWOOD A. ROHRBAUGH, JR., DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High St., Gettysburg, PA 17325; Charles Rohrbaugh, 304 Main Street, Apt. 4, McSherrystown, PA 17344

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

## ESTATE OF WILLIAM S. YOUNG, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executor: Steven A. Young, 787 Pine Run Road, Abbottstown, PA 17301

Attorney: Timothy J. Colgan, Esq., Wiley, Lenox, Colgan & Marzacco, P.C., 130 W. Church St., Suite 100, Dillsburg, PA 17019

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1370 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of April, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land situate, lying and being in Germany Township, Adams County, Pennsylvania, more particularly bounded and described as follows;

BEGINNING in the center line of Feeser Road (T-442) at corner of Lot No. 6; thence by Lot No. 6 South 74 degrees 30 minutes 10 seconds East 752.83 feet to a steel rod; thence by Lot No. 6 and Lot No. 5 North 31 degrees 23 minutes 45 seconds East 663.76 feet to a 14" Shagbark Hickory; thence by Lot No. 10 North 79 degrees 32 minutes 30 seconds East 264.51 feet to a steel rod; thence by same South 37 degrees 22 minutes 00 seconds East 52.44 feet to a 16" Swamp White Oak; thence continuing by same South 68 degrees 35 minutes 05 seconds West 111.62 feet to a 14" Shagbark Hickory; thence by same South 67 degrees 22 minutes 40 seconds East 228.30 feet to a 16" Shagbark Hickory; thence by same South 40 degrees 10 minutes 50 seconds East 69.58 feet to an 18" Hickory; thence by same North 26 degrees 01 minute 30 seconds East 65.74 feet to a steel rod; thence by same South 47 degrees 27 minutes 00 seconds East 124.93 feet to a steel rod; thence by same North 75 degrees 03 minutes 35 seconds East 148.32 feet to a steel rod; thence by same North 01 degree 38 minutes 45 seconds East 67.18 feet to a 14" Swamp White Oak; thence by same North 70 degrees 27 minutes 00 seconds East 79.86 feet to a point in creek; thence by land now or formerly of Gregory Lang South 00 degrees 01 minutes 20 seconds East 53.06 feet to an existing steel rod; thence by land now or formerly of National Tree Company South 24 degrees 01 minute 00 seconds West 193.56 feet to an existing steel rod; thence by land now or formerly of Ideldton Baum South 25 degrees 37 minutes 20 seconds West 448.95 feet to an existing steel rod; thence by same South 34 degrees 26 minutes 15 seconds West 155.81 feet to a steel rod; thence by Lot No. 9 North 74 degrees 30 minutes 10 seconds West 1,560.58 feet to a point in the center line of Feeser Road; thence in the center line of Feeser Road North 09 degrees 52 minutes 05 seconds East 50.24 feet to a point, the place of BEGINNING.

HAVING erected thereon a dwelling known as 145 Feeser Road, Littlestown, PA 17340.

## Parcel # 116-72

BEING the same premises which Randy and Bonnie Smith by their deed dated 4/14/2000 and recorded 5/1/2000 in the Recorder of Deeds Office of Adams County, Pennsylvania in Deed Book Volume 2040, page 1, granted and conveyed unto Frank E. Walker and Patricia A. Walker.

SEIZED and taken into execution as the property of **Frank E. Walker & Patricia A. Walker** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 1, 2006, 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.

3/3, 10 & 17

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1322 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of April, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

The following two tracts of land in Reading Township, Adams County:

**TRACT NO. 1:** ALL that certain lot of land, situate in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 681 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County in Plan Book 1, Page 5, and subject to all legal highways, easements, rights of way and restrictions of record.

**TRACT NO. 2:** ALL that certain half lot of ground situate in Reading Township, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

BEGINNING at a point on the Eastern property line of Lake Meade Drive at the Southwest corner of half lot now or formerly of William F. Lerew, et al; thence along the Eastern property line of Lake Meade Drive by a curve to the right

whose radius is 713.52 feet, an arc distance of 42.24 feet and having a long chord bearing of North 25 degrees 45 minutes 18 seconds West, 42.23 feet to a point at the Southwest corner of Lot No. 681, being Tract No. 1 hereinabove described; thence by such Lot No. 681 North 65 degrees 56 minutes 27 seconds East, 308.00 feet to a point in or at Lake Meade; thence in or at Lake Meade South 18 degrees 05 minutes 36 seconds East, 24.31 feet to a point at the Northeast corner of half lot now or formerly of William F. Lerew, et al; thence by same South 62 degrees 32 minutes 56 seconds West, 304.76 feet to a point, the place of BEGINNING.

BEING the Northern half of Lot No. 680 in the Lake Meade Subdivision, such description being taken from draft of survey prepared by Larue Surveys, Inc., dated July 18, 1975.

BEING the same premises which Dorothy I. Eisenhour, widow, by Deed dated 09/12/97 and recorded 01/06/98 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 1507, 23 granted and conveyed unto Donald E. Eisenhour

Premises Known as: 476 Lake Meade Drive, East Berlin, PA 17316

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 1, 2006, 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.

3/3, 10 & 17

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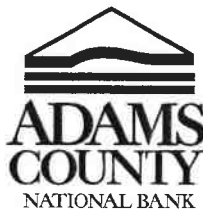
LIBERTY DEVELOPMENT VS. LIBERTY TWP. ET AL

*This opinion continued from last issue (3/3/2006)*

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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. 05-S-1322 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of April, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

The following two tracts of land in Reading Township, Adams County:

**TRACT NO. 1:** ALL that certain lot of land, situate in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 681 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County in Plan Book 1, Page 5, and subject to all legal highways, easements, rights of way and restrictions of record.

**TRACT NO. 2:** ALL that certain half lot of ground situate in Reading Township, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

BEGINNING at a point on the Eastern property line of Lake Meade Drive at the Southwest corner of half lot now or formerly of William F. Lerew, et al; thence along the Eastern property line of Lake Meade Drive by a curve to the right whose radius is 713.52 feet, an arc distance of 42.24 feet and having a long chord bearing of North 25 degrees 45 minutes 18 seconds West, 42.23 feet to a point at the Southwest corner of Lot No. 681, being Tract No. 1 hereinabove described; thence by such Lot No. 681 North 85 degrees 56 minutes 27 seconds East, 308.00 feet to a point in or at Lake Meade, thence in or at Lake Meade South 18 degrees 05 minutes 36 seconds East, 24.31 feet to a point at the Northeast corner of half lot now or formerly of William F. Lerew, et al; thence by same South 62 degrees 32 minutes 56 seconds West, 304.76 feet to a point, the place of BEGINNING.

BEING the Northern half of Lot No. 680 in the Lake Meade Subdivision, such description being taken from draft of survey prepared by Larue Surveys, Inc., dated July 18, 1975.

BEING the same premises which Dorothy I. Eisenhour, widow, by Deed dated 09/12/97 and recorded 01/06/98 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 1507, 23 granted and conveyed unto Donald E. Eisenhour.

Premises Known as: 476 Lake Meade Drive, East Berlin, PA 17316

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 1, 2006, 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.

3/3, 10 & 17

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-179 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of April, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land situate, lying and being in the Borough of Carroll Valley, Adams County, Pennsylvania, being Lot No. 71 in Section E, Charnita, Inc., more particularly bounded and described as follows:

BEGINNING at a point in the center of Echo Trail at Lot No. 70; thence through the cul-de-sac of said Echo Trail and by Lot No. 70 South 13 degrees 3 minutes 40 seconds West, 155 feet to a point; thence North 72 degrees 24 minutes 20

seconds West, 166.16 feet to Lot No. 74; thence by said Lot North 11 degrees 47 minutes 40 seconds East 138.17 feet to Lot No. 72, thence by said lot South 78 degrees 12 minutes 20 seconds East, 168.4 feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section E Charnita", dated July 2, 1966 and revised August 8, 1966, prepared by Gordon L. Brown, R.S., recorded in Adams County, Miscellaneous Docket 5 at page 865.

BEING THE SAME by which from James M. Coward and Carla A. Coward, James M. Coward her attorney in fact Dated 12/16/88 and recorded: 12/30/88 in Book 511 page 214.

Tax Parcel No: 43-33-31

Premises Known As: 26 Echo Trail, Fairfield, PA 17320

SEIZED and taken into execution as the property of **Kathy A. Dick & Bryon D. Dick** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 1, 2006, 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.

3/3, 10 & 17

## LIBERTY DEVELOPMENT VS. LIBERTY TWP. ET AL

*Continued from last issue (3/3/2006)*

Liberty Development, in its request for recusal, raised several circumstances which it believes indicates actual bias on the part of the Chairman. Liberty Development notes that its application for approval of a planned residential development (PRD) was initially considered during an election year in which Board membership was open to election. While the application was pending, the composition of the Board changed because a new member, who subsequently became Chairman of the Board, defeated an incumbent.<sup>7</sup> All of Liberty Development's allegations of bias relate to the new member's ("Chairman") actions during the course of the election which Liberty Development suggests indicate prejudgment of its tentative plan. The allegations raised by Liberty Development consist of the following:

1. The Chairman was a founding member of the organization "Save Our Liberty", which ultimately was granted party status before the Board and actively opposed the tentative plan application;<sup>8</sup>
2. At a citizens meeting held on August 27, 2003, the Chairman presented himself as representing "Save Our Liberty" and solicited memberships and donations for the payment of legal fees and other expenses to oppose Liberty Development's application. Additionally, Liberty Development claims that the Chairman is listed on the agenda under the heading "Call to Action" and that during the meeting, he expressed his personal view that Liberty Development's PRD would be detrimental to the quality of life in Liberty Township and that all citizens should oppose the plan;

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<sup>7</sup>The record indicates that Liberty Development's application for tentative review of their plan was filed on September 29, 2003. A hearing on the application commenced on November 24, 2003, and spanned eight different days through January 14, 2004. A final decision by the Board was entered on March 16, 2004. The record further indicates that Board membership consisted of Leonard Sites, Chairman, Charles Alexander, and John Miller through December 31, 2003. Five of the eight hearing dates were held prior to December 31, 2003. During the three remaining hearing dates, the Board consisted of Paul Harner, Chairman, Leonard Sites, and John Miller. The Board's decision denying the PRD tentative plan consisted of votes in favor of the denial by Chairman Harner and Supervisor Miller. Supervisor Sites voted for approval of the plan.

<sup>8</sup>The organization, "Save Our Liberty", also petitioned this Court to be granted intervenor status. The petition was denied by Order of Court dated September 27, 2004.

3. The Chairman, on Election Day, solicited voters to support his write-in candidacy by claiming that he would vote to reject Liberty Development's application; and
4. At a public meeting on November 5, 2003, after the Chairman had won the election, but prior to becoming a Board member, the Chairman indicated that the reason he won the election was his position against "the PRD." When asked for clarification as to whether the Chairman was against PRD's, or against the Wormald plan,<sup>9</sup> it is alleged that the Chairman stated "PRD's and PRD's similar to the Wormald plan and including the Wormald plan."

As indicated above, Pennsylvania appellate courts have found recusal to be necessary in circumstances where a member of the tribunal publicly expressed a predisposition against a project or took an advocacy role against the matter at issue. See *Prin*, cited above, and *Thornbury Twp. Bd. of Supervisors*, cited above. Under the proffered facts, it appears that there is a substantial issue as to the Chairman's ability to preside impartially. It is equally clear that the Chairman will almost certainly be a witness. It would appear, therefore, that an evidentiary hearing on this issue is necessary. However, before granting Liberty Development's Request to Present Additional Testimony, I must consider the Township's argument that an additional evidentiary hearing is unnecessary since even if bias is found, the results of the Board's action remain the same.

In support of their argument, the Board cites *Kuszyk*, cited above. In *Kuszyk*, the Commonwealth Court was faced with the issue of whether a zoning board member who was the husband of a township supervisor was required to recuse himself in considering the validity of a cease-and-desist order issued against a landowner by decision of the supervisors. *Kuszyk*, 834 A.2d at 662. Failing to find any evidence of actual bias, the Commonwealth Court held that the tangential evidence of the marital relationship was insufficient to justify recusal. *Id.* at 665. In dicta, the Commonwealth panel noted that, even assuming recusal was appropriate, removal of the disqualified member's vote would still have resulted in a 2-2 decision. *Id.* The

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<sup>9</sup>Liberty Development's application for tentative approval has been referred to consistently by the parties as the Wormald Plan apparently in reference to Edward E. Wormald, General Manager of Liberty Development Company, LLC, and signatory on the application.

Court concluded that since a tie vote acts as a denial of the requested relief, error in resolving the recusal petition, if any, was harmless. *Id.*

In reading the line of cases cited as authority, it is interesting to note that *Kuszyk* is the first case where a court applied this rule of law to an appeal from a land use decision by an agency board. While it is true that earlier cases have concluded that a tie vote by an administrative body equates to a denial, the issue in those cases was presented in the context of whether a tie vote constituted a lack of action for a “deemed approval” in a writ of mandamus action.<sup>10</sup> I find the history of this legal proposition intriguing in light of another opinion from the Commonwealth Court which seems to indicate a contrary result. In *Borough of Youngsville*, cited above, the Commonwealth Court found that a zoning hearing board member improperly failed to disqualify himself in a circumstance where the board member, as an employee of the applicant, participated in earlier proceedings involving the land use application. *Borough of Youngsville*, 450 A.2d at 1091. After noting that the board would have produced a 1-1 vote if the board member had not participated in the hearing, the Commonwealth Court directed the Court of Common Pleas to “take such evidence as the parties wish to introduce and make findings of fact and conclusions of law” in consideration of the application. *Id.* at 1092. In light of these contrary events, I will defer the resolution of this issue unless and until there is a finding of actual bias following the presentation of additional evidence.

Because the integrity of our legal process is at issue, I grant Liberty Development’s Request to Present Additional Testimony on the important issue of bias.<sup>11</sup> In reaching this decision, I am mindful of the eloquent words of Justice Papadakos in *Reilly*, cited above:

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<sup>10</sup>It is well settled in this State that a municipality’s failure to comply with the time provisions set forth in the MPC will result in a deemed approval of a land use application. *Coretsky v. Bd. of Comm’rs of Butler Twp.*, 555 A.2d 72, 74 (Pa. 1989).

<sup>11</sup>The Board cites 53 P.S. § 65603 which reads that “A member of the board shall not be disqualified from voting on any issue before the board solely because the member has previously expressed an opinion on the issue in either an official or unofficial capacity.” 53 P.S. § 65603. The Board concludes that the Chairman’s actions, even if true, are not a basis for recusal under the protections of this section. On the other hand, Liberty Development suggests that in considering its application for tentative approval of the PRD, the Board was acting in its adjudicative capacity and is, thus, subject to greater scrutiny. See *North Point Breeze Coalition v. Pittsburgh*, 431 A.2d 398, 401 (Pa.Cmwlth. 1981). I will defer the resolution of this specific issue until additional testimony is taken.



Questions concerning the fairness, impartiality, or bias of the [tribunal] always affect the administration of justice and can cloak the whole system of judicature with suspicion and distrust. Because recusal requests call into question our ability to mediate fairly, they raise important issues in which the public is concerned. If our [tribunals] are perceived to be unfair and biased, our future ability to adjudicate the public's grievances and wrongs will be threatened, because we all lose the one thing that brings litigants into our halls of justice — their trust. Without the people's trust that our decisions are made without malice, ill-will, bias, personal interest or motive for or against those submitting to our jurisdiction, our whole system of judicature will crumble. Accordingly, when challenges are made concerning the necessity for the recusal of a [member of a tribunal], an important public question is being addressed which we, as responsible representatives of the people, must resolve.

*Reilly*, 489 A.2d at 1301.

Liberty Development also seeks to present additional evidence regarding the legal effect of the 1985 amendment to the Liberty Township Zoning Ordinance. In denying Liberty Development's application for tentative approval, the Board concluded that PRD's are not permitted under the Liberty Township Zoning Ordinance. In reviewing the original Liberty Township Zoning Ordinance, adopted on April 3, 1984, the Board found that PRD's were permitted only as "special uses." Since a 1985 Amendment to the Zoning Ordinance repealed "all special uses under the Zoning Ordinance...", the Board concluded that this language effectively eliminated PRD's from the Township's zoning scheme and, thus, eliminated authorization for PRD's within the boundaries of Liberty Township.

Liberty Development seeks to present additional evidence claiming that since the 1985 Amendment issue was not raised by the Township until after the hearings were concluded and the record was closed, they were denied the opportunity to address this issue. Liberty Development further argues that the Township's acceptance of their PRD application led them to believe that the 1985 Amendment was not at issue. Because the record before the Court

indicates that Liberty Development had sufficient notice of this issue and was provided ample opportunity to present evidence, I deny the request to open the record for this purpose.

A painstaking review of the record indicates that correspondence from the Adams County Office of Planning and Development to the parties, dated December 3, 2003, recommended the denial of Liberty Development's PRD on four different bases. Significantly, the first basis listed by the Adams County Office of Planning and Development is that PRD's are not permitted in the zoning districts affecting the property. Later in the correspondence, the author, Richard Schmoyer,<sup>12</sup> devotes three paragraphs in support of his conclusion that PRD's are not permitted under the Ordinance due to the 1985 Amendment.

At the December 22, 2003, hearing, Richard Schmoyer was called to testify as a witness. During his testimony he indicated that the Adams County Office of Planning and Development recommended the denial of the application based upon, among other things, "some issues that we thought we saw relative to the applicability of the Ordinance itself and on completeness of the Ordinance itself...." Hearing Transcript, p. 600. Later in his testimony, in response to questions concerning the issue of whether PRD's are permitted under the Ordinance, Mr. Schmoyer indicated:

We write zoning ordinances as planners, and we did look at other zoning ordinances in Adams County to see how PRD's were treated. In the other cases where they are permitted, they are permitted in specific districts. In this case after that amendment eliminated them, we felt based on what we read, it was a question in the minds of the entire staff of whether or not, and I think we did suggest the Township take a serious legal look at this issue.

Hearing Transcript, p. 678. The significance of this issue was not lost on the appellant as evidenced by counsel's attempt during cross-examination to cast doubt on the credibility of Mr. Schmoyer concerning this issue. See Hearing Transcript, p. 686, lines 3-9.

The issue concerning the 1985 Amendment was revisited in the January 19, 2004, recommendation from the Liberty Township Planning Commission. In summarizing the Planning Commission's

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<sup>12</sup>Richard H. Schmoyer is Director of the Adams County Department of Planning and Development.

three-one vote of in favor of the denial of the application, the Commission noted “review of the zoning ordinance shows no basis for a PRD to be allowed in the zones proposed or any zone in Liberty Township....” Save Our Liberty Exhibit 30, p. 4. This comment from the Planning Commission references the 1985 Amendment and states that the Commission believed that PRD’s were repealed by the 1985 Amendment. Counsel for Liberty Development indicated receipt of the report at the January 19, 2004, hearing and significantly, perhaps in recognition of the substance of the report, called a number of witnesses in order to establish a bias claim against Planning Commission members. See generally, Transcript, pp. 1062-75.

Perhaps the clearest indication of Liberty Development’s awareness of this issue is found in the testimony of its expert, Richard N. Coch. In response to questions posed by Liberty Development’s counsel, the following exchange occurred:

- Q: Please refer to Part IV(B) of the Adams County comments (at page 10) where it is suggested that PRD’s are not permitted uses under the Township’s Zoning Ordinance. Please state your view concerning these comments.
- A: Adams County Planning in their previous comments applicable to the Community of Liberty PRD were unaware of the May 1985 Amendments to the Zoning Ordinance. Those amendments eliminated special uses including the PRD special use within the GU District. Adams County Planning now suggests that this amendment eliminated PRD’s as a permitted use within any district in the Township. Based upon our experience in dealing with zoning ordinances, including those with PRD provisions, we do not think this to be a reasonable or proper interpretation. Otherwise the entirety of Article V of the Zoning Ordinance setting forth the PRD standards and requirements would be a nullity. It appears to us that if the township had intended to eliminate PRD’s as a permitted use within the Township, it would have repealed Article V as a part of the 1985 Amendment. It is our view that PRD’s are allowed within any district of the Township so long as the standards and requirements of Article V are satisfied, in order to provide innovative design alternatives and to allow for flexible community mixed use development.

Exhibit A-7, p. 10. This exchange reveals not only that Liberty Development was aware of the comments of the Adams County Planning Department, but also that the 1985 Amendments, and their effect, were an issue before the Board. Liberty Development's argument, that it was denied the opportunity to present evidence on this critical issue, is not supported by the record. In fact, Liberty Development presented evidence in support of its position that the 1985 Amendments did not affect the viability of PRD's in Liberty Township.<sup>13</sup>

The suggestion that Liberty Development was led to believe that the 1985 Amendment was not an issue is simply not credible in light of the record. Rather, Liberty Development's actions and arguments following the close of the evidentiary record clearly reveal its awareness of this issue. Following the close of testimony on January 21, 2004, Liberty Development granted the Township an extension in rendering a decision so that each party would have the opportunity to file proposed findings of fact and briefs. The next activity of record occurs on February 23, 2004, when both Liberty Development and Save Our Liberty submitted briefs to the Township for consideration. Liberty Development's Brief is accompanied by Proposed Findings of Fact and Conclusions of Law. Since the lengthy briefs of both parties were submitted to the Township on the same day, neither Liberty Development nor Save Our Liberty had the benefit of seeing its adversary's arguments. Yet, the second Conclusion of Law suggested by Liberty Development addresses the issue of whether PRD's are permitted in the Township.<sup>14</sup> Liberty Development supports this Proposed Conclusion of Law with its brief, which sets forth argument, and supporting case law, concerning the effect of the 1985 Amendment. In

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<sup>13</sup> In its brief, Liberty Development suggests that the 1985 Amendment did not become an issue until after Chairman Harner took office. Once again, this claim is not supported by the record. The above-referenced testimony of Richard Coch was presented to the Board in a hearing held on December 15, 2003, which precedes Mr. Harner's ascension to the Board. Interestingly, Mr. Coch's testimony was submitted in a pre-prepared question and answer form, which apparently was taken from a previous application filed, and subsequently withdrawn, by Liberty Development. See Transcript, p. 390. Although the record is unclear, the initial application for a tentative plan, called the Community of Liberty, was formally withdrawn sometime prior to November 24, 2003. See Transcript, p. 3.

<sup>14</sup> Liberty Development's Proposed Findings of Fact and Conclusion of Law No. 2 reads: "At the time the Liberty Valley PRD Application was filed with the Township, Article V of the Zoning Ordinance permitted planned residential developments in all zoning districts in the Township."

light of this record, it cannot be credibly argued that the viability of PRD's in Liberty Township was a non-issue. Although Liberty Development may have miscalculated the significance of the issue, its argument claiming that it was surprised is meritless.

Throughout the various pleadings in this matter,<sup>15</sup> Liberty Development proffers a number of items which it seeks to present as additional evidence. After reviewing each of those items, it is apparent that practically all of those items were known and available to Liberty Development prior to the close of the evidentiary record before the Board.<sup>16</sup> Under these circumstances, I am unable to find that Liberty Development was refused the opportunity to be fully heard or that relevant testimony was excluded. See *Caln Nether Co.*, cited above. The record itself leads to a contrary conclusion. Testimony was presented over eight different days involving more than twenty different witnesses. Additionally, the Board took comment from a number of citizens. There is no indication that relevant testimony from any witness was excluded by the Board. Although public comment was limited, the parties to the application were granted unlimited time to present testimony and other evidence.<sup>17</sup> I

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<sup>15</sup> Liberty Development has filed a Notice of Appeal, with thirteen exhibits attached; a Motion to Present Additional Evidence; and a Brief in Support of Motion to Present Additional Evidence.

<sup>16</sup> Liberty Development also suggests that a resolution passed by the Board in another land use matter on March 2, 2004, and comments in a local newspaper concerning that resolution and attributed to members of the Board, occurred subsequent to closure of the record. Although interesting, they provide little insight to the issues before the Court. Obviously, they are not indicative of actions by Township officials which may have misled, or caused reliance on the part of Liberty Development, since the comments post-date all application proceedings before the Board. Moreover, the evidence does not indicate inconsistent results concerning the same issue. Rather, this evidence appears to reflect the Board's struggle with complicated legal issues concerning two separate large-scale land development plans. Although not part of the record in this matter, there are various references throughout this proceeding to another PRD plan in Liberty Township submitted by Roy and Edith Crum. After the Board rendered a decision on the Crum application, the matter was appealed to the Adams County Court of Common Pleas, 04-S-352. By Order of Court dated June 29, 2004, all parties to this litigation were permitted to intervene in the Crum appeal.

<sup>17</sup> At the conclusion of the final hearing on January 19, 2004, the Township Solicitor, Walton Davis, Esquire, leaves the applicants the option of closing the record or presenting additional evidence, as indicated by the following exchange:

Mr. Davis: Anything else or close these proceedings out?

Mr. Zwally: I think it appropriate to close the proceedings. I would like to have a brief off the record discussion before we do.

Transcript, p. 1220.

agree with the Township; if error occurred, it was the result of the Township permitting too much testimony.

In reaching this conclusion, I am mindful that the denial of Liberty Development's Petition to submit additional evidence on this issue may very well preclude, or substantially hinder, its ability to pursue theories challenging the Board's finding that PRD's are not permitted under the Liberty Township Zoning Ordinance.<sup>18</sup> However, the litigants have been given their opportunity to present their cause. Where there is an opportunity to raise an issue or to present evidence before a municipal body, and a party fails to do so, that party has waived the right to do so at a later date. *Mack v. Zoning Hearing Bd. of Plainfield Twp.*, 558 A.2d 616, 618 (1989). Permitting the presentation of new theories or additional evidence following the entry of a decision by a municipal body exposes litigants to the uncertainty of collateral attack and is contrary to the successful administration of justice.

For the foregoing reasons, the attached Order is entered.

#### ORDER OF COURT

AND NOW, this 24th day of June, 2005, the Plaintiff's Motion to Present Additional Evidence concerning the legal effect of the 1985 Amendment to the Zoning Ordinance is denied. The Plaintiff's Motion to Present Additional Evidence concerning bias is granted. Pursuant to *Amerikohl Min. Inc. v. Zoning Hearing Bd. of Wharton Twp.*, 597 A.2d 219 (Pa.Cmwlth. 1991), this Court's decision to accept additional evidence of bias will not, in and of itself, change the standard of review of the Board of Supervisors' decision. An evidentiary hearing for the admission of testimony permitted by this Order will be scheduled upon Praecipe of any party.

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<sup>18</sup>Liberty Development argues in its Brief that the Township should be estopped from concluding that PRD's are not authorized under the Township Ordinance. Its Motion to present additional evidence seeks to admit testimony and evidence in support of this claim.

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1291 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of April, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain parcel of land situate on the North side of Conewago Creek, in Reading Township, County of Adams, Commonwealth of Pennsylvania, more particularly bounded and described as follows:

BEGINNING at an iron pin on the South side of a 20 foot private roadway at the Northwest corner of Lot No. 9 as shown on the plan of lots heretobelow identified; thence by said Lot No. 9 South 7 degrees West 191.1 feet to an iron pin at the Southwest corner of said Lot No. 9; thence running parallel with Conewago Creek North 83 degrees West 75 feet to a point in the middle of the Southern boundary line of Lot No. 11 shown on said plan of plots; thence running in the middle of said Lot No. 11 of the lands now or formerly of Melvin J. Starnier and Mary A. Starnier, his wife, North 7 degrees East 188.85 feet to a point on the Southern side of said private roadway, which is located at the middle of the Northern boundary of said Lot No. 11; thence along the Southern side of said 20 foot private roadway South 84-1/4 degrees East 75 feet to the above described place of BEGINNING.

BEING all of Lot No. 10 and the Eastern half of Lot No. 11 on a plan of building lots of Melvin J. Starnier, surveyed on August 8, 1944 by Leroy H. Winebrenner, registered surveyor.

TOGETHER with a perpetual right of way and privilege irrevocable in, over and upon lands now or formerly of Melvin J. Starnier and wife lying between the tract of land hereby conveyed and Conewago Creek, unto the grantee herein, his heirs and assigns, as a means of ingress, egress and regress to and from Conewago Creek, which right of way and privilege is to be exercised in common with Melvin J. Starnier and wife, their heirs and assigns.

Further, together with a right of way, in common with Melvin J. Starnier and wife, their heirs and assigns, over and upon a 20 foot roadway at the Northern end of said lot, as set forth on the plan of lots heretobelow mentioned, from the tract hereby conveyed to the public road leading to Dicks Dam Bridge, as long as the right of way along Conewago Creek, aforesaid, is not laid out and opened as a public road, all rights, privileges and easements over the 20 foot private

roadway, aforesaid, hereby granted, shall cease and terminate.

Vesting Information:

Vested by: QuitClaim Deed dated 9-7-77, given by Robert W. Sullivan and Mary A. Sullivan, his wife to Ronald W. Sullivan recorded 9-14-77 in Book: 333 Page 421.

Premises being: 304 South Hickory Lane, New Oxford, PA 17350

Tax Parcel No. J9-70F

SEIZED and taken into execution as the property of **Ronald W. Sullivan** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 1, 2006, 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.

3/3, 10 & 17

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1102 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of April, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point on the Northern edge of the dedicated right of way of Water Street at corner of Lot No. 2-B on the hereinafter referred to draft of survey; thence along the Northern edge of said dedicated right of way of Water Street, North 81 degrees 30 minutes 40 seconds West, 56.25 feet to a steel rod in the center of an existing driveway at corner of Lot No. 1-B on the hereinafter referred to draft of survey; thence by in said existing driveway, by Lot No. 1-B, and passing through an electric service pole, North 08 degrees 29 minutes 20 seconds East, 221.74 feet to a steel pin on line of land now or formerly of Carl R. Sturges; thence by said land of Carl R. Sturges,

South 81 degrees 30 minutes 40 seconds East, 56.25 feet to a steel pin at corner of Lot No. 2-B on the hereinafter referred to draft of survey; thence by said Lot No. 2-B and for a portion of this course running through a party wall dividing Lot No. 2-A and 2-B, South 08 degrees 29 minutes 20 seconds West, 221.74 feet to a point on the Northern edge of the dedicated right of way of Water Street, the point and place of BEGINNING.

BEING the same premises which Bruce R. Vandyk and Dixie A. Vandyk, husband and wife, granted and conveyed unto James E. Caskey, Jr. by Deed dated November 15, 1993 and recorded November 16, 1993 at DBV 808, Page 24 in the Recorder of Deeds Office of Adams County.

Tax Parcel (18) C 15-0088

Premises known as: 120 Water Street, Fairfield, PA 17320

SEIZED and taken into execution as the property of **James E. Caskey, Jr.** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 1, 2006, 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.

3/3, 10 & 17

## ATTORNEY NOTICE

Washington County law firm seeks PA licensed associate attorney with 1-3 years experience, preferably in real estate and/or estate law. Applicants should send resume, transcript, and writing sample to Barbara Rizzo, 70 East Beau Street, Washington, PA 15301, by April 1, 2006.

3/10 & 17

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1370 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of April, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING in the center line of Feeser Road (T-442) at corner of Lot No. 6; thence by Lot No. 6 South 74 degrees 30 minutes 10 seconds East 752.83 feet to a steel rod; thence by Lot No. 6 and Lot No. 5 North 31 degrees 23 minutes 45 seconds East 663.76 feet to a 14" Shagbark Hickory; thence by Lot No. 10 North 79 degrees 32 minutes 30 seconds East 264.51 feet to a steel rod; thence by same South 37 degrees 22 minutes 00 seconds East 52.44 feet to a 16" Swamp White Oak; thence continuing by same South 68 degrees 35 minutes 05 seconds West 111.62 feet to a 14" Shagbark Hickory; thence by same South 67 degrees 22 minutes 40 seconds East 228.30 feet to a 16" Shagbark Hickory; thence by same South 40 degrees 10 minutes 50 seconds East 69.58 feet to an 18" Hickory; thence by same North 26 degrees 01 minute 30 seconds East 65.74 feet to a steel rod; thence by same South 47 degrees 27 minutes 00 seconds East 124.93 feet to a steel rod; thence by same North 75 degrees 03 minutes 35 seconds East 148.32 feet to a steel rod; thence by same North 01 degree 38 minutes 45 seconds East 67.18 feet to a 14" Swamp White Oak; thence by same North 70 degrees 27 minutes 00 seconds East 79.86 feet to a point in creek; thence by land now or formerly of Gregory Lang South 00 degrees 01 minutes 20 seconds East 53.06 feet to an existing steel rod; thence by land now or formerly of National Tree Company South 24 degrees 01 minute 00 seconds West 193.56 feet to an existing steel rod; thence by land now or formerly of Ideltdon Baum South 25 degrees 37 minutes 20 seconds West 448.95 feet to an existing steel rod; thence by same South 34 degrees 26 minutes 15 seconds West 155.81 feet to a steel rod; thence by Lot No. 9 North 74 degrees 30 minutes 10 seconds West 1,560.58 feet to a point in the center line of Feeser Road; thence in the center line of Feeser Road North 09 degrees 52 minutes 05 seconds East 50.24 feet to a point, the place of BEGINNING.

HAVING erected thereon a dwelling known as 145 Feeser Road, Littlestown, PA 17340.

## Parcel # 116-72

BEING the same premises which Randy and Bonnie Smith by their deed dated 4/14/2000 and recorded 5/1/2000 in the Recorder of Deeds Office of Adams County, Pennsylvania in Deed Book Volume 2040, page 1, granted and conveyed unto Frank E. Walker and Patricia A. Walker.

SEIZED and taken into execution as the property of **Frank E. Walker & Patricia A. Walker** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 1, 2006, 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.

3/3, 10 & 17

## 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 Tuesday, March 14, 2006, at 9:00 a.m.

**ELICKER**—Orphans' Court Action Number OC-8-06. The First and Final Account of Walter J. Chrismer and Joyce L. Hartlaub, Executors of the Last Will and Testament of Martha E. Elicker, deceased, late of Union Township, Adams County, Pennsylvania.

Kelly A. Lawver  
Clerk of Courts

3/3 & 10

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1369 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of April, 2006, 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 New Oxford, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a stake making the intersection of the Southern side of a 12 foot wide alley with the Eastern side of Commerce Street; thence along the East side of Commerce Street, South 14 degrees 30 minutes East, 84 feet to a point at other lands now or formerly of Robes Development and Construction Co., known as Lot No. 2; thence along said Lot No. 2, North 75 degrees 30 minutes East, 231 feet, more or less, to a point at lands now or formerly of the John Mauss Estate; thence along said last mentioned lands, North 14 degrees 30 minutes West, 84 feet to a stake on the South side of the aforesaid 12-foot wide alley; thence along the South side of said alley, South 75 degrees 30 minutes West, 231 feet, more or less, to a point, the place of BEGINNING.

Being Lot No. 1 on a plan of Lots prepared for Forbes Development and Construction Co. and duly recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 3 at page 36.

Tax Parcel # 5-192

SEIZED and taken into execution as the property of **David L. Gonzalez & Celiflora Garcia** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 15, 2006, 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.

3/10, 17 & 24



IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW  
CASE NO. 05-S-952  
Action to Quiet Title

LAWRENCE E. MCGLAUGHLIN & D.  
JUENE MCGLAUGHLIN, Plaintiffs

vs.

JAMES G. KOLBE & T. JANE KOLBE,  
their respective executors, heirs and/or  
assigns, Defendants

ORDER OF COURT

AND NOW, this 22nd day of February, 2006, it appearing that a Complaint with Notice to Defend was filed hereon on August 31, 2005, and that the same was served upon Defendants, James G. Kolbe and T. Jane Kolbe, by publication pursuant to Order of Court dated December 13, 2005, on date set forth in the attached Motion; and it further appearing that no appearance of record nor answer or other pleading has been filed on behalf of Defendants within the time allotted by law for the same, and therefore, upon motion of John A. Wolfe, Esq., Wolfe and Rice, LLC, attorneys for Plaintiffs,

IT IS HEREBY ORDERED AND DIRECTED that judgment by default be and the same is hereby entered in favor of Plaintiffs, Lawrence E. McGlaughlin and D. Juene McGlaughlin, and against Defendants, James G. Kolbe and T. Jane Kolbe, their respective executors, heirs and/or assigns.

AND IT IS FURTHER ORDERED AND DIRECTED that the said Defendants be and the same hereby are forever barred from asserting any right, title, interest or claim inconsistent with the right, title, interest and claim of Plaintiffs as set forth in the Complaint with respect to the land herein described:

ALL that tract of land situate, lying and being in Liberty Township, Adams County, Pennsylvania, being Lot No. 56 in Section O, bounded and described as follows:

BEGINNING at a point in the center of Apache Trail at Lot No. 57; thence by said lot North 42 degrees 51 minutes 10 seconds East, 212.35 feet to lands of Karl F. Hobbs; thence by said lands South 47 degrees 8 minutes 50 seconds East, 130 feet to Lot No. 55; thence by said lot and by Lot No. 54 South 54 degrees 37 minutes 43 seconds West, 230.88 feet to a point in the center of said Apache Trail; thence in said Apache Trail North 36 degrees 8 minutes 16 seconds West, 78.79 feet to a point; thence continuing in said Apache Trail North 61 degrees 5 minutes 50

seconds West 5.71 feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section O, Charnita" dated October 21, 1969, prepared by Evans, Hagan & Holdefer, and recorded in Adams County Plat Book No. 1 at page 49.

BEING the same as lands described in the deed to the Defendants recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Deed Book 277 at page 1091.

Unless the same Defendants shall within thirty (30) days after publication of this Order commence an action in Ejectment or other appropriate action to assert any claim they may have against the Plaintiffs herein; and upon the failure of the Defendants to commence such action against the Plaintiffs within thirty (30) days after said publication, the Prothonotary of Adams County, Pennsylvania is directed upon praecipe of the Plaintiffs to enter final judgment herein in favor of Plaintiffs and against Defendants pursuant to Pa.R.C.P. No. 1066 (b) (1) and to cause a true and attested copy of this Order and such final judgment to be recorded in the Office of Recorder of Deeds of Adams County, Pennsylvania, the same to be indexed in the name of the Defendants, James G. Kolbe and T. Jane Kolbe, their respective heirs, executors, administrators, successors and assigns, as GRANTORS and the name of the Plaintiffs, Lawrence E. McGlaughlin and D. Juene McGlaughlin, GRANTEES.

BY THE COURT,  
/s/Michael A. George, Judge

3/10

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1340 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of April, 2006, 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 of ground situate in the Borough of McSherrystown, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING on the South Street (formerly known as German Street) at corner of property now or formerly of J. Wallace Noel, and extending thence along said property in a Northwestwardly direction one hundred sixteen and ninety-one one-hundredths (116.91) feet, more or less, to an alley; thence along said alley in a Southwestwardly direction forty and zero one-hundredths (40.00) feet to a point; thence along property now

or formerly of Hanover Improvement Company Southeastwardly by a line parallel to the course first above mentioned one hundred twenty and eighty-one one-hundredths (120.81) feet, more or less, to South Street; thence Northeastwardly along South Street forty and zero one-hundredths (40.00) feet to the place of BEGINNING.

BEING composed of part of Lot No. 30 and all of Lot No. 29 in Block B on a plan of lots laid out by Emanuel H. Hostetter, Administrator of the Estate of Sarah J. Hostetter, deceased.

TITLE TO SAID PREMISES IS VESTED IN Edward G. Klingler and Jeanette M. Klingler, husband and wife, by Deed from Jeanette M. Hucks, (formerly a widow), now known as, Jeanette M. Klingler joined by Edward G. Klingler, her husband, dated 02-17-05, recorded 02-28-05 in Deed Book 3877, page 55.

Tax Parcel: 28-005-0311-000

Premises Being: 631 South Street, McSherrystown, PA 17344

SEIZED and taken into execution as the property of Edward G. Klingler & Jeanette M. Klingler a/k/a Jeanette M. Smith a/k/a Jeanette M. Heir a/k/a Jeanette M. Hucks and to be sold by me,

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 15, 2006, 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.

3/10, 17 & 24

IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW  
CASE NO. 05-S-947  
Action to Quiet Title

LAWRENCE E. McGLAUGHLIN & D.  
JUENE McGLAUGHLIN, Plaintiffs

vs.

ADELINE A. MUELLER & MATHILDA R.  
BOWMAN, their respective executors,  
heirs and/or assigns, Defendants

ORDER OF COURT

AND NOW, this 22nd day of February, 2006, it appearing that a Complaint with Notice to Defend was filed hereon on August 31, 2005, and that the same was served upon Defendants, Adeline A. Mueller and Mathilda R. Bowman, by publication pursuant to Order of Court dated December 2, 2005, on date set forth in the attached Motion; and it further appearing that no appearance of record nor answer or other pleading has been filed on behalf of Defendants within the time allotted by law for the same, and therefore, upon motion of John A. Wolfe, Esq., Wolfe and Rice, LLC, attorneys for Plaintiffs.

IT IS HEREBY ORDERED AND DIRECTED that judgment by default be and the same is hereby entered in favor of Plaintiffs, Lawrence E. McGlaughlin and D. Juene McGlaughlin, and against Defendants, Adeline A. Mueller and Mathilda R. Bowman, their respective executors, heirs and/or assigns.

AND IT IS FURTHER ORDERED AND DIRECTED that the said Defendants be and the same hereby are forever barred from asserting any right, title, interest or claim inconsistent with the right, title, interest and claim of Plaintiffs as set forth in the Complaint with respect to the land herein described:

This action concerns a tract of land situated in Liberty Township, Adams County, Pennsylvania, being Lot Number 207 in Section AA, bounded and described as follows:

BEGINNING at a point in the center of Lindsay Trail at Lot No. 206; thence by said lot North 53 degrees 23 minutes 56 seconds West, 169.28 feet to Lot No. 225; thence by said lot and by Lot No. 226 North 36 degrees 36 minutes 4 seconds East, 180 feet to Lot No. 208; thence by said lot South 19 degrees 5 minutes 10 seconds East, 241.29 feet to a point in the center of said Lindsay Trail; thence in said Lindsay Trail South 70 degrees 54 minutes 50 seconds West, 53.25 feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section

AA, Charnita" dated October 21, 1969, prepared by Evans, Hagan & Holdefer, and recorded in Adams County Plat Book No. 1 at page 59.

Unless the same Defendants shall within thirty (30) days after publication of this Order commence an action in Ejectment or other appropriate action to assert any claim they may have against the Plaintiffs herein; and upon the failure of the Defendants to commence such action against the Plaintiffs within thirty (30) days after said publication, the Prothonotary of Adams County, Pennsylvania is directed upon praecipe of the Plaintiffs to enter final judgment herein in favor of Plaintiffs and against Defendants pursuant to Pa.R.C.P. No. 1066 (b) (1) and to cause a true and attested copy of this Order and such final judgment to be recorded in the Office of Recorder of Deeds of Adams County, Pennsylvania, the same to be indexed in the name of the Defendants, Adeline A. Mueller and Mathilda R. Bowman, their respective heirs, executors, administrators, successors and assigns, as GRANTORS and the names of the Plaintiffs, Lawrence E. McGlaughlin and D. Juene McGlaughlin, GRANTEES.

BY THE COURT,  
/s/Michael A. George, Judge

3/10

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1302 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of April, 2006, 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 Menallen Township, Adams County, Pennsylvania, being more particularly bounded and described as follows:

BEGINNING at a point in the right of way line of Township Road T-387 at corner of Lot No. 2A on the hereinafter referred to draft of survey; thence by Lot No. 2A, South 02 degrees 53 minutes 21 seconds East, 261.70 feet to a pin set along other lands now or formerly of Antonio Mojica; thence by lands now or formerly of Antonio Mojica, South 82 degrees 27 minutes 04 seconds West, 134.39 feet to a point along lands now or formerly of Richard H. Sullivan; thence along lands now or formerly of Richard H. Sullivan, North 21 degrees 47 minutes 41 seconds West, 288.17 feet to a point in the right of way line of Township Road T-387; thence continuing in the right of way line of Township Road T-387, North 87 degrees 06 minutes 39 seconds East, 227.32 feet to a point in the right of way

line of Township Road T-387, the point and place of BEGINNING, CONTAINING 1.113 Acres.

The above description was taken from a draft of survey prepared by Jerry D. LaRue, April 8, 1997, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 46 at page 96.

IT BEING the same premises which Larry S. Kuhn and Kelley L. Kuhn, husband and wife, by their Deed dated June 30, 2000, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 2080, Page 117, granted and conveyed unto James M. Hartman, Sr.

Parcel ID#: Map E4, Parcel 13B

Address: 1756 Coon Road (previously known as 1740 Coon Road), Aspers, PA 17304

SEIZED and taken into execution as the property of **James M. Hartman, Sr.** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 15, 2006, 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.

3/10, 17 & 24

## 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 DORIS BELT EIKER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Catherine J. Gault, Esq., 303 Conewago Road, New Oxford, PA 17350

Attorney: Catherine J. Gault, Esq., 303 Conewago Road, New Oxford, PA 17350

## ESTATE OF LESLIE A. FLYNN a/k/a LESLIE ANN FLYNN, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Executor: Shelley E. Sykes, P.O. Box 70, Arendtsville, PA 17303

Attorney: Walton V. Davis, Esq., 63 West High Street, Gettysburg, PA 17325

## ESTATE OF HOWARD J. McDANNELL, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Daniel J. McDannell, 5000 Chambersburg Road, Ortanna, PA 17353

Attorney: Wendy Weikal-Beauchat, Esq., 63 West High St., Gettysburg, PA 17325

## SECOND PUBLICATION

## ESTATE OF LEON J. ELINE, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Richard D. Eline, 1466 Park Terrace Drive, Chambersburg, PA 17201

Attorney: David C. Smith, Esq., 754 Edgegrove Rd., Hanover, PA 17331

## ESTATE OF WILLIAM H. HUFF, DEC'D

Late of the Borough of York Springs, Adams County, Pennsylvania

Executrix: Angel R. Steele, c/o Brian C. Linsenbach, Esq., Schrack & Linsenbach PC, 124 West Harrisburg Street, P.O. Box 310, Dillsburg, PA 17019-0310

Attorney: Brian C. Linsenbach, Esq., Schrack & Linsenbach PC, 124 West Harrisburg Street, P.O. Box 310, Dillsburg, PA 17019-0310

## ESTATE OF ANN M. JUSTICE, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Geanine J. Roser, 1550 Water Street, Fairfield, PA 17320

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

## ESTATE OF MILDRED B. KEPNER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Diane K. Ley, 34 N. Miller St., Fairfield, PA 17320

Attorney: Wendy Weikal-Beauchat, Esq., 63 West High St., Gettysburg, PA 17325

## ESTATE OF EVELYN B. LEPPA, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Richard J. Smith and Janet L. Smith, 30 Oak Drive, Hanover, PA 17331

Attorney: David C. Smith, Esq., 754 Edgegrove Rd., Hanover, PA 17331

## ESTATE OF MARY E. SNYDER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Sara Ellen Mummert, 516 McMillan St., Gettysburg, PA 17325

Attorney: Chester G. Schultz, Esq., 145 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF DOLORES N. STALEY-WILSON, DEC'D

Late of the Borough of Bendersville, Adams County, Pennsylvania

William B. Wilson, 259 S. Main Street, P.O. Box 71, Bendersville, PA 17306

Attorney: Henry O. Heiser, III, Esq., 104 Baltimore Street, Gettysburg, PA 17325

## THIRD PUBLICATION

## ESTATE OF ANN L. KENDRICK, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executors: George A. O'Brien, Jr., George A. O'Brien, Sr. and Mary E. Nugent, c/o Andrew F. Kagen, Esq., 2675 Eastern Blvd., York, PA 17402

Attorney: Andrew F. Kagen, Esq., 2675 Eastern Blvd., York, PA 17402

## ESTATE OF DELPHINE V. SEIFRIT a/k/a DELPHINE W. SEIFRIT, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Co-Executors: Janet M. Smith, 115 Cottage Road, Shippensburg, PA 17257; Randall Sell, 3651 Carlisle Road, Gardners, PA 17324

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

## ESTATE OF JOAN MARIE SHERMAN, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executor: Lisa Marie Sherman a/k/a Lisa Marie Neeley, 905 Hoods Mill Road, Woodbine, MD 21797

Attorney: John J. Murphy III, Esq., Patrono & Associates, LLC, 30 West Middle Street, Gettysburg, PA 17325

## ESTATE OF GLENN R. TROSTLE, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Glenn R. Trostle, Jr., 589 Knoxlyn Rd., Gettysburg, PA 17325

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

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-380 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of April, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those described 4 tracts of land described lot of ground, with improvements thereon erected, situate in Franklin Township, Adams County, Pennsylvania, bounded and described as follows:

TRACT NO. 1

BEGINNING at a stone for a corner on the South side of a public road running from Route 234 to Cashtown near a pine tree; thence running on the South side of the said public road South 70 degrees West, 83 feet to a point on land now or formerly of Ernest Saum North 15-1/2 degrees West, 278.3 feet to a stone corner; thence running by land now or formerly of George McDannell North 82-1/2 degrees East, 140.5 feet to a stone corner; thence running by land now or formerly of Gilbert Bucher's heirs South 2-1/2 degrees East, 256.50 feet to a stone, the place of BEGINNING. CONTAINING 108 perches.

TRACT NO. 2

BEGINNING at a point in Township Road T-364 at other lands now or formerly of Ernest Saum; thence by lands now or formerly of Saum and passing through a reference iron pin set back 37 feet from the place of beginning North 07 degrees 18 minutes West, 271.50 feet to a steel pin at lands now or formerly of Paul McDannell; thence by lands now or formerly of Paul McDannell North 87 degrees 54 minutes East 90.87 feet to a steel pin at lands now or formerly of Donald Coldsmith; thence by lands now or formerly of Coldsmith and passing through a reference steel pin 26 feet from the terminus of their call South 07 degrees 30 minutes East, 265.65 feet to a point in Township Road T-364; thence in said Township Road South 84 degrees 12 minutes West, 91.45 feet to a point at the place of BEGINNING. CONTAINING 24,426 square feet, neat measure.

TRACT NO. 3

BEGINNING at a nail in the center of Township Road T-364 at corner of lands now or formerly of Robert W. Prater; thence running in the center of said Township Road T-364, North 69 degrees 16 minutes 30 seconds West, 82.21 feet to a point in the center of said road; thence continuing in the center of said road, North 39 degrees 34 minutes 45 seconds West, 78.81 feet to a point in the center of said road; thence continuing in

the center of said road, North 17 degrees 24 minutes 10 seconds West, 160.05 feet to a point in the center of said road at corner of lands now or formerly of Hazel C. McDannell; thence along said McDannell lands, North 80 degrees 57 minutes 25 seconds East, 108.67 feet to an iron pin at corner of lands now or formerly of Robert W. Prater; thence along said Prater lands, South 14 degrees 36 minutes 20 seconds East, through an iron pin set back 40.96 feet from the end of this course, 268.31 feet to a nail in the center of Township Road T-364, the point and place of BEGINNING. CONTAINING 0.543 acres.

The above description was taken from a draft of survey prepared by Richard W. Boyer, R.S. of Boyer Surveys, Biglerville, Adams County, Pennsylvania, dated 12/19/1978 the said draft of survey is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 27, Page 4, the above described tract being designated as Lot No. 1.

TRACT NO. 4

BEGINNING at a railroad spike in the center line of New Road T-364 at corner of Lot No. 1 on the draft of survey hereinafter referred to; thence along Lot No. 1, North 71 degrees 05 minutes 10 seconds East, passing through a reference pipe 25.00 feet from the beginning of this course, 642.47 feet to a pipe at land now or formerly of Thomas Reeve; thence by same South 32 degrees 30 minutes 50 seconds East, 136.21 feet to an existing pipe and stones at lands now or formerly of Elizabeth R. McClell; thence by same South 60 degrees 32 minutes 24 seconds West, 355.00 feet to an existing iron pin at land now or formerly of Robert W. Prater; thence by same South 76 degrees 16 minutes 43 seconds West, 235.17 feet to an existing pin at land now or formerly of David Stewart; thence by same South 76 degrees 15 minutes 55 seconds West, 108.71 feet to an existing nail in the center line of New Road T-364 aforesaid; thence in the center line of such road North 13 degrees 05 minutes 00 seconds West, 167.14 feet to a railroad spike, the place of BEGINNING. CONTAINING 2.670 acres.

The above description was taken from a draft of survey prepared by Richard W. Boyer, Adams County Surveyor, dated March 5, 1980, recorded in Plat Book 34, at page 61, the above described tract being designated as Lot No. 2.

Being known as: 788 New Road, Oртanna, PA 17353

Property ID No.: 12-C9-32

TITLE TO SAID PREMISES IS VESTED IN Raymond B. Williams, Sr. and Candy S. Williams, husband and wife by deed from Gerald H. Deighton, single person, by his attorney in fact Edward G.

Puhl and Harry J. Blaisdell, single person, by his attorney in fact Edward G. Puhl dated 3/31/00 recorded 4/17/00 in Deed Book 2032 Page 136.

SEIZED and taken into execution as the property of **Raymond B. Williams, Sr. & Candy S. Williams** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 15, 2006, 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.

3/10, 17 & 24

# *Adams County* Legal Journal

Vol. 47

March 17, 2006

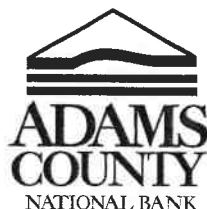
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In times like these,  
you and your clients need  
the experience and expertise  
provided by a trust professional.



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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1322 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of April, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

The following two tracts of land in Reading Township, Adams County:

**TRACT NO. 1:** ALL that certain lot of land, situate in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 681 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County in Plan Book 1, Page 5, and subject to all legal highways, easements, rights of way and restrictions of record.

**TRACT NO. 2:** ALL that certain half lot of ground situate in Reading Township, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

BEGINNING at a point on the Eastern property line of Lake Meade Drive at the Southwest corner of half lot now or formerly of William F. Lerew, et al; thence along the Eastern property line of Lake Meade Drive by a curve to the right whose radius is 713.52 feet, an arc distance of 42.24 feet and having a long chord bearing of North 25 degrees 45 minutes 18 seconds West, 42.23 feet to a point at the Southwest corner of Lot No. 681, being Tract No. 1 hereinabove described; thence by such Lot No. 681 North 65 degrees 56 minutes 27 seconds East, 308.00 feet to a point in or at Lake Meade, thence in or at Lake Meade South 18 degrees 05 minutes 36 seconds East, 24.31 feet to a point at the Northeast corner of half lot now or formerly of William F. Lerew, et al; thence by same South 62 degrees 32 minutes 56 seconds West, 304.76 feet to a point, the place of BEGINNING.

BEING the Northern half of Lot No. 680 in the Lake Meade Subdivision, such description being taken from draft of survey prepared by Larue Surveys, Inc., dated July 18, 1975.

BEING the same premises which Dorothy I. Eisenhour, widow, by Deed dated 09/12/97 and recorded 01/06/98 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 1507, 23 granted and conveyed unto Donald E. Eisenhour.

Premises Known as: 476 Lake Meade Drive, East Berlin, PA 17316

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS:

You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 1, 2006, 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.

3/3, 10 & 17

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-179 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of April, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land situate, lying and being in the Borough of Carroll Valley, Adams County, Pennsylvania, being Lot No. 71 in Section E, Charnita, Inc., more particularly bounded and described as follows:

BEGINNING at a point in the center of Echo Trail at Lot No. 70; thence through the cul-de-sac of said Echo Trail and by Lot No. 70 South 13 degrees 3 minutes 40 seconds West, 155 feet to a point, thence North 72 degrees 24 minutes 20

seconds West, 166.16 feet to Lot No. 74; thence by said Lot North 11 degrees 47 minutes 40 seconds East 138.17 feet to Lot No. 72, thence by said lot South 78 degrees 12 minutes 20 seconds East, 168.4 feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section E Charnita", dated July 2, 1966 and revised August 8, 1966, prepared by Gordon L. Brown, R.S., recorded in Adams County, Miscellaneous Docket 5 at page 865.

BEING THE SAME by which from James M. Coward and Carla A. Coward, James M. Coward her attorney in fact Dated 12/16/88 and recorded: 12/30/88 in Book 511 page 214.

Tax Parcel No: 43-33-31

Premises Known As: 26 Echo Trail, Fairfield, PA 17320

SEIZED and taken into execution as the property of **Kathy A. Dick & Bryon D. Dick** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS:

You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 1, 2006, 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.

3/3, 10 & 17

## COMMONWEALTH VS. ARNOLD

1. In order to succeed on a claim based upon newly-discovered evidence, the petitioner must establish by a preponderance of the evidence that: (1) the evidence has been discovered after the trial and it would not have been obtained at or prior to trial through reasonable diligence; (2) such evidence is not cumulative; (3) the evidence is not being used solely to impeach credibility; and (4) such evidence would likely compel a different verdict.

2. After a defendant has entered a plea of guilty, the only cognizable issues in a post conviction proceeding are the validity of the plea of guilty and the legality of the sentence.

3. Pennsylvania Courts have required strict adherence to detailed procedures concerning the entry of guilty pleas.

4. A guilty plea is an acknowledgment by a defendant that he participated in the commission of certain acts with criminal intent. He acknowledges the existence of the facts and the intent. The facts that he acknowledges may or may not be within the powers of the Commonwealth to prove.

5. Appellate authority has solidified the principal that a defendant may not knowingly lie to the Court during the guilty plea colloquy.

6. The defendant's request to withdraw his guilty plea based upon after-discovered evidence is not cognizable under the P.C.R.A.

7. Recantation testimony is one of the least reliable forms of proof, particularly when it constitutes the admission of perjury.

8. Before relief may be granted based upon a recantation of testimony, the recantation testimony must be credible to the trial court.

9. In order to obtain relief under the P.C.R.A. premised upon a claim of ineffective assistance of counsel, a petitioner must establish beyond a preponderance of the evidence that counsel's ineffectiveness so determined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,  
PENNSYLVANIA, CRIMINAL ACTION NO. CC-458-03. COM-  
MONWEALTH OF PENNSYLVANIA VS. SHAWN FREDERICK  
ARNOLD.

David McGlaughlin, Esq., Assistant District Attorney, for  
Commonwealth

Robert J. Chester, Esq., for Defendant

George, J., July 15, 2005

### OPINION

This matter comes before the Court on Defendant Shawn Arnold's ("Arnold") Petition for Collateral Relief filed Pursuant to the Post-Conviction Relief Act (P.C.R.A.), 42 Pa. C.S.A. § 9541, et seq. The thrust of Arnold's Petition seeks to withdraw his guilty plea based upon a claim of after-discovered evidence. For the reasons set forth below, the request for relief under the P.C.R.A. is denied.

On March 26, 2003, Arnold was charged with a variety of crimes resulting from allegations that he had sexual intercourse with his thirteen-year-old step-daughter “approximately 500 times.” On September 5, 2003, Arnold appeared before the Court and pled guilty to statutory sexual assault as a felony of the second degree under 18 Pa.C.S. § 3122.1. On October 14, 2003, Arnold was sentenced to no less than five years nor more than ten years in a state correctional institution pursuant to a negotiated plea agreement. Arnold neither filed post-sentence motions nor a direct appeal to the Superior Court; however, on September 10, 2004, he filed a petition pursuant to the P.C.R.A. Since Arnold was without counsel at the time he filed the PCRA Petition, this Court appointed counsel on his behalf and permitted the filing of an amended petition. Following the transcription of Arnold’s guilty plea and sentencing proceedings, an Amended PCRA Petition was filed on March 18, 2005. In his Amended PCRA Petition, Arnold claims that the victim, who is currently eighteen years old, recanted her statements and now claims that Arnold did not have intercourse with her. An evidentiary hearing was held on May 20, 2005, and, thereafter, the parties were provided with an opportunity to file legal briefs. The matter is now ripe for disposition.

According to 42 Pa. C.S.A. § 9543(a)(2), the P.C.R.A. provides relief from convictions or sentences resulting from one of the following:

- i. A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- ii. Ineffective assistance of counsel which, in circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- iii. A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.
- iv. The improper obstruction by government officials of the petitioner’s right of appeal where a meritorious appealable issue exists and was properly preserved in the trial court.



- v. Deleted.
- vi. The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.
- vii. The imposition of a sentence greater than the lawful maximum.
- viii. A proceeding in a tribunal without jurisdiction.

42 Pa. C.S.A. § 9543(a)(2). Although Arnold pursues relief under the provision related to after-discovered evidence, the procedural posture of this matter presents an interesting theoretical discussion. Specifically, I must determine what effect, if any, Arnold's guilty plea has on his efforts to pursue a theory based upon the unavailability of exculpatory evidence at the time of trial when, in fact, no trial occurred.

In order to succeed on a claim based upon newly-discovered evidence, "the petitioner must establish by a preponderance of the evidence that: (1) the evidence has been discovered after the trial and it could not have been obtained at or prior to trial through reasonable diligence; (2) such evidence is not cumulative; (3) [the evidence] is not being used solely to impeach credibility; and (4) such evidence would likely compel a different verdict." *Commonwealth v. Abu-Jamal*, 720 A.2d 79, 94 (Pa. 1993). Notably, the Supreme Court in *Abu-Jamal* considered the parameters of the after-discovered evidence rule in the context of 42 Pa. C.S.A. § 9543(a)(2)(vi) of the P.C.R.A. following a conviction after a jury trial. In fact, since the advent of statutory post-conviction proceedings,<sup>1</sup> all case law relating to after-discovered evidence has arisen in the context of evidence discovered subsequent to the occurrence of a trial. Prior to the adoption of the Act, however, the Pennsylvania Supreme Court considered the effect of after-discovered evidence following the entry of a plea of guilty in *Commonwealth v. Peoples*, 319 A.2d 679 (Pa. 1974).

In *Peoples*, the defendant sought to withdraw his guilty plea to the general charge of murder based upon after-discovered evidence

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<sup>1</sup>The P.C.R.A. was adopted on May 13, 1982 as Public Law 417. The original Act has subsequently been amended on several occasions transforming it into the current P.C.R.A.

consisting of the testimony of a witness who the defendant contended would support a claim of self defense. *Id.* at 680. The Commonwealth argued that, as a matter of law, after-discovered evidence standing alone is insufficient to permit the withdrawal of a guilty plea. *Id.* In rejecting the Commonwealth's argument, the Supreme Court in *Peoples* opined that "after-discovered evidence which would justify a new trial would also entitle a defendant to withdraw his guilty plea." *Id.* at 681.

The rule enunciated by the Supreme Court in *Commonwealth v. Peoples*, however, appears at odds with subsequent appellate authority discussing the conclusiveness of a plea of guilty in the context of the P.C.R.A. Our courts have recognized that "[a]fter a defendant has entered a plea of guilty, the only cognizable issues in a post conviction proceeding are the validity of the plea of guilty and the legality of the sentence." *Commonwealth v. Rounsley*, 717 A.2d 537, 538 (Pa. Super. 1998).<sup>2</sup>

In order to ensure that those who enter guilty pleas are fully informed of the nature and result of their plea, Pennsylvania Courts have required strict adherence to detailed procedures concerning the entry of guilty pleas. See Pa. Rule of Criminal Procedure 590, et. seq.; see also *Commonwealth v. Willis*, 369 A.2d 1189, 1189-90 (Pa. 1977) and *Commonwealth v. Dillbeck*, 353 A.2d 824, 826-27 (Pa. 1976) (Inquiry into six specific areas during a guilty plea colloquy is mandatory). The procedural safeguards required throughout the guilty plea process reflect not only the seriousness, but also the conclusiveness, of the entry of a guilty plea. As eloquently stated by Justice McDermitt:

A guilty plea is an acknowledgment by a defendant that he participated in the commission of certain acts with criminal intent. He acknowledges the existence of the facts and the intent. The facts that he acknowledges may or may not be within the powers of the Commonwealth to prove. However, the plea of guilt admits that the facts

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<sup>2</sup> As discussed later in this Opinion, recent appellate authority has permitted challenges to the validity of a guilty plea under a theory of counsel's ineffectiveness prior to or during the plea process. See *Commonwealth v. Lynch*, 820 A.2d 728 (Pa. Super. 2003).

and intent occurred, and is a confession not only of what the Commonwealth might prove, but also as to what the defendant knows to have happened.

....

A guilty plea is not a ceremony of innocence, it is an occasion where one offers a confession of guilt. If a defendant voluntarily, knowingly, and intelligently wishes to acknowledge facts that in themselves constitute an offense, that acknowledgement is independent of the procedures of proving or refuting them. How they would be proved, what burdens accompany their proof, what privileges exist to avoid their proof, what safeguards exist to determine their accuracy, and under what rules they would be determined, by whom and how, are irrelevant. The defendant is before the Court to acknowledge facts that he is instructed constitute a crime. He is not there to gauge the likelihood of their proof, nor to weigh them in the light of the available procedures for their proof. He is there to voluntarily say what he knows occurred, whether the Commonwealth would prove them or not, and that he will accept their legal meaning and their legal consequence....

*Commonwealth v. Anthony*, 475 A.2d 1303, 1307 (Pa. 1984).

In light of the gravity of the guilty plea, a criminal defendant has a duty to answer questions truthfully during the colloquy. "We [cannot] permit a defendant to postpone the final disposition of his case by lying to the Court and later alleging that his lies were induced by the prompting of counsel." *Commonwealth v. Cappelli*, 489 A.2d 813, 819 (Pa. Super. 1985). Although Pennsylvania has not adopted a standard wherein the entry of a guilty plea precludes further inquiry into the validity of that plea, appellate authority has solidified the principle that a defendant may not knowingly lie to the Court during the guilty plea colloquy. *Commonwealth v. Pollard*, 832 A.2d 517, 524 (Pa. Super. 2003).

It is important to distinguish the line of cases permitting attacks on the validity of a guilty plea. This line of cases generally falls into two categories. The first category being those cases related to the ineffectiveness of counsel during plea proceedings raised under 42

Pa. C.S.A. § 9543(a)(2)(i),<sup>3</sup> see generally *Lynch*, cited above; and the second category being those cases where the guilty plea was unlawfully induced under circumstances which make it likely that the inducement caused the guilty plea and the party seeking relief is innocent, see 42 Pa. C.S.A. § 9543(a)(2)(iii).<sup>4</sup> Regardless of the theory pursued, however, all appellate authority addressing issues related to the withdrawal of guilty pleas pursuant to the P.C.R.A. fall within one of these provisions. With the exception of the pre-P.C.R.A. precedent, I have failed to uncover any case law discussing the withdrawal of a guilty plea in the context of after-discovered evidence.

Interestingly, the P.C.R.A. distinguishes between guilty pleas and trial proceedings. Compare 42 Pa.C.S.A. § 9543(a)(2)(iii) with 42 Pa.C.S.A. § 9543(a)(2)(vi). Since the rules of statutory construction require that the courts “construe a statute so as to give effect to every word contained therein,” *Keystone Aerial Surveys, Inc. v. Pennsylvania Property and Cas. Ins. Guar. Ass’n*, 777 A.2d 84, 90 (Pa. Super. 2001), re-argument denied, app. granted, 796 A.2d 983 (Pa. 2002), affirmed, 829 A.2d 297 (Pa. 2003), the distinction in the choice of words in the two sections of the statutory remedy created by the legislature is material. It appears, therefore, that Arnold’s request to withdraw his guilty plea based upon after-discovered evidence is not cognizable under the P.C.R.A. This interpretation not only breathes meaning into the words of Justice McDermitt, but also

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<sup>3</sup> 42 Pa.C.S.A. § 9543(a)(2)(ii) provides the following as a basis of relief: Ineffective assistance of counsel which, in the circumstances of a particular case, so undermine the truth determining process that no reliable adjudication of guilt or innocence could have taken place. In order to be successful on an ineffectiveness of counsel claim, the petitioner must show that the underlying claim is of arguable merit, the course chosen by counsel had no reasonable basis and was not designed to serve the petitioner’s interest, and counsel’s conduct prejudiced the petitioner. *Commonwealth v. Davis*, 541 A.2d 315, 318 (Pa. 1988). The standard for post-sentence withdrawal of guilty pleas dovetails with the arguable merit/prejudice requirements for relief based on a claim of ineffective assistance of plea counsel under which the defendant must show that counsel’s deficient stewardship resulted in a manifest injustice; for example, by facilitating entry of unknowing, involuntary, or unintelligent plea. *Commonwealth v. Flanagan*, 854 A.2d 489, 502 (Pa. 2004). See also *Commonwealth v. Morrison*, \_\_A.2d\_\_, 2005 LEXIS 1502 (Pa.Super. June 17, 2005).

<sup>4</sup> Unlike a claim under subsection (a)(2)(ii), a request for relief under subsection (a)(2)(iii) requires the petitioner to establish actual innocence. See generally *Lynch*, cited above.

construes the P.C.R.A. in a manner consistent with the long line of appellate authority recognizing a defendant's duty to answer questions truthfully during the plea process. See *Pollard*, 832 A.2d at 524; *Commonwealth v. Barnes*, 687 A.2d 1163, 1167 (Pa. Super. 1996); *Commonwealth v. Harris*, 553 A.2d 428, 434 (Pa. Super. 1989).

*Continued to next issue (3/24/2006)*

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1291 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of April, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain parcel of land situate on the North side of Conewago Creek, in Reading Township, County of Adams, Commonwealth of Pennsylvania, more particularly bounded and described as follows:

BEGINNING at an iron pin on the South side of a 20 foot private roadway at the Northwest corner of Lot No. 9 as shown on the plan of lots heretobelow identified; thence by said Lot No. 9 South 7 degrees West 191.1 feet to an iron pin at the Southwest corner of said Lot No. 9; thence running parallel with Conewago Creek North 83 degrees West 75 feet to a point in the middle of the Southern boundary line of Lot No. 11 shown on said plan of plots; thence running in the middle of said Lot No. 11 of the lands now or formerly of Melvin J. Starner and Mary A. Starner, his wife, North 7 degrees East 188.85 feet to a point on the Southern side of said private roadway, which is located at the middle of the Northern boundary of said Lot No. 11; thence along the Southern side of said 20 foot private roadway South 84-1/4 degrees East 75 feet to the above described place of BEGINNING.

BEING all of Lot No. 10 and the Eastern half of Lot No. 11 on a plan of building lots of Melvin J. Starner, surveyed on August 8, 1944 by Leroy H. Winebrenner, registered surveyor.

TOGETHER with a perpetual right of way and privilege irrevocable in, over and upon lands now or formerly of Melvin J. Starner and wife lying between the tract of land hereby conveyed and Conewago Creek, unto the grantee herein, his heirs and assigns, as a means of ingress, egress and regress to and from Conewago Creek, which right of way and privilege is to be exercised in common with Melvin J. Starner and wife, their heirs and assigns.

Further, together with a right of way, in common with Melvin J. Starner and wife, their heirs and assigns, over and upon a 20 foot roadway at the Northern end of said lot, as set forth on the plan of lots heretobefore mentioned, from the tract hereby conveyed to the public road leading to Dicks Dam Bridge, as long as the right of way along Conewago Creek, aforesaid, is not laid out and opened as a public road, all rights, privileges and easements over the 20 foot private

roadway, aforesaid, hereby granted, shall cease and terminate.

Vesting Information:

Vested by: QuitClaim Deed dated 9-7-77, given by Robert W. Sullivan and Mary A. Sullivan, his wife to Ronald W. Sullivan recorded 9-14-77 in Book: 333 Page 421.

Premises being: 304 South Hickory Lane, New Oxford, PA 17350

Tax Parcel No. J9-70F

SEIZED and taken into execution as the property of **Ronald W. Sullivan** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 1, 2006, 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.

3/3, 10 & 17

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1102 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of April, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point on the Northern edge of the dedicated right of way of Water Street at corner of Lot No. 2-B on the hereinafter referred to draft of survey; thence along the Northern edge of said dedicated right of way of Water Street, North 81 degrees 30 minutes 40 seconds West, 56.25 feet to a steel rod in the center of an existing driveway at corner of Lot No. 1-B on the hereinafter referred to draft of survey; thence by in said existing driveway, by Lot No. 1-B, and passing through an electric service pole, North 08 degrees 29 minutes 20 seconds East, 221.74 feet to a steel pin on line of land now or formerly of Carl R. Sturges; thence by said land of Carl R. Sturges,

South 81 degrees 30 minutes 40 seconds East, 56.25 feet to a steel pin at corner of Lot No. 2-B on the hereinafter referred to draft of survey; thence by said Lot No. 2-B and for a portion of this course running through a party wall dividing Lot No. 2-A and 2-B, South 08 degrees 29 minutes 20 seconds West, 221.74 feet to a point on the Northern edge of the dedicated right of way of Water Street, the point and place of BEGINNING.

BEING the same premises which Bruce R. Vandynke and Dixie A. Vandynke, husband and wife, granted and conveyed unto James E. Caskey, Jr. by Deed dated November 15, 1993 and recorded November 16, 1993 at DBV 808. Page 24 in the Recorder of Deeds Office of Adams County.

Tax Parcel (18) C 15-0088

Premises known as: 120 Water Street, Fairfield, PA 17320

SEIZED and taken into execution as the property of **James E. Caskey, Jr.** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 1, 2006, 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.

3/3, 10 & 17

## ATTORNEY NOTICE

Washington County law firm seeks PA licensed associate attorney with 1-3 years experience, preferably in real estate and/or estate law. Applicants should send resume, transcript, and writing sample to Barbara Rizzo, 70 East Beau Street, Washington, PA 15301, by April 1, 2006.

3/10 & 17

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1370 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of April, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING in the center line of Feeser Road (T-442) at corner of Lot No. 6; thence by Lot No. 6 South 74 degrees 30 minutes 10 seconds East 752.83 feet to a steel rod; thence by Lot No. 6 and Lot No. 5 North 31 degrees 23 minutes 45 seconds East 663.76 feet to a 14" Shagbark Hickory; thence by Lot No. 10 North 79 degrees 32 minutes 30 seconds East 264.51 feet to a steel rod; thence by same South 37 degrees 22 minutes 00 seconds East 52.44 feet to a 16" Swamp White Oak; thence continuing by same South 68 degrees 35 minutes 05 seconds West 111.62 feet to a 14" Shagbark Hickory; thence by same South 67 degrees 22 minutes 40 seconds East 228.30 feet to a 16" Shagbark Hickory; thence by same South 40 degrees 10 minutes 50 seconds East 69.58 feet to an 18" Hickory; thence by same North 26 degrees 01 minute 30 seconds East 65.74 feet to a steel rod; thence by same South 47 degrees 27 minutes 00 seconds East 124.93 feet to a steel rod; thence by same North 75 degrees 03 minutes 35 seconds East 148.32 feet to a steel rod; thence by same North 01 degree 38 minutes 45 seconds East 67.18 feet to a 14" Swamp White Oak; thence by same North 70 degrees 27 minutes 00 seconds East 79.86 feet to a point in creek; thence by land now or formerly of Gregory Lang South 00 degrees 01 minutes 20 seconds East 53.06 feet to an existing steel rod; thence by land now or formerly of National Tree Company South 24 degrees 01 minute 00 seconds West 193.56 feet to an existing steel rod; thence by land now or formerly of Ideldon Baum South 25 degrees 37 minutes 20 seconds West 448.95 feet to an existing steel rod; thence by same South 34 degrees 26 minutes 15 seconds West 155.81 feet to a steel rod; thence by Lot No. 9 North 74 degrees 30 minutes 10 seconds West 1,560.58 feet to a point in the center line of Feeser Road; thence in the center line of Feeser Road North 09 degrees 52 minutes 05 seconds East 50.24 feet to a point, the place of BEGINNING.

HAVING erected thereon a dwelling known as 145 Feeser Road, Littlestown, PA 17340.

## Parcel # 116-72

BEING the same premises which Randy and Bonnie Smith by their deed dated 4/14/2000 and recorded 5/1/2000 in the Recorder of Deeds Office of Adams County, Pennsylvania in Deed Book Volume 2040, page 1, granted and conveyed unto Frank E. Walker and Patricia A. Walker,

SEIZED and taken into execution as the property of **Frank E. Walker & Patricia A. Walker** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 1, 2006, 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.

3/3, 10 & 17

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1340 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of April, 2006, 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 of ground situate in the Borough of McSherrystown, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING on the South Street (formerly known as German Street) at corner of property now or formerly of J. Wallace Noel, and extending thence along said property in a Northwestwardly direction one hundred sixteen and ninety-one one-hundredths (116.91) feet, more or less, to an alley; thence along said alley in a Southwestwardly direction forty and zero one-hundredths (40.00) feet to a point; thence along property now or formerly of Hanover Improvement Company Southeastwardly by a line parallel to the course first above mentioned one hundred twenty and eighty-one one-hundredths (120.81) feet, more or less, to South Street; thence Northeastwardly along South Street forty and zero one-hundredths (40.00) feet to the place of BEGINNING.

BEING composed of part of Lot No. 30 and all of Lot No. 29 in Block B on a plan of lots laid out by Emanuel H. Hostetter, Administrator of the Estate of Sarah J. Hostetter, deceased.

TITLE TO SAID PREMISES IS VESTED IN Edward G. Klingler and Jeanette M. Klingler, husband and wife, by Deed from Jeanette M. Hucks, (formerly a widow), now known as, Jeanette M. Klingler joined by Edward G. Klingler, her husband, dated 02-17-05, recorded 02-28-05 in Deed Book 3877, page 55.

Tax Parcel: 28-005-0311-000

Premises Being: 631 South Street, McSherrystown, PA 17344

SEIZED and taken into execution as the property of **Edward G. Klingler & Jeanette M. Klingler a/k/a Jeanette M. Smith a/k/a Jeanette M. Heir a/k/a Jeanette M. Hucks** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 15, 2006, 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.

3/10, 17 & 24

## FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN pursuant to the provisions of Sec. 311 of the Act of Assembly of December 16, 1982, 54 PA. C.A. 311, that an application for registration of a fictitious name was filed on February 22, 2006 with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, for the conducting of a business under the name of BRUSTER'S REAL ICE CREAM, with its principal office or place of business at 1126 York Road, Gettysburg, PA 17325.

The name and address of corporation interested in said business is: Cream Cuisine, Inc., 239 Skyline View, Carlisle, PA 17013.

Joseph D. Buckley, Esq.  
1237 Holly Pike  
Carlisle, PA 17013  
(717) 249-2448

3/17

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1302 Issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of April, 2006, 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 Menallen Township, Adams County, Pennsylvania, being more particularly bounded and described as follows:

BEGINNING at a point in the right of way line of Township Road T-387 at corner of Lot No. 2A on the hereinafter referred to draft of survey; thence by Lot No. 2A, South 02 degrees 53 minutes 21 seconds East, 261.70 feet to a pin set along other lands now or formerly of Antonio Mojica; thence by lands now or formerly of Antonio Mojica, South 82 degrees 27 minutes 04 seconds West, 134.39 feet to a point along lands now or formerly of Richard H. Sullivan; thence along lands now or formerly of Richard H. Sullivan, North 21 degrees 47 minutes 41 seconds West, 288.17 feet to a point in the right of way line of Township Road T-387; thence continuing in the right of way line of Township Road T-387, North 87 degrees 06 minutes 39 seconds East, 227.32 feet to a point in the right of way line of Township Road T-387, the point and place of BEGINNING, CONTAINING 1.113 Acres.

The above description was taken from a draft of survey prepared by Jerry D. LaRue, April 8, 1997, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 46 at page 96.

IT BEING the same premises which Larry S. Kuhn and Kelley L. Kuhn, husband and wife, by their Deed dated June 30, 2000, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 2080, Page 117, granted and conveyed unto James M. Hartman, Sr.

Parcel ID#: Map E4, Parcel 13B

Address: 1756 Coon Road (previously known as 1740 Coon Road), Aspers, PA 17304

SEIZED and taken into execution as the property of **James M. Hartman, Sr.** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 15, 2006, 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.

3/10, 17 & 24

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-1196 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of April, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in the Borough of Fairfield, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a lietz spike in the centerline of Legislative Route No. 01015 at the corner of Lot No. 3 and at the corner of lands now or formerly of James M. Landis; thence by Lot No. 3, South 25 degrees 02 minutes 35 seconds West, 160 feet, passing through a reference pipe set back 25 feet from the beginning of this course, to a steel rod at the corner of Lot No. 3 and the corner of other lands now or formerly of James M. Landis; thence by said other lands of James M. Landis, North 64 degrees 57 minutes 25 seconds West, 105 feet to a steel rod at the corner of said other lands of James M. Landis and the corner of Lot No. 5; thence by said Lot No. 5, North 25 degrees 02 minutes 35 seconds East, 160 feet, passing through a reference pipe set back 25 feet from the end of this course, to a lietz spike set in the centerline of Legislative Route No. 01015 at the corner of Lot No. 5 and at the corner of lands now or formerly of James M. Landis; thence by said lands of James M. Landis and running in the centerline of Legislative Route No. 01015, South 64 degrees 57 minutes 25 seconds East, 105 feet to a lietz spike set in the centerline of said Legislative Route No. 01015 at the corner of Lot No. 3 and the corner of said lands now or formerly of James M. Landis, the place of BEGINNING.

The above description was taken from a subdivision plan dated May 16, 1983 prepared by Adams County Surveys, which is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 38 at Page 55, being Lot No. 4 thereon.

BEING THE SAME PREMISES which Jason Lawrence Vinson and Charlotte Ann Vinson, husband and wife, by Deed dated June 24, 1999 and recorded in the Office of the Recorder of Deeds of Adams County on August 17, 1999 in Deed Book Volume 1896, Page 327, granted and conveyed unto Jason Lawrence Vinson.

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

DBV 1896

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Parcel (11) 5-62

Premises known as: 44 N. Miller Street, Fairfield, PA 17320

SEIZED and taken into execution as the property of **Jason Lawrence Vinson & Charlotte Ann Vinson** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 15, 2006, 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.

3/17, 24 & 31

## FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that on January 26, 2006 an application for registration of the fictitious name BARKER HOUSE BED & BREAKFAST was filed under the Fictitious Names Act, 54 Pa. C.S.A. § 301, et seq., in the Department of State of the Commonwealth of Pennsylvania, in Harrisburg, Pennsylvania, for the conduct of business at its principal office or place of business situated at 10 Lincoln Highway West, New Oxford, PA 17350. Robert R. Kennedy and Elizabeth M. Sutton are the parties to the registration.

Latsha Davis Yohe & McKenna, P.C.  
1700 Bent Creek Boulevard, Suite 140  
Mechanicsburg, PA 17050

3/17



## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-380 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of April, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those described 4 tracts of land described lot of ground, with improvements thereon erected, situate in Franklin Township, Adams County, Pennsylvania, bounded and described as follows:

TRACT NO. 1

BEGINNING at a stone for a corner on the South side of a public road running from Route 234 to Cashtown near a pine tree; thence running on the South side of the said public road South 70 degrees West, 83 feet to a point on land now or formerly of Ernest Saum North 15-1/2 degrees West, 278.3 feet to a stone corner; thence running by land now or formerly of George McDannell North 82-1/2 degrees East, 140.5 feet to a stone corner; thence running by land now or formerly of Gilbert Bucher's heirs South 2-1/2 degrees East, 256.50 feet to a stone, the place of BEGINNING. CONTAINING 108 perches.

TRACT NO. 2

BEGINNING at a point in Township Road T-364 at other lands now or formerly of Ernest Saum; thence by lands now or formerly of Saum and passing through a reference iron pin set back 37 feet from the place of beginning North 07 degrees 18 minutes West, 271.50 feet to a steel pin at lands now or formerly of Paul McDannell; thence by lands now or formerly of Paul McDannell North 87 degrees 54 minutes East 90.87 feet to a steel pin at lands now or formerly of Donald Coldsmith; thence by lands now or formerly of Coldsmith and passing through a reference steel pin 26 feet from the terminus of their call South 07 degrees 30 minutes East, 265.65 feet to a point in Township Road T-364; thence in said Township Road South 84 degrees 12 minutes West, 91.45 feet to a point at the place of BEGINNING. CONTAINING 24,426 square feet, neat measure.

TRACT NO. 3

BEGINNING at a nail in the center of Township Road T-364 at corner of lands now or formerly of Robert W. Prater; thence running in the center of said Township Road T-364. North 69 degrees 16 minutes 30 seconds West, 82.21 feet to a point in the center of said road; thence continuing in the center of said road, North 39 degrees 34 minutes 45 seconds West, 78.81 feet to a point in the center of said road; thence continuing in

the center of said road, North 17 degrees 24 minutes 10 seconds West, 160.05 feet to a point in the center of said road at corner of lands now or formerly of Hazel C. McDannell; thence along said McDannell lands, North 80 degrees 57 minutes 25 seconds East, 108.67 feet to an iron pin at corner of lands now or formerly of Robert W. Prater; thence along said Prater lands, South 14 degrees 36 minutes 20 seconds East, through an iron pin set back 40.96 feet from the end of this course, 268.31 feet to a nail in the center of Township Road T-364, the point and place of BEGINNING. CONTAINING 0.543 acres.

The above description was taken from a draft of survey prepared by Richard W. Boyer, R.S. of Boyer Surveys, Biglerville, Adams County, Pennsylvania, dated 12/19/1978 the said draft of survey is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 27, Page 4, the above described tract being designated as Lot No. 1.

TRACT NO. 4

BEGINNING at a railroad spike in the center line of New Road T-364 at corner of Lot No. 1 on the draft of survey hereinafter referred to; thence along Lot No. 1, North 71 degrees 05 minutes 10 seconds East, passing through a reference pipe 25.00 feet from the beginning of this course, 642.47 feet to a pipe at land now or formerly of Thomas Reeve; thence by same South 32 degrees 30 minutes 50 seconds East, 136.21 feet to an existing pipe and stones at lands now or formerly of Elizabeth R. McCleaf; thence by same South 60 degrees 32 minutes 24 seconds West, 355.00 feet to an existing iron pin at land now or formerly of Robert W. Prater; thence by same South 76 degrees 16 minutes 43 seconds West, 235.17 feet to an existing pin at land now or formerly of David Stewart; thence by same South 76 degrees 15 minutes 55 seconds West, 108.71 feet to an existing nail in the center line of New Road T-364 aforesaid; thence in the center line of such road North 13 degrees 05 minutes 00 seconds West, 167.14 feet to a railroad spike, the place of BEGINNING. CONTAINING 2.670 acres.

The above description was taken from a draft of survey prepared by Richard W. Boyer, Adams County Surveyor, dated March 5, 1980, recorded in Plat Book 34, at page 61, the above described tract being designated as Lot No. 2.

Being known as: 788 New Road, Orttanna, PA 17353

Property ID No.: 12-C9-32

TITLE TO SAID PREMISES IS VESTED IN Raymond B. Williams, Sr. and Candy S. Williams, husband and wife by deed from Gerald H. Deighton, single person, by his attorney in fact Edward G.

Puhl and Harry J. Blaisdell, single person, by his attorney in fact Edward G. Puhl dated 3/31/00 recorded 4/17/00 in Deed Book 2032 Page 136.

SEIZED and taken into execution as the property of **Raymond B. Williams, Sr. & Candy S. Williams** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 15, 2006, 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.

3/10, 17 & 24

## 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 April 1, 2006, a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of HORTUSCAPE DESIGNS, with its principal place of business at 110 Wenschoff Road, Fairfield, PA 17320. The names and addresses of the persons owning or interested in said business are Gary Huggens, residing at 110 Wenschoff Road, Fairfield, PA 17320. The character or nature of the business is landscape design services.

3/17

## 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 A. BAKER, JR., DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Administrators: Robert A. Baker, Sr. and Christina J. Baker, 774 Blackhorse Tavern Rd., Gettysburg, PA 17325

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

## ESTATE OF WILLIAM C. BAKER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Administrators: Robert A. Baker, Sr. and Christina J. Baker, 774 Blackhorse Tavern Rd., Gettysburg, PA 17325

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

## ESTATE OF RICHARD A. BOLLINGER, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executrix: Linda Jean Redding, 54 Hillcrest Drive, P.O. Box 234, Biglerville, PA 17307

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

## ESTATE OF ALVERDA V. BREAM, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Rodney W. Weidner, 4050 Carlisle Rd., Gardners, PA 17324

Attorney: Chester G. Schultz, Esq., 145 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF MARIE E. BUIE, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrices: Jacqueline A. Miller, 68 Fawn Ave., New Oxford, PA 17350; Janice M. Blatt, 2916 Hanover Pike, Hanover, PA 17331; Joann E. Willis, 304 Buckingham Rd., Lynchburg, VA 24502

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

## ESTATE OF CARMELLA T. CALANO, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Executor: Robert F. Jerulli, 333 Lafayette Drive, Littlestown, PA 17340

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

## ESTATE OF CALVIN MILTON GARDNER, II, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Suzanne Marie Gardner, 29 West Penn Ave., Cleona, PA 17042

Attorney: Judith Koper Morris, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

## ESTATE OF JUDY M. PRILLAMAN a/k/a JUDY MAE PRILLAMAN, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Steven J. Prillaman, 337 Seven Stars Road, Gettysburg, PA 17325

## ESTATE OF MARIAN E. SWOPE a/k/a MARION E. SWOPE, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Noreen M. Green, 33 Red Bridge Road, Gettysburg, PA 17325

Attorney: Chester G. Schultz, Esq., 145 Baltimore Street, Gettysburg, PA 17325

## SECOND PUBLICATION

## ESTATE OF DORIS BELT EIKER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Catherine J. Gault, Esq., 303 Conewago Road, New Oxford, PA 17350

Attorney: Catherine J. Gault, Esq., 303 Conewago Road, New Oxford, PA 17350

## ESTATE OF LESLIE A. FLYNN a/k/a LESLIE ANN FLYNN, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Executor: Shelley E. Sykes, P.O. Box 70, Arendtsville, PA 17303

Attorney: Walton V. Davis, Esq., 63 West High St., Gettysburg, PA 17325

## ESTATE OF HOWARD J. McDANNELL, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Daniel J. McDannell, 5000 Chambersburg Road, Orrtanna, PA 17353

Attorney: Wendy Weikal-Beauchat, Esq., 63 West High St., Gettysburg, PA 17325

## THIRD PUBLICATION

## ESTATE OF LEON J. ELINE, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Richard D. Eline, 1466 Park Terrace Drive, Chambersburg, PA 17201

Attorney: David C. Smith, Esq., 754 Edgegrove Rd., Hanover, PA 17331

## ESTATE OF WILLIAM H. HUFF, DEC'D

Late of the Borough of York Springs, Adams County, Pennsylvania

Executrix: Angel R. Steele, c/o Brian C. Linsenbach, Esq., Schrack & Linsenbach PC, 124 West Harrisburg Street, P.O. Box 310, Dillsburg, PA 17019-0310

Attorney: Brian C. Linsenbach, Esq., Schrack & Linsenbach PC, 124 West Harrisburg Street, P.O. Box 310, Dillsburg, PA 17019-0310

## ESTATE OF ANN M. JUSTICE, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Geanine J. Roser, 1550 Water Street, Fairfield, PA 17320

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

## ESTATE OF MILDRED B. KEPNER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Diane K. Ley, 34 N. Miller St., Fairfield, PA 17320

Attorney: Wendy Weikal-Beauchat, Esq., 63 West High St., Gettysburg, PA 17325

## ESTATE OF EVELYN B. LEPPA, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Richard J. Smith and Janet L. Smith, 30 Oak Drive, Hanover, PA 17331

Attorney: David C. Smith, Esq., 754 Edgegrove Rd., Hanover, PA 17331

## ESTATE OF MARY E. SNYDER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Sara Ellen Mummett, 516 McMillan St., Gettysburg, PA 17325

Attorney: Chester G. Schultz, Esq., 145 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF DOLORES N. STALEY-WILSON, DEC'D

Late of the Borough of Bendersville, Adams County, Pennsylvania

William B. Wilson, 259 S. Main Street, P.O. Box 71, Bendersville, PA 17306

Attorney: Henry O. Heiser, III, Esq., 104 Baltimore St., Gettysburg, PA 17325

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-359 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of April, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot or piece of ground situate, lying and being in Mt. Joy Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point near the centerline of S.R. 0134, the Taneytown Road, at a corner of Lot No. 3 on the hereinafter mentioned draft of survey and subdivision plan; thence in S.R. 0134, the Taneytown Road, South Ten (10) degrees Three (03) minutes Seventeen (17) seconds East, One Hundred Thirty-five and Thirty-nine One-hundredths (135.39) feet to a point near the centerline of said S.R. 0134, the Taneytown Road; thence continuing in S.R. 0134, the Taneytown Road, South Eight (08) degrees Sixteen (16) minutes Twenty-six (26) seconds East 287.82 feet to a point in said S.R. 0134, the Taneytown Road; thence South Eighty-four (84) degrees Fifty (50) minutes Thirteen (13) seconds West, Twenty-five and Eighty-three One-hundredths (25.83) feet to an existing railroad spike on line of land of the Mt. Joy Evangelical Lutheran Church and along the edge of Benner Road; thence crossing Benner Road, North Five (05) degrees Forty (40) minutes Eighteen (18) seconds West, Twenty-six and Forty One-hundredths (26.40) feet to an existing wooden post; thence along and in said Benner Road, South Eighty (80) degrees Eleven (11) minutes Thirty (30) seconds West, One Hundred Forty-seven and Twenty-five One-hundredths (147.25) feet to an existing cotton gin spindle One (1) foot North of the centerline of said Benner Road; thence in said Benner Road, South Eighty (80) degrees Nine (09) minutes Twenty-five (25) seconds West, One Hundred Fifty-five (155.00) feet to a railroad spike set near the centerline of Benner Road, and at a corner of Lot No. 5; thence by Lot No. 5, North Twenty-six (26) degrees Eight (8) minutes Fifteen (15) seconds West, Two Hundred Seventy and Seventy-one One-hundredths (270.71) feet to a steel pin set on line of Lot No. 5 and at a corner of Lot No. 3; thence by Lot No. 3, and passing through a steel pin set Twenty-five (25) feet from the next mentioned point, North Sixty-one (61) degrees Fifty-six (56) minutes Twenty-five (25) seconds East,

Four Hundred Thirty-one and One One-hundredths (431.01) feet to a point near the centerline of S.R. 0134, Taneytown Road, at a corner of Lot No. 3, the place of BEGINNING.

CONTAINING 2.847 Acres, more or less. BEING PARCEL #30-F17-65.

THE ABOVE DESCRIPTION was taken from a draft of survey and subdivision plan entitled "Scheller Subdivision", dated October 27, 1997, and revised January 19, 1998, as prepared by Richard W. Boyer, Professional Land Surveyor No. 17399-E, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 73 at pages 23 and 23A, and designated as Lot No. 4 thereon.

UNDER AND SUBJECT to certain restrictions contained in prior deeds and instruments of record.

BEING the same premises which Vincent Scheller and Marie Scheller, husband and wife, by Deed dated September 2, 1999 and recorded on September 3, 1999 in the Office of the Recorder of Deeds in and for Adams County in Deed Book 1909, Page 141, granted and conveyed unto Joseph M. Regler, IV and April L. Regler, husband and wife, as tenants by the entireties, in fee.

SEIZED AND TAKEN as the property of Joseph M. Regler, IV and April L. Regler under Judgment No. 03-S-359.

Premises Known As: 2585 Taneytown Rd., Gettysburg, PA 17325

SEIZED and taken into execution as the property of **April L. Regler & Joseph M. Regler, IV** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 15, 2006, 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.

3/17, 24 & 31

# Adams County Legal Journal

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*This opinion continued from last issue (3/17/2006)*

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Helping families achieve  
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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-380 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of April, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those described 4 tracts of land described lot of ground, with improvements thereon erected, situate in Franklin Township, Adams County, Pennsylvania, bounded and described as follows:

TRACT NO. 1

BEGINNING at a stone for a corner on the South side of a public road running from Route 234 to Cashtown near a pine tree; thence running on the South side of the said public road South 70 degrees West, 83 feet to a point on land now or formerly of Ernest Saum North 15-1/2 degrees West, 278.3 feet to a stone corner; thence running by land now or formerly of George McDannell North 82-1/2 degrees East, 140.5 feet to a stone corner; thence running by land now or formerly of Gilbert Bucher's heirs South 2-1/2 degrees East, 256.50 feet to a stone, the place of BEGINNING. CONTAINING 108 perches.

TRACT NO. 2

BEGINNING at a point in Township Road T-364 at other lands now or formerly of Ernest Saum; thence by lands now or formerly of Saum and passing through a reference iron pin set back 37 feet from the place of beginning North 07 degrees 18 minutes West, 271.50 feet to a steel pin at lands now or formerly of Paul McDannell; thence by lands now or formerly of Paul McDannell North 87 degrees 54 minutes East 90.87 feet to a steel pin at lands now or formerly of Donald Coldsmith; thence by lands now or formerly of Coldsmith and passing through a reference steel pin 26 feet from the terminus of their call South 07 degrees 30 minutes East, 265.65 feet to a point in Township Road T-364; thence in said Township Road South 84 degrees 12 minutes West, 91.45 feet to a point at the place of BEGINNING CONTAINING 24,426 square feet, neat measure.

TRACT NO. 3

BEGINNING at a nail in the center of Township Road T-364 at corner of lands now or formerly of Robert W. Prater; thence running in the center of said Township Road T-364, North 69 degrees 16 minutes 30 seconds West, 82.21 feet to a point in the center of said road; thence continuing in the center of said road, North 39 degrees 34 minutes 45 seconds West, 78.81 feet to a point in the center of said road; thence continuing in the center of said road, North 17 degrees 24 minutes 10 seconds West, 160.05 feet to a point in the center of said road at corner of lands now or formerly of Hazel C. McDannell; thence along said McDannell lands, North 80 degrees 57 minutes 25 seconds East, 108.67 feet to an iron pin at corner of lands now or formerly of Robert W. Prater; thence along said Prater lands, South 14 degrees 36 minutes 20 seconds East, through an iron pin set back 40.96 feet from the end of this course, 268.31 feet to a nail in the center of Township Road T-364, the point and place of BEGINNING. CONTAINING 0.543 acres.

The above description was taken from a draft of survey prepared by Richard W. Boyer, R.S. of Boyer Surveys, Biglerville, Adams County, Pennsylvania, dated 12/19/1978 the said draft of survey is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 27, Page 4, the above described tract being designated as Lot No. 1.

TRACT NO. 4

BEGINNING at a railroad spike in the center line of New Road T-364 at corner of Lot No. 1 on the draft of survey hereinafter referred to; thence along Lot No. 1, North 71 degrees 05 minutes 10 seconds East, passing through a reference pipe 25.00 feet from the beginning of this course, 642.47 feet to a pipe at land now or formerly of Thomas Reeve; thence by same South 32 degrees 30 minutes 50 seconds East, 136.21 feet to an existing pipe and stones at lands now or formerly of Elizabeth R. McCleafe; thence by same South 60 degrees 32 minutes 24 seconds West, 355.00 feet to an existing iron pin at land now or formerly of Robert W. Prater; thence by same South 76 degrees 16 minutes 43 seconds West,

235.17 feet to an existing pin at land now or formerly of David Stewart; thence by same South 76 degrees 15 minutes 55 seconds West, 108.71 feet to an existing nail in the center line of New Road T-364 aforesaid; thence in the center line of such road North 13 degrees 05 minutes 00 seconds West, 167.14 feet to a railroad spike, the place of BEGINNING. CONTAINING 2.670 acres.

The above description was taken from a draft of survey prepared by Richard W. Boyer, Adams County Surveyor, dated March 5, 1980, recorded in Plat Book 34, at page 61, the above described tract being designated as Lot No. 2.

Being known as: 788 New Road, Orrtanna, PA 17353

Property ID No.: 12-C9-32

TITLE TO SAID PREMISES IS VESTED IN Raymond B. Williams, Sr. and Candy S. Williams, husband and wife by deed from Gerald H. Deighton, single person, by his attorney in fact Edward G. Puhl and Harry J. Blaisdell, single person, by his attorney in fact Edward G. Puhl dated 3/31/00 recorded 4/17/00 in Deed Book 2032 Page 136.

SEIZED and taken into execution as the property of **Raymond B. Williams, Sr. & Candy S. Williams** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 15, 2006, 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.

3/10, 17 & 24

## COMMONWEALTH VS. ARNOLD

*Continued from last issue (3/17/2006)*

In this case, Arnold entered a guilty plea to statutory sexual assault on September 5, 2003. Before entering his plea, he provided the Court with a written colloquy wherein he acknowledged his right to a jury trial, the permissible ranges of sentences for the charges against him, the presumption of his innocence, the fact that the trial court was not bound by the terms of the plea agreement until accepted by the Court, his full satisfaction with the representation by his counsel, and the fact that his plea was being entered voluntarily and of his own free will. Notably, Arnold's written colloquy also acknowledged that by pleading guilty, he understood that he was admitting that he committed each element of the crime to which he was entering his plea. In addition to the written colloquy, an oral colloquy was conducted wherein Arnold was, once again, instructed as to the permissible maximum penalties against him, his right to a jury trial, the Commonwealth's burden of proof, and the presumption of innocence which he enjoyed. See September 5, 2003, Transcript, pages 3-5. During the oral colloquy, Arnold was instructed as to the elements of the charge against him as well as a potential defense to the charge. Thereafter, the Commonwealth established a factual basis for the plea where the following was represented to the Court:

The allegations were presented to the Adams County Children and Youth Office with respect to the defendant having sexual relations with his step-daughter. The Pennsylvania State Police investigated that and after some investigation, interviewed the defendant. The accused confessed to the Pennsylvania State Police with respect to having sexual relations with his step-daughter, the victim, for approximately three years. Upon interviewing the victim, she confirmed the fact that she and the defendant had been having a sexual relationship and confirmed that the two of them had had sexual intercourse approximately 500 times between her age of thirteen until January of 2003.

September 5, 2003, Transcript, page 6. After the Court ascertained that the victim, who was sitting in the Courtroom, was in agreement with the terms of the plea agreement, the following occurred:

The Court:           Mr. Arnold, whose decision, sir, is it that you enter this plea of guilty today?

The Defendant: Mine.

The Court: And are you doing so of your own free will?

The Defendant: Yes.

The Court: Has anybody promised you anything in exchange for your plea of guilty other than the plea agreement which we spoke about?

The Defendant: No, sir.

The Court: Has anybody threatened you in any way to have you enter this plea of guilty?

The Defendant: No, sir.

The Court: Are you pleading guilty, sir, because it is in fact true that you have had sexual intercourse with someone under the age of sixteen? How old is the defendant by the way?

Attorney Coffey: The victim to this point Your Honor, is sixteen years old. The defendant or the victim—

The Court: I think you indicated that the sexual relationship started when she was thirteen but how old is the defendant?

Attorney Coffey: His date of birth, Your Honor, is 1970, 7/23/1970.

The Court: Sir, are you pleading guilty because it is in fact true that the victim in this matter was under the age of sixteen and you were approximately thirty or so when you were having sexual intercourse with her?

The Defendant: Yes, sir.

September 5, 2003, Transcript, pages 7-8. Following the acceptance of the guilty plea, Arnold was scheduled for sentencing on October 14, 2003. Despite being advised of his right to withdraw his guilty plea prior to sentencing, no such request was made by Arnold and sentencing occurred as scheduled. Both prior to and immediately following sentencing, the Court provided Arnold with the opportunity to comment. However, in each instance, Arnold declined.

Undoubtedly, Arnold's plea was knowingly and voluntarily entered. Moreover, he affirmatively represented to the Court that he committed the acts for which he was charged. He chose not to hold

the Commonwealth to its burden of proof and knowingly elected not to pursue a trial. Obviously, Arnold knows, better than anyone, the true extent of his interaction with the victim. With that knowledge, he admitted his guilt. Under these circumstances, it would be an affront to the dignity of the Court and the orderly procedures mandated by appellate authority to treat the guilty plea process as a meaningless and insignificant ceremony. Arnold's position that he did not mean what he said when he admitted committing the criminal acts, because he is now aware of evidence that might permit a favorable result at trial, essentially renders the carefully crafted procedures of the guilty plea process a hollow ritual.<sup>5</sup>

I find that Arnold's claim for relief based upon evidence discovered after his guilty plea is not cognizable under the P.C.R.A. However, in the exercise of caution and because of the lack of appellate authority expressly overturning, or at least distinguishing, *Peoples*, I will nonetheless evaluate Arnold's request pursuant to the principles related to after-discovered evidence as enunciated by our appellate courts.

A new trial in a criminal case will be awarded on the ground of after-discovered evidence where "(1) the evidence has been discovered after the trial and it could not have been obtained at or prior to trial through reasonable diligence; (2) such evidence is not merely cumulative; (3) it is not being used solely to impeach credibility; and (4) such evidence would likely compel a different verdict." *Abu-Jamal*, 720 A.2d at 94. In order to evaluate Arnold's claim under the scrutiny of this four-point test, it is important to understand the nature and substance of Arnold's allegedly after-discovered evidence. This

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<sup>5</sup>In *Peoples*, cited above, Justice O'Brien opines that "[i]t would be incongruous to allow a defendant a new trial on the basis of after-discovered evidence when he has already had one trial, but to deny him a new trial on the basis of [after-discovered evidence] merely because he had originally decided not to go to trial, but plead guilty...." *Peoples*, 319 A.2d at 681. That assessment overlooks the clear distinction that a person who exercises their constitutional rights to a trial by jury is maintaining the presumption of innocence which they enjoy. On the other hand, a person who has admitted their guilt prior to trial is no longer clothed in the presumption of innocence. In the earlier circumstance, after-discovered evidence may very well have had an effect on the trier of fact who, as a result of a conviction, stripped the defendant of the presumption of innocence. In the latter circumstance, after-discovered evidence is immaterial where it is the defendant himself who has admitted his commission of a crime and thus gave up his right to hold the Commonwealth to proving guilt beyond a reasonable doubt.



after-discovered evidence, as alleged by Arnold, consists solely of the recanted testimony of the victim.

Our appellate courts have repeatedly recognized that recantation testimony is one of the least reliable forms of proof, particularly when it constitutes the admission of perjury. *Commonwealth v. Loner*, 836 A.2d 125, 135 (Pa.Super. 2003). For instance, in *Commonwealth v. Mosteller*, 284 A.2d 786, 788 (Pa. 1971), our Supreme Court noted that “[r]ecanting testimony is exceedingly unreliable and it is the duty of the court to deny a new trial where it is not satisfied that such testimony is true.” Therefore, before relief may be granted based upon a recantation of testimony, the recantation testimony must be credible to the trial court. *Commonwealth v. Lee*, 385 A.2d 1317, 1319 (Pa. 1978).

After hearing the recantation testimony at a hearing during which I had the opportunity to observe the victim’s manner and demeanor while testifying, I find the recantation testimony incredible. Her claim, that her initial statement to the police implicating Arnold was the result of pressure from law enforcement officials, is unconvincing. Her testimony is also contradicted by the record. Specifically, at the September 5, 2003, guilty plea proceeding, the victim sat in the courtroom while the Commonwealth’s attorney recounted the factual background, including statements made by the victim as well as Arnold’s confession. Despite being given the opportunity to comment to the Court, the victim offered no comment to the Commonwealth’s representation that the victim’s family wanted Arnold to “do jail time.” Sentencing Transcript, page 6.

The claim of recantation must be viewed in light of the victim’s current circumstances. Importantly, the victim’s natural mother remains married to Arnold. See certification as to testimony in Shawn Arnold’s P.C.R.A. hearing dated April 14, 2005. In fact, on June 3, 2004, the victim’s mother filed a motion to modify sentence on Arnold’s behalf.<sup>6</sup> On August 26, 2004, Arnold filed a PCRA Petition, which, apparently, was delivered to the Courthouse by the victim’s mother. Although a condition of Arnold’s sentence prohibited contact with the victim, it appears he somehow became aware that the victim has recanted her earlier statements. Certainly, a common link in this exchange of information is the victim’s mother.

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<sup>6</sup>Interestingly, as of the date of the filing of the motion to modify, there is no reference concerning recantation by the victim.

In early October of 2004, correspondence was forwarded to this Court, purportedly signed by the victim, wherein she claims that Arnold did not assault her. Once again, however, the correspondence carries the signature of the victim's mother and her address. Although it is not apparent in the record, the victim's mother sat with the victim during the P.C.R.A. hearing at which she recanted her testimony. Thus, not only was the recanted testimony unconvincing in its presentation from the witness stand, the inherent unreliability of recantation testimony is further clouded by the pressures inherent in the victim's natural mother's alliance with Arnold.

In an effort to bolster his argument, Arnold avers that the victim's statement against him is the sole evidence upon which the Commonwealth relied in supporting the filing of criminal charges. Arnold cites *Mosteller*, cited above, for the proposition that where a conviction is based completely on the testimony of a child victim, and the truth of that testimony is open to a serious question because of a subsequent recantation, a new trial is necessary. I do not, however, find *Mosteller* controlling.

*Mosteller* involves factual circumstances which are not present in the instant case. First, the trial testimony of the child victim in *Mosteller* was the **sole** evidence supporting the conviction. Second, the *Mosteller* Court noted that the testimony of a disinterested medical witness raised serious question as to the truth of the victim's testimony. Instantly, evidence against Arnold consisted not only of the victim's statements, but also included Arnold's confession to Pennsylvania State Troopers. Additionally, there is no indication, prior to the recent recantation, of any evidence discrediting the victim's initial statements to the police. Moreover, unlike *Mosteller*, the victim's statement was confirmed by Arnold himself when he appeared before this court and admitted to having sexual intercourse with his step-daughter. For these reasons, I find *Mosteller* distinguishable. I also find that the incredible recantation testimony of the victim is insufficient to justify the withdrawal of Arnold's plea and the grant of a new trial.

Although the main focus of Arnold's Petition was his claim based upon after-discovered evidence, his Petition also raises an alleged ineffective assistance of counsel claim under 42 Pa. C.S.A. § 9543(a)(2)(ii). As noted above, in order to obtain relief under the

P.C.R.A. premised upon a claim of ineffective assistance of counsel, “a petitioner must establish beyond a preponderance of the evidence that counsel’s ineffectiveness ‘so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.’” *Commonwealth v. Payne*, 794 A.2d 902, 905 (Pa. Super. 2002) app. denied, 808 A.2d 571 (Pa. 2002) (quoting 42 Pa.C.S.A. § 9543(a)(2)(ii)). Therefore, the petitioner must demonstrate that: “(1) the underlying claim is of arguable merit; (2) counsel had no reasonable strategic basis for his or her action or inaction; and (3) the petitioner was prejudiced by counsel’s act or omission.” *Id.* at 906-07. It is the petitioner’s burden to prove that counsel was ineffective since the law presumes effectiveness on the part of counsel. *Id.* at 906.

In support of his ineffectiveness claim, Arnold claims that he requested his attorney to interview the victim prior to his entry of a plea. He suggests that counsel’s failure to do so precluded his ability to adequately weigh the evidence against him before entering his plea. At an evidentiary hearing in this matter, however, Arnold failed to produce any credible evidence whatsoever on this issue. Specifically, he failed to present any evidence that trial counsel failed to interview the victim prior to trial or, importantly, that such an interview would have revealed inconsistent statements by the victim.<sup>7</sup> As such, he has failed to carry his burden in establishing counsel’s ineffectiveness.

Perhaps the lack of evidence on this issue is a reflection of Arnold’s statements to the Court at the time of his guilty plea. In his written colloquy, Arnold acknowledged that he was fully satisfied with his counsel and that his counsel had not failed to do anything which he asked him to do. Specifically, Arnold represented the following to the Court: “I agree that my lawyer has contacted, or attempted to contact, every witness or source of evidence of which I have advised him and that if contact was unsuccessful, I am satisfied that my lawyer has exhausted all possible leads to locate the witness or evidence.” Written Plea Colloquy, paragraph 10. Arnold may not

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<sup>7</sup> As indicated above, the first indication in the record of the victim’s recantation occurs August 26, 2004, or approximately eleven and a half months after his guilty plea.

now claim that he lied to the Court in an effort to overturn his previous plea. See *Harris*, cited above.<sup>8</sup>

For the foregoing reasons, Arnold's PCRA Petition is denied.

#### ORDER OF COURT

AND NOW, this 15th day of July, 2005, the Defendant's Petition for Post-Conviction Relief is denied.

The Defendant is advised that he has the right to file an appeal to the Pennsylvania Superior Court from this denial. Such an appeal must be filed within thirty days of the date of this Order. Failure to file an appeal to the Superior Court within thirty days of the date of this Order shall preclude the Defendant from any further challenge to this Court's ruling.

The Defendant is advised that he has the absolute right to be represented by an attorney on appeal and that court-appointed counsel remains as his attorney of record in this matter. The Defendant is advised, however, that counsel will not act on his behalf unless specifically directed to do so by the Defendant.

Finally, the Defendant is advised that he may proceed in forma pauperis on appeal which means if he is unable to afford the cost related to an appeal, those costs will be paid on his behalf by the County of Adams.

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<sup>8</sup>In Arnold's initial un-counseled petition, he makes references to the credibility of the State Trooper who initiated charges against him and the voluntariness of the waiver of *Miranda* warnings prior to providing a confession to the police. These claims, however, have apparently been abandoned in Arnold's counseled Amended PCRA Petition. Even if these claims were not abandoned, Arnold failed to present any evidence whatsoever in support of these claims at the PCRA hearing. Accordingly, they are also dismissed because Arnold failed to carry his burden in establishing a basis for relief. *Commonwealth v. Walters*, 244 A.2d 757, 759 (Pa. 1968).

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1340 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of April, 2006, 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 of ground situate in the Borough of McSherrystown, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING on the South Street (formerly known as German Street) at corner of property now or formerly of J. Wallace Noel, and extending thence along said property in a Northwestwardly direction one hundred sixteen and ninety-one one-hundredths (116.91) feet, more or less, to an alley; thence along said alley in a Southwestwardly direction forty and zero one-hundredths (40.00) feet to a point; thence along property now or formerly of Hanover Improvement Company Southeastwardly by a line parallel to the course first above mentioned one hundred twenty and eighty-one one-hundredths (120.81) feet, more or less, to South Street; thence Northeastwardly along South Street forty and zero one-hundredths (40.00) feet to the place of BEGINNING.

BEING composed of part of Lot No. 30 and all of Lot No. 29 in Block B on a plan of lots laid out by Emanuel H. Hostetter, Administrator of the Estate of Sarah J. Hostetter, deceased.

TITLE TO SAID PREMISES IS VESTED IN Edward G. Klingler and Jeanette M. Klingler, husband and wife, by Deed from Jeanette M. Hucks, (formerly a widow), now known as, Jeanette M. Klingler joined by Edward G. Klingler, her husband, dated 02-17-05, recorded 02-28-05 in Deed Book 3877, page 55.

Tax Parcel: 28-005-0311-000

Premises Being: 631 South Street, McSherrystown, PA 17344

SEIZED and taken into execution as the property of **Edward G. Klingler & Jeanette M. Klingler a/k/a Jeanette M. Smith a/k/a Jeanette M. Heir a/k/a Jeanette M. Hucks** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 15, 2006, 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.

3/10, 17 & 24

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution of the Court No. 03-S-359 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of April, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot or piece of ground situate, lying and being in Mt. Joy Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point near the centerline of S.R. 0134, the Taneytown Road, at a corner of Lot No. 3 on the hereinafter mentioned draft of survey and subdivision plan; thence in S.R. 0134, the Taneytown Road, South Ten (10) degrees Three (03) minutes Seventeen (17) seconds East, One Hundred Thirty-five and Thirty-nine One-hundredths (135.39) feet to a point near the centerline of said S.R. 0134, the Taneytown Road; thence continuing in S.R. 0134, the Taneytown Road, South Eight (08) degrees Sixteen (16) minutes Twenty-six (26) seconds East 287.82 feet to a point in said S.R. 0134, the Taneytown Road, thence South Eighty-four (84) degrees Fifty (50) minutes Thirteen (13) seconds West, Twenty-five and Eighty-three One-hundredths (25.83) feet to an existing railroad spike on line of land of the Mt. Joy Evangelical Lutheran Church and along the edge of Benner Road; thence crossing Benner Road, North Five (05) degrees Forty (40) minutes Eighteen (18) seconds West, Twenty-six and Forty One-hundredths (26.40) feet to an existing wooden post; thence along and in said Benner Road, South Eighty (80) degrees Eleven (11) minutes Thirty (30) seconds West, One Hundred Forty-seven and Twenty-five One-hundredths (147.25) feet to an existing cotton gin spindle One (1) foot North of the centerline of said Benner Road; thence in said Benner Road, South Eighty (80) degrees Nine (09) minutes Twenty-five (25) seconds West, One Hundred Fifty-five (155.00) feet to a railroad spike set near the centerline of Benner Road, and at a corner of Lot No. 5; thence by Lot No. 5, North Twenty-six (26) degrees Eight (8) minutes Fifteen (15) seconds West, Two Hundred

Seventy and Seventy-one One-hundredths (270.71) feet to a steel pin set on line of Lot No. 5 and at a corner of Lot No. 3; thence by Lot No. 3, and passing through a steel pin set Twenty-five (25) feet from the next mentioned point, North Sixty-one (61) degrees Fifty-six (56) minutes Twenty-five (25) seconds East, Four Hundred Thirty-one and One One-hundredths (431.01) feet to a point near the centerline of S.R. 0134, Taneytown Road, at a corner of Lot No. 3, the place of BEGINNING.

CONTAINING 2.847 Acres, more or less. BEING PARCEL #30-F17-65.

THE ABOVE DESCRIPTION was taken from a draft of survey and subdivision plan entitled "Scheller Subdivision", dated October 27, 1997, and revised January 19, 1998, as prepared by Richard W. Boyer, Professional Land Surveyor No. 17399-E, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 73 at pages 23 and 23A, and designated as Lot No. 4 thereon.

UNDER AND SUBJECT to certain restrictions contained in prior deeds and instruments of record.

BEING the same premises which Vincent Scheller and Marie Scheller, husband and wife, by Deed dated September 2, 1999 and recorded on September 3, 1999 in the Office of the Recorder of Deeds in and for Adams County in Deed Book 1909, Page 141, granted and conveyed unto Joseph M. Regler, IV and April L. Regler, husband and wife, as tenants by the entireties, in fee.

SEIZED AND TAKEN as the property of Joseph M. Regler, IV and April L. Regler under Judgment No. 03-S-359.

Premises Known As: 2585 Taneytown Rd., Gettysburg, PA 17325

SEIZED and taken into execution as the property of **April L. Regler & Joseph M. Regler, IV** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 15, 2006, 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.

3/17, 24 & 31

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1302 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of April, 2006, 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 Menallen Township, Adams County, Pennsylvania, being more particularly bounded and described as follows:

BEGINNING at a point in the right of way line of Township Road T-387 at corner of Lot No. 2A on the hereinafter referred to draft of survey; thence by Lot No. 2A, South 02 degrees 53 minutes 21 seconds East, 261.70 feet to a pin set along other lands now or formerly of Antonio Mojica; thence by lands now or formerly of Antonio Mojica, South 82 degrees 27 minutes 04 seconds West, 134.39 feet to a point along lands now or formerly of Richard H. Sullivan; thence along lands now or formerly of Richard H. Sullivan, North 21 degrees 47 minutes 41 seconds West, 288.17 feet to a point in the right of way line of Township Road T-387; thence continuing in the right of way line of Township Road T-387, North 87 degrees 06 minutes 39 seconds East, 227.32 feet to a point in the right of way line of Township Road T-387, the point and place of BEGINNING. CONTAINING 1.113 Acres.

The above description was taken from a draft of survey prepared by Jerry D. LaRue, April 8, 1997, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 46 at page 96.

IT BEING the same premises which Larry S. Kuhn and Kelley L. Kuhn, husband and wife, by their Deed dated June 30, 2000, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 2080, Page 117, granted and conveyed unto James M. Hartman, Sr.

Parcel ID#: Map E4, Parcel 13B

Address: 1756 Coon Road (previously known as 1740 Coon Road), Aspers, PA 17304

SEIZED and taken into execution as the property of **James M. Hartman, Sr.** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 15, 2006, 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.

3/10, 17 & 24

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-1196 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of April, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in the Borough of Fairfield, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a lietz spike in the centerline of Legislative Route No. 01015 at the corner of Lot No. 3 and at the corner of lands now or formerly of James M. Landis; thence by Lot No. 3, South 25 degrees 02 minutes 35 seconds West, 160 feet, passing through a reference pipe set back 25 feet from the beginning of this course, to a steel rod at the corner of Lot No. 3 and the corner of other lands now or formerly of James M. Landis; thence by said other lands of James M. Landis, North 64 degrees 57 minutes 25 seconds West, 105 feet to a steel rod at the corner of said other lands of James M. Landis and the corner of Lot No. 5; thence by said Lot No. 5, North 25 degrees 02 minutes 35 seconds East, 160 feet, passing through a reference pipe set back 25 feet from the end of this course, to a lietz spike set in the centerline of Legislative Route No. 01015 at the corner of Lot No. 5 and the corner of lands now or formerly of James M. Landis; thence by said lands of James M. Landis and running in the centerline of Legislative Route No. 01015, South 64 degrees 57 minutes 25 seconds East, 105 feet to a lietz spike set in the centerline of said Legislative Route No. 01015 at the corner of Lot No. 3 and the corner of said lands now or formerly of James M. Landis, the place of BEGINNING.

The above description was taken from a subdivision plan dated May 16, 1983 prepared by Adams County Surveyors, which is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 38 at Page 55, being Lot No. 4 thereon.

BEING THE SAME PREMISES which Jason Lawrence Vinson and Charlotte Ann Vinson, husband and wife, by Deed dated June 24, 1999 and recorded in the Office of the Recorder of Deeds of Adams County on August 17, 1999 in Deed Book Volume 1896, Page 327, granted and conveyed unto Jason Lawrence Vinson.

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

DBV 1896

Page 327

Parcel (11) 5-62

Premises known as: 44 N. Miller Street, Fairfield, PA 17320

SEIZED and taken into execution as the property of **Jason Lawrence Vinson & Charlotte Ann Vinson** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 15, 2006, 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.

3/17, 24 & 31

## 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 ELVA A. BARNES, DEC'D**  
Late of Germany Township, Adams County, Pennsylvania  
Michael A. Barnes, 4762 Baltimore Pike, Littlestown, PA 17340  
Attorney: David K. James, III, Esq., 234 Baltimore St., Gettysburg, PA 17325
- ESTATE OF RAYMOND T. HAWKINS, DEC'D**  
Late of Highland Township, Adams County, Pennsylvania  
Executrix: Sandy S. Hawkins, 125 Glenwood Drive, Gettysburg, PA 17325  
Attorney: Wendy Weikal-Beauchat, Esq., 63 West High St., Gettysburg, PA 17325
- ESTATE OF JOHN E. LONES, DEC'D**  
Late of Cumberland Township, Adams County, Pennsylvania  
Executrix: Kirsten O'Connor, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506  
Attorney: Richard A. Blakely, Esq., c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
- ESTATE OF JAMES A. NOEL, DEC'D**  
Late of the Borough of McSherrystown, Adams County, Pennsylvania  
Executor: Veronica A. Linebaugh, c/o 135 North George Street, York, PA 17401  
Attorney: Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 135 North George Street, York, PA 17401
- ESTATE OF ANNA J. TAUSCHER, DEC'D**  
Late of Franklin Township, Adams County, Pennsylvania  
Executrix: Stephanie Appler, 2136 Herbert Avenue, Westminster, MD 21157  
Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF ROGER G. WELLMAN, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania  
Victoria Adams, 45 Stayman Way, Littlestown, PA 17340  
Attorney: David K. James, III, Esq., 234 Baltimore St., Gettysburg, PA 17325

## SECOND PUBLICATION

- ESTATE OF ROBERT A. BAKER, JR., DEC'D**  
Late of Cumberland Township, Adams County, Pennsylvania  
Administrators: Robert A. Baker, Sr and Christina J. Baker, 774 Blackhorse Tavern Rd., Gettysburg, PA 17325  
Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325
- ESTATE OF WILLIAM C. BAKER, DEC'D**  
Late of Cumberland Township, Adams County, Pennsylvania  
Administrators: Robert A. Baker, Sr and Christina J. Baker, 774 Blackhorse Tavern Rd., Gettysburg, PA 17325  
Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325
- ESTATE OF RICHARD A. BOLLINGER, DEC'D**  
Late of Reading Township, Adams County, Pennsylvania  
Executrix: Linda Jean Redding, 54 Hillcrest Drive, P.O. Box 234, Biglerville, PA 17307  
Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325
- ESTATE OF ALVERDA V. BREAM, DEC'D**  
Late of Straban Township, Adams County, Pennsylvania  
Executor: Rodney W. Weidner, 4050 Carlisle Rd., Gardners, PA 17324  
Attorney: Chester G. Schultz, Esq., 145 Baltimore Street, Gettysburg, PA 17325
- ESTATE OF MARIE E. BUIE, DEC'D**  
Late of Conewago Township, Adams County, Pennsylvania  
Executrices: Jacqueline A. Miller, 68 Fawn Ave., New Oxford, PA 17350; Janice M. Blatt, 2916 Hanover Pike, Hanover, PA 17331; Joann E. Willis, 304 Buckingham Rd., Lynchburg, VA 24502  
Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

## ESTATE OF CARMELLA T. CALANO, DEC'D

Late of Germany Township, Adams County, Pennsylvania  
Executor: Robert F. Jerulli, 333 Lafayette Drive, Littlestown, PA 17340  
Attorney: Elinor Albright Rebert, Esq., 515 Carlisle St., Hanover, PA 17331

## ESTATE OF CALVIN MILTON GARDNER, II, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
Executrix: Suzanne Marie Gardner, 29 West Penn Ave., Cleona, PA 17042  
Attorney: Judith Koper Morris, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

## ESTATE OF JUDY M. PRILLAMAN a/k/a JUDY MAE PRILLAMAN, DEC'D

Late of Franklin Township, Adams County, Pennsylvania  
Executor: Steven J. Prillaman, 337 Seven Stars Road, Gettysburg, PA 17325

## ESTATE OF MARIAN E. SWOPE a/k/a MARION E. SWOPE, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania  
Executrix: Noreen M. Green, 33 Red Bridge Road, Gettysburg, PA 17325  
Attorney: Chester G. Schultz, Esq., 145 Baltimore Street, Gettysburg, PA 17325

## THIRD PUBLICATION

- ESTATE OF DORIS BELT EIKER, DEC'D**  
Late of Oxford Township, Adams County, Pennsylvania  
Executrix: Catherine J. Gault, Esq., 303 Conewago Road, New Oxford, PA 17350  
Attorney: Catherine J. Gault, Esq., 303 Conewago Road, New Oxford, PA 17350
- ESTATE OF LESLIE A. FLYNN a/k/a LESLIE ANN FLYNN, DEC'D**  
Late of the Borough of Arendtsville, Adams County, Pennsylvania  
Executor: Shelley E. Sykes, P.O. Box 70, Arendtsville, PA 17303  
Attorney: Walton V. Davis, Esq., 63 West High St., Gettysburg, PA 17325
- ESTATE OF HOWARD J. McDANNELL, DEC'D**  
Late of Franklin Township, Adams County, Pennsylvania  
Executor: Daniel J. McDannell, 5000 Chambersburg Road, Orrtanna, PA 17353  
Attorney: Wendy Weikal-Beauchat, Esq., 63 West High St., Gettysburg, PA 17325

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 February 28, 2006, for the incorporation of GETTYSBURG GLASS, INC. under the Pennsylvania Corporation Law of 1988. The initial registered office of the corporation is 322 E. Water St., Gettysburg, PA 17325.

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

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INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation for EAGLES FUNDING, INC., were filed under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444, No. 177, as amended and supplemented.

Timothy J. Shultis, Esq.  
Miller & Shultis, P.C.  
Solicitors

3/24

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# *Adams County* Legal Journal

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Vol. 47

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No. 45, pp. 278-280

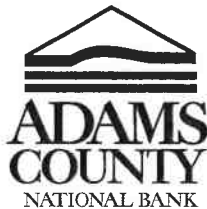
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## IN THIS ISSUE

COMMONWEALTH VS. GETTIER

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



Member FDIC

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#### SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-359 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of April, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot or piece of ground situate, lying and being in Mt. Joy Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point near the centerline of S.R. 0134, the Taneytown Road, at a corner of Lot No. 3 on the hereinafter mentioned draft of survey and subdivision plan; thence in S.R. 0134, the Taneytown Road, South Ten (10) degrees Three (03) minutes Seventeen (17) seconds East, One Hundred Thirty-five and Thirty-nine One-hundredths (135.39) feet to a point near the centerline of said S.R. 0134, the Taneytown Road; thence continuing in S.R. 0134, the Taneytown Road, South Eight (08) degrees Sixteen (16) minutes Twenty-six (26) seconds East 287.82 feet to a point in said S.R. 0134, the Taneytown Road; thence South Eighty-four (84) degrees Fifty (50) minutes Thirteen (13) seconds West, Twenty-five and Eighty-three One-hundredths (25.83) feet to an existing railroad spike on line of land of the Mt. Joy Evangelical Lutheran Church and along the edge of Benner Road; thence crossing Benner Road, North Five (05) degrees Forty (40) minutes Eighteen (18) seconds West, Twenty-six and Forty One-hundredths (26.40) feet to an existing wooden post; thence along and in said Benner Road, South Eighty (80) degrees Eleven (11) minutes Thirty (30) seconds West, One Hundred Forty-seven and Twenty-five One-hundredths (147.25) feet to an existing cotton gin spindle One (1) foot North of the centerline of said Benner Road; thence in said Benner Road, South Eighty (80) degrees Nine (09) minutes Twenty-five (25) seconds West, One Hundred Fifty-five (155.00) feet to a railroad spike set near the centerline of Benner Road, and at a corner of Lot No. 5; thence by Lot No. 5, North Twenty-six (26) degrees Eight (8) minutes Fifteen

(15) seconds West, Two Hundred Seventy and Seventy-one One-hundredths (270.71) feet to a steel pin set on line of Lot No. 5 and at a corner of Lot No. 3; thence by Lot No. 3, and passing through a steel pin set Twenty-five (25) feet from the next mentioned point, North Sixty-one (61) degrees Fifty-six (56) minutes Twenty-five (25) seconds East, Four Hundred Thirty-one and One One-hundredths (431.01) feet to a point near the centerline of S.R. 0134, Taneytown Road, at a corner of Lot No. 3, the place of BEGINNING.

CONTAINING 2.847 Acres, more or less. BEING PARCEL #30-F17-65.

THE ABOVE DESCRIPTION was taken from a draft of survey and subdivision plan entitled "Scheller Subdivision", dated October 27, 1997, and revised January 19, 1998, as prepared by Richard W. Boyer, Professional Land Surveyor No. 17399-E, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 73 at pages 23 and 23A, and designated as Lot No. 4 thereon.

UNDER AND SUBJECT to certain restrictions contained in prior deeds and instruments of record.

BEING the same premises which Vincent Scheller and Marie Scheller, husband and wife, by Deed dated September 2, 1999 and recorded on September 3, 1999 in the Office of the Recorder of Deeds in and for Adams County in Deed Book 1909, Page 141, granted and conveyed unto Joseph M. Regler, IV and April L. Regler, husband and wife, as tenants by the entireties, in fee.

SEIZED AND TAKEN as the property of Joseph M. Regler, IV and April L. Regler under Judgment No. 03-S-359.

Premises Known As: 2585 Taneytown Rd., Gettysburg, PA 17325

SEIZED and taken into execution as the property of **April L. Regler & Joseph M. Regler, IV** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 15, 2006, 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.

3/17, 24 & 31

#### FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN pursuant to the provisions of Sec. 311 of the Act of Assembly of December 16, 1982, 54 PA C.S.A. 311, that an application for registration of a fictitious name was filed on March 9, 2006 with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, for the conducting of a business under the fictitious name of GETTYSBURG MOTORCYCLE TOURS with its principal office or place of business at 5 Novice Trail, Fairfield, PA 17320. The names and addresses of all persons owning or interested in said business are: Jeffrey Redding, 5 Novice Trail, Fairfield, PA 17320.

John J. Murphy III, Esq.  
Patrono & Associates, LLC

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#### INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation for KEENEY'S LAWN SERVICE, INC. were filed with the Department of State of the Commonwealth of Pennsylvania on March 13, 2006, under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444.

Guthrie, Nonemaker, Yingst & Hart  
Solicitor

3/31

## COMMONWEALTH VS. GETTIER

1. Suppression motions shall be contained in an omnibus pre-trial motion and if a timely motion is not made, it shall be deemed waived.
2. The “in the interest of justice” rule urges the trial court to exercise discretion to hear an untimely motion when the merits of the motion are so apparent that justice requires it to be heard.
3. The weaving of a vehicle upon a roadway may not constitute justifiable reasons for effectuating a traffic stop.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,  
PENNSYLVANIA, CRIMINAL ACTION NO. CR-148-2005.  
COMMONWEALTH VS. TERRY L. GETTIER.

Shawn Wagner, Esq., District Attorney, for Commonwealth  
Robert J. Chester, Esq., for Defendant  
Kuhn, P.J., July 27, 2005

### MEMORANDUM OPINION

Before the Court for initial determination is whether Defendant is entitled to a hearing on his Omnibus Pre-Trial Motion filed July 20, 2005. For reasons set forth herein, a hearing is granted.

By way of background, on December 4, 2004, Defendant was arrested for Driving Under the Influence. A Preliminary Hearing was held on February 2, 2005, and the case was bound over for court. Defendant was formally arraigned on March 10, 2005, and discovery was provided to defense counsel on March 14, 2005. On July 20, 2005, Defendant filed his omnibus motion containing a petition for writ of habeas corpus and a motion for suppression of evidence.

Commonwealth has objected to the motion as being untimely. Pa. R.Crim.P. 581 provides that suppression motions shall be contained in an omnibus pre-trial motion and if a timely motion is not made, it shall be deemed waived. Pa.R.Crim.P. 579 provides that omnibus pre-trial motions are to be filed within 30 days after arraignment. Thus, it appears that Defendant’s motion should have been filed by April 10, 2005, and was filed 101 days late.

However, Rule 581 also contains the “in interest of justice” rule which allows the trial court, in its discretion, to address tardy motions in the interest of justice.

Here, Defendant is alleging that there was insufficient basis to effectuate a traffic stop, therefore, making all evidence discovered

thereafter suppressible. A review of the transcript of the preliminary hearing clearly demonstrates that Defendant was aware of the alleged basis for the traffic stop and, in fact, argued that the charges should be dismissed because the stop was unsupported by articulable reasons.

When the instant motion was presented to the undersigned in open court on July 25, 2005, Defendant's counsel attempted to justify the untimeliness by indicating that he was waiting for the transcript of the preliminary hearing and discussing with Defendant whether to proceed. Frankly, both excuses lack merit.

The hearing was rather short and the issues uncomplicated. Receipt of a transcript was not necessary in order to proceed with an omnibus motion. Besides, Defendant did not indicate when the transcript was requested and received in order to explain the delay. Furthermore, waiting for Defendant to decide whether to file a pre-trial motion is not a basis upon which to overcome waiver resulting from a tardy motion.

Nevertheless, the "in the interest of justice" rule urges the trial court to exercise discretion to hear an untimely motion when the merits of the motion are so apparent that justice requires it to be heard. *Commonwealth v. Long*, 753 A.2d 272, 280 (Pa. Super. 2000). The merits of this case requires further review.

*Commonwealth v. Gleason*, 785 A.2d 983 (Pa. 2001) and its progeny stand for the principle that the weaving of a vehicle upon a roadway may not constitute justifiable reasons for effectuating a traffic stop. Here, Officer Weikert was on routine patrol on the Biglerville Road when he observed a Chrysler vehicle "driving over the white fog line." He also thought "speed was an issue." [T. 4]. The officer pulled behind a truck which was behind the Chrysler. He observed the Chrysler "swerving over the fog line at one point in time, actually almost going up to the embankment off the Biglerville Road." [T. 4]. The Chrysler then went "over" the double yellow line. The truck pulled from the line of traffic and the officer noticed the vehicle "going over the fog line again, then over the yellow line." [T. 4]. At that point, the stop was effectuated. The officer's observations occurred over "at least a half mile" of travel [T. 7]. There were no other vehicles or pedestrians upon the highway. [T. 8]. The criminal complaint indicates that the incident occurred at 1:30 A.M.

Based on the evidence presented, this Court cannot determine whether there was an articulable basis to effectuate the stop. If the stop was based upon erratic driving, the testimony is that Defendant crossed over the fog line three times and the double yellow line twice over a distance of no less than one-half mile. There was, however, no indication whether the vehicle crossed those lines by two inches or the entire width of the car. There was no testimony that the weaving was gradual or extreme. The reference to "almost going up to the embankment" is meaningless unless one knows the proximity of the embankment to the roadway and what is meant by "going up to" it. If the stop was based on speed, that reasoning is lacking as well. There was no testimony as to the posted speed limit or the speed at which the officer had to travel to keep pace with Defendant. No adverse weather, roadway, or topographical conditions were described.

Accordingly, there may be merit to Defendant's motion. Therefore, the Court will grant Defendant a hearing in the interest of justice.

## 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 WAYNE R. SMITH, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Cheryl A. Swisher, HC 61 Box 75, Capon Bridge, WV 26711

Attorney: John James Mooney, III, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

## SECOND PUBLICATION

## ESTATE OF ELVA A. BARNES, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Michael A. Barnes, 4762 Baltimore Pike, Littlestown, PA 17340

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

## ESTATE OF RAYMOND T. HAWKINS, DEC'D

Late of Highland Township, Adams County, Pennsylvania

Executrix: Sandy S. Hawkins, 125 Glenwood Drive, Gettysburg, PA 17325

Attorney: Wendy Weikal-Beauchat, Esq., 63 West High St., Gettysburg, PA 17325

## ESTATE OF JOHN E. LONES, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Kirsten O'Connor, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

Attorney: Richard A. Blakely, Esq., c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

## ESTATE OF JAMES A. NOEL, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Veronica A. Linebaugh, c/o 135 North George Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 135 North George Street, York, PA 17401

## ESTATE OF ANNA J. TAUSCHER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Stephanie Appler, 2136 Herbert Avenue, Westminster, MD 21157

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

## ESTATE OF ROGER G. WELLMAN, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Victoria Adams, 45 Stayman Way, Littlestown, PA 17340

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

## THIRD PUBLICATION

## ESTATE OF ROBERT A. BAKER, JR., DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Administrators: Robert A. Baker, Sr. and Christina J. Baker, 774 Blackhorse Tavern Rd., Gettysburg, PA 17325

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

## ESTATE OF WILLIAM C. BAKER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Administrators: Robert A. Baker, Sr. and Christina J. Baker, 774 Blackhorse Tavern Rd., Gettysburg, PA 17325

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

## ESTATE OF RICHARD A. BOLLINGER, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executrix: Linda Jean Redding, 54 Hillcrest Drive, P.O. Box 234, Biglerville, PA 17307

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

## ESTATE OF ALVERDA V. BREAM, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Rodney W. Weidner, 4050 Carlisle Rd., Gardeners, PA 17324

Attorney: Chester G. Schultz, Esq., 145 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF MARIE E. BUIE, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrices: Jacqueline A. Miller, 68 Fawn Ave., New Oxford, PA 17350; Janice M. Blatt, 2916 Hanover Pike, Hanover, PA 17331; Joann E. Willis, 304 Buckingham Rd., Lynchburg, VA 24502

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

## ESTATE OF CARMELLA T. CALANO, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Executor: Robert F. Jerulli, 333 Lafayette Drive, Littlestown, PA 17340

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

## ESTATE OF CALVIN MILTON GARDNER, II, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Suzanne Marie Gardner, 29 West Penn Ave., Cleona, PA 17042

Attorney: Judith Koper Morris, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

## ESTATE OF JUDY M. PRILLAMAN a/k/a JUDY MAE PRILLAMAN, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Steven J. Prillaman, 337 Seven Stars Road, Gettysburg, PA 17325

## ESTATE OF MARIAN E. SWOPE a/k/a MARIAN E. SWOPE, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Noreen M. Green, 33 Red Bridge Road, Gettysburg, PA 17325

Attorney: Chester G. Schultz, Esq., 145 Baltimore Street, Gettysburg, PA 17325

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-1196 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of April, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situated in the Borough of Fairfield, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a lietz spike in the centerline of Legislative Route No. 01015 at the corner of Lot No. 3 and at the corner of lands now or formerly of James M. Landis; thence by Lot No. 3, South 25 degrees 02 minutes 35 seconds West, 160 feet, passing through a reference pipe set back 25 feet from the beginning of this course, to a steel rod at the corner of Lot No. 3 and the corner of other lands now or formerly of James M. Landis; thence by said other lands of James M. Landis, North 64 degrees 57 minutes 25 seconds West, 105 feet to a steel rod at the corner of said other lands of James M. Landis and the corner of Lot No. 5; thence by said Lot No. 5, North 25 degrees 02 minutes 35 seconds East, 160 feet, passing through a reference pipe set back 25 feet from the end of this course, to a lietz spike set in the centerline of Legislative Route No. 01015 at the corner of Lot No. 5 and the corner of lands now or formerly of James M. Landis; thence by said lands of James M. Landis and running in the centerline of Legislative Route No. 01015, South 64 degrees 57 minutes 25 seconds East, 105 feet to a lietz spike set in the centerline of said Legislative Route No. 01015 at the corner of Lot No. 3 and the corner of said lands now or formerly of James M. Landis, the place of BEGINNING.

The above description was taken from a subdivision plan dated May 16, 1983 prepared by Adams County Surveys, which is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 38 at Page 55, being Lot No. 4 thereon.

BEING THE SAME PREMISES which Jason Lawrence Vinson and Charlotte Ann Vinson, husband and wife, by Deed dated June 24, 1999 and recorded in the Office of the Recorder of Deeds of Adams County on August 17, 1999 in Deed Book Volume 1896, Page 327, granted and conveyed unto Jason Lawrence Vinson.

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 1896

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Parcel (11) 5-62

Premises known as: 44 N. Miller Street, Fairfield, PA 17320

SEIZED and taken into execution as the property of **Jason Lawrence Vinson & Charlotte Ann Vinson** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 15, 2006, 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.

3/17, 24 & 31