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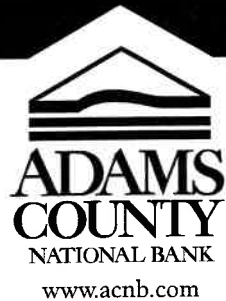
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COMMONWEALTH VS. ORTIZ-LUGO

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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-667 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 12th day of October, 2007, 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 piece, parcel or tract of land, together with the improvements thereon erected, situate in the Township of Straban, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

BEGINNING at a stone for a corner in a line of property formerly of George Cashman; thence by the same, North 21 degrees West (appears as North 22 degrees West on some other deeds), 27.6 perches to a stone; thence by land formerly of John Goulden and John Yeagy, North 62-1/4 degrees East 60.9 perches to a stone; 32.8 perches to a stone; thence by same South 67-1/4 degrees West 62.6 perches to the place of BEGINNING. CONTAINING 11 acres, 2 rods and 20 perches.

Premises being: 130 Cashman Road, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **John J. Calloway, Mary Francis Calloway & Bonnie Michele Still-Hammond** 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 November 2, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/24, 31 & 9/7

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-370 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 12th day of October, 2007, 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 ground situate in Carroll Valley Borough, County of Adams, Commonwealth of Pennsylvania, being known as J-179, bounded and described as follows:

LOT NO. 179-SECTION J:

BEGINNING at a point in the center of Crossland Trail at Lot No. 178; thence by said lot North 3 degrees 11 minutes 40 seconds West, 200 feet to Lot No. 172; thence by said lot South 87 degrees 23 minutes 40 seconds East, 100 feet to Lot No. 180; thence by said lot South 3 degrees 11 minutes 40 seconds East, 200 feet to a point in the center of said Crossland Trail; thence in said Crossland Trail North 87 degrees 23 minutes 40 seconds West, 100 feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled 'Section J, Charnita Ski Area, Inc., dated March 20, 1968, prepared by Gordon L. Brown, R.S., recorded in Adams County Plat Book No. 1 at page 24.

BEING the same tract of land which by deed Sonali H. Shah and Neelima H. Shah, by deed dated January 13, 2003, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 2954 at page 107, sold and conveyed unto David C. Stepnick and Susan E. Stepnick, husband and wife, the Grantors herein.

RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN Michael B. Wurdeman and Sandra M. Wurdeman, husband and wife, as tenants of an estate by the entireties, by Deed from David C. Stepnick and Susan E. Stepnick, husband and wife, dated 8-31-05, recorded 9-6-05, in Deed Book 4114, page 266.

Premises being: 14 Crossland Trail, Fairfield, PA 17320

Tax Parcel No. 43-002-0088-000

SEIZED and taken into execution as the property of **Sandra M. Wurdeman a/k/a Sandra Byrd Wurdeman a/k/a Sandra Marie Wurdeman & Michael B. Wurdeman** 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 November 2, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/24, 31 & 9/7

CHANGE OF NAME
IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

NOTICE IS HEREBY GIVEN that on the 2nd day of August, 2007, the Petition of Amanda Marie Whitesell was filed in the Court of Common Pleas of Adams County, Pennsylvania, requesting an Order to Change her name from Amanda Marie Whitesell to Amanda Marie Heller.

The Court has fixed the 17th day of October, 2007, at 9:00 a.m. in Courtroom 2 of the Adams County Courthouse, Gettysburg, Pennsylvania, as the time and place for the hearing on said Petition, when and where all interested parties may appear and show cause, if any, why the request of the Petitioner should not be granted.

9/7

COMMONWEALTH VS. ORTIZ-LUGO

1. In order to establish a claim of ineffective assistance of counsel, the petitioner must prove that (1) the underlying claim has substantive merit; (2) that counsel did not have a reasonable basis for his or her actions or failure to act; and (3) that the petitioner suffered prejudice as a result of counsel's deficient performance.

2. Counsel will be deemed effective so long as the course chosen had some reasonable basis designated to effectuate the client's interests.

3. The burden is upon the petitioner by a preponderance of the evidence to identify acts or omissions made by counsel that cannot be considered the result of reasonable professional judgment.

4. A chosen strategy will not be found to have lacked a reasonable basis unless it is proven that an alternative not chosen offered a potential for success substantially greater than the course actually pursued.

5. In cases where ineffectiveness allegedly induces a plea, the test for establishing prejudice is not a stringent one. Defendant must show that it is reasonably probable that but for counsel's errors, he would not have pleaded guilty and would have gone to trial.

In the Court of Common Pleas of Adams County, Pennsylvania, Criminal, No. CC-178-03, COMMONWEALTH VS. ORTIZ-LUGO.

Shawn Wagner, Esq., District Attorney, for Commonwealth

Steve Rice, Esq., for Defendant

Kuhn, P.J., September 22, 2006

OPINION ON DEFENDANT'S AMENDED MOTION FOR POST CONVICTION RELIEF

Before the Court for disposition is Defendant's Amended Motion For Post Conviction Relief filed July 12, 2005. For reasons set forth herein said Motion is granted.

PROCEDURAL BACKGROUND

At approximately 4:20 a.m. on February 11, 2003, Maria DelPerez-Santos was shot and killed by Defendant outside Pilgrims Pride, New Oxford, Adams County, Pennsylvania. Subsequent to arrest, Defendant was represented by Abraham B. Cardenas, Esq.

On June 23, 2003, Defendant and counsel appeared before the undersigned for the purpose of Arraignment and tendering a guilty plea to first degree murder. Defendant, who is from Puerto Rico, only speaks Spanish; however, counsel was bi-lingual in Spanish and English. Nevertheless an interpreter was provided for Defendant. Rights, the factual background, the elements of the offense, lesser offenses and penalties were reviewed on the record. After thirty-five

minutes of discussion, Defendant and counsel were given the opportunity to speak privately for twenty-four minutes. Subsequently, another thirty minutes of record discussion occurred after which it was clear that Defendant was not admitting facts which would constitute murder of the first degree. A not guilty plea was entered on the record.

Subsequently, Defendant, counsel and an interpreter appeared before the Court on August 1, 2003 for the purpose of presenting a guilty plea for first degree murder. As done previously, rights, the factual background, the elements of the offense, lesser offenses and penalties were reviewed. Again, Defendant denied his intention to kill the victim. Consequently, the Commonwealth and Defendant agreed to present a nolo contendere plea. That plea was accepted and Defendant was sentenced to life imprisonment.

On July 8, 2004, Defendant filed a pro se PCRA motion and Steve Rice, Esq., was appointed to represent him. Conferences were held September 24, 2004 and November 23, 2004. Defendant subsequently filed his amended motion. A hearing was held on August 23, 2005 and November 7, 2005.

ISSUES

Defendant claims that plea counsel was ineffective because he failed (1) to properly advise Defendant of potential defenses, lesser offenses, and the relevance of character witnesses; (2) to adequately interview Defendant to develop information that would assist in allowing Defendant to make an informed decision whether to proceed to trial or to enter a plea; and (3) to properly advise Defendant regarding release from prison in the future.

FACTUAL BACKGROUND

Testimony revealed that after the shooting Defendant left the scene and was arrested shortly thereafter. He was interviewed by officers of the York City Police Department beginning at 10:55 a.m. During the interview (Def. Ex. 3), Defendant stated that he and the victim had ended a seven to eight month relationship the month before the shooting. That day, he brought the gun with him to work because he "was mad." He and the victim arrived at work at about the same time. When he saw her walking by, "without thinking I started shooting" because "I was mad." He claimed that the victim had "provoked me a lot" at work when she "teased the guys." Also present at the time of the shooting were Pedro and Leroy.

Defendant was further interviewed beginning at 6:04 p.m. by Trooper Angel Garcia of the Pennsylvania State Police. Also present were three officers from Eastern Adams Regional Police Department. Defendant stated that he brought a gun with him that day because of his anger over what he perceived the victim to be doing to him. He was angry because she had been provoking him ("she played with the guys and took them by the hand") at work after their breakup. He had not spoken to anyone else about his anger over the victim. Defendant arrived at work before the victim and saw her walking. He followed her, pulled the gun from his pants and the victim yelled "no, Papo." Without any further conversation, Defendant shot "crazy like" ("a la loco") three to four times from a distance of five to six feet. Defendant indicated that his intention was to scare the victim but not to actually shoot her. He was unsure whether any of the shots hit the victim until she fell after the last shot. Defendant denied shooting the victim after she had fallen to the ground. He was unsure whether his friends, Pedro or Leroy, saw what had happened. After leaving the scene, Defendant drove home and told Diana Morales what had happened. The interview ended at 7:59 p.m. [Def. Ex. 4].

Pedro Villa was interviewed by police. He reported being driven to work that day by Defendant. After Defendant parked the car in the Pilgrims Pride lot, Defendant ran toward the victim saying "I told you, I told you." Defendant pulled a gun from his pants and fired two shots toward the ground. Mr. Villa told Defendant to stop. Defendant then pointed the gun at the victim, fired a third shot, and the victim fell to the ground. Defendant fired a fourth shot at the victim while she was on the ground and then fled the scene. [Def. Ex. 2].

Mr. Villa was re-interviewed two days later. At this time, he added that Defendant parked his car several spaces from the victim's car. He reported hearing the first shot and then saw Defendant with a gun conversing with the victim. Defendant pointed the gun at the victim and fired a shot causing her to fall to her knees. The next shot was fired into the victim's face and a final shot was fired into her while she was on the ground. [Def. Ex. 1].

At the PCRA hearing, Defendant testified and also presented the testimony of Mr. Villa, Denise Garcia, Diana Morales, Dayana Ortiz, Hiram Vega, and Carlos Garrastequi.¹

Defendant recalls meeting with Attorney Cardenas once at the Adams County Prison where they discussed the incident and the problems he had with the victim. He contends that he told counsel he never intended to kill the victim, that his mind went “blank” and he was shooting “crazy-like.” He also admitted speaking with counsel at the courthouse three to four times.

Defendant reports that counsel never discussed with him (1) potential defenses, (2) the burden of proof and evidence² that could be presented to a jury if the Commonwealth would pursue the death penalty, (3) that he could be examined by a psychiatrist; or (4) the identity of potential witnesses. He testified that had he been told these things he would not have entered the plea. Defendant contends that he entered the plea on advice of counsel solely in order to avoid the death penalty. He further indicated that counsel advised him that he would only have to serve twenty-five years if he received a sentence of life in prison on a conviction of first degree murder.

Mr. Villa testified that he met Attorney Cardenas one time but was asked no questions. He has known Defendant for approximately five years and indicated that if requested, he could have testified as a character witness as to Defendant’s law abiding and peaceful nature. He also stated that he was aware of how the victim would embarrass Defendant by calling him names and how upset Defendant was for several weeks leading up to the shooting.

Denise Garcia knew Defendant because he had lived in her home for approximately one year prior to the incident. She thought Defendant appeared depressed before the shooting but she never

¹ Tanya Fernandez testified that she translated Defendant’s February 11, 2003 interviews with the police.

² Defendant argues that counsel never discussed aggravating factors that might be presented by the Commonwealth. He also argues that counsel never discussed potential mitigating factors with him. He testified that he had no prior criminal convictions or a history of hurting anyone. He was raised by his mother who spent a lot of time in bars. There was no adult male role model in his life. Defendant quit school in Puerto Rico before finishing tenth grade. He also reported having a good work history. Furthermore, Defendant has a twelve year old daughter who lives with her mother.

discussed that with him. Ms. Garcia had some discussions with Attorney Cardenas but no in depth conversation regarding Defendant's background.

Diana Morales has known Defendant since 1989. She knew Defendant came from a poor family, that his mother spent a lot of time in the bars and that she died of AIDS several years ago. She knew Defendant as a respectful and amicable person and she would have testified as a character witness as to his law abiding and peaceful nature if requested. Before the shooting, she did not notice anything different about Defendant other than that he appeared "a little depressed." Ms. Morales testified that she requested counsel to obtain a psychological evaluation of Defendant and that the cost was to be included in the \$5,000.00 retainer she paid on Defendant's behalf.

The testimony of Hiram Vega and Dayanara Ortiz was stipulated. Mr. Vega would have testified that Defendant has a reputation for being a peaceful, law-abiding and honest person. Furthermore, he knew Defendant was raised in a poor environment by a mother who was an alcoholic and a prostitute. He found Defendant to be a good person and friend. Ms. Ortiz (age twelve) would have testified that Defendant is her father and is a good, kind, and loving parent and provider.

Carlos Garrastequi testified that he had known Defendant for about four years and as a co-worker. He also knew the victim. Mr. Garrastequi was aware of difficulties in the relationship between the victim and Defendant because the victim would flirt with other men and ridicule Defendant.

Attorney Cardenas testified that after being retained he spoke to Defendant at the prison to gauge his thoughts and demeanor during the incident. Counsel found Defendant to be calm and lucid and able to describe the event in detail. Counsel viewed photographs of the wounds and determined that the last shot was fired from a close distance (four feet) and caused the head wound. He also obtained copies of both video-taped interviews of Defendant conducted the day of the shooting. He visited the scene of the shooting. Counsel claims that he spoke with Defendant in detail regarding the procedures in capital cases. He reported discussing the issue of provocation and insanity with Defendant. With regard to Defendant shooting "loco," counsel interpreted Defendant as referring to his actions

of shooting wildly rather than his state of mind. Counsel also testified that he tried to interview Mr. Villa over the telephone but that he was a reluctant witness. Counsel did not formally request discovery from the Commonwealth but reported that the District Attorney was cooperative in providing him with whatever was requested.

Counsel was aware that the Commonwealth had not filed notice that it was going to seek the death penalty if the case proceeded to trial but from conversations with then District Attorney Paul Dean, he was advised of the Commonwealth's intent to do so. He reported being advised that the Commonwealth would pursue as an aggravating circumstance that the shooting put others at risk. He indicated that he was also aware of how the victim had provoked Defendant and tried unsuccessfully to have the District Attorney agree to a resolution less than first degree murder.

Counsel admitted that he had never represented a defendant in a capital case but had previously represented clients in homicide cases. He was very concerned about the evidence indicating Defendant's guilt as to first degree murder. He knew Defendant was angry and took the gun to work with him. He knew Defendant walked up to the victim and shot her several times at close range, including a final shot after her plea for him to stop. Defendant told counsel he knew he was going to shoot the victim when he got out of the car. Counsel did not believe there was enough evidence to pursue a diminished capacity defense. Furthermore, he did not believe there was sufficient provocation by the victim simply because she flirted with other men. Moreover, Defendant never claimed that he was "insane." Counsel was not able to discern rage in Defendant's demeanor. Defendant did display some remorse and only shed tears when speaking of his daughter. Furthermore, neither Ms. Garcia nor Ms. Morales described Defendant being angry or showing other emotion preceding the shooting.

Counsel testified that he discussed character testimony with Defendant and Defendant identified Ms. Garcia and Ms. Morales as possible witnesses. He acknowledged not discussing the legal significance of such testimony with Defendant.

Attorney Cardenas testified that he reviewed procedural options with Defendant but never told him he had to enter a plea. Counsel insisted that he never advised Defendant that he would be released after twenty-five years of a life sentence.

DISCUSSION

To be eligible for PCRA relief, the petitioner must plead and prove that his conviction and sentence resulted from one of the enumerated factors. Here, Defendant claims he is entitled to relief because of ineffective assistance of counsel which, in the circumstances of this particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place. 42 Pa. C.S.A. § 9543(a)(2)(ii). When raising a PCRA claim of ineffective counsel, the law presumes that counsel is effective and the burden of proving otherwise rests with the petitioner by a preponderance of the evidence. In order to establish a claim of ineffective assistance of counsel, the petitioner must prove that (1) the underlying claim has substantive merit; (2) that counsel did not have a reasonable basis for his or her actions or failure to act; and (3) that the petitioner suffered prejudice as a result of counsel's deficient performance. *Commonwealth v. Zook*, 887 A.2d 1218, 1229 (Pa. 2005). The courts do not employ a hindsight evaluation of the record in determining whether counsel acted reasonably. Instead, counsel will be deemed to be effective so long as the course chosen had some reasonable basis designed to effectuate the client's interests. *Id.*

One is entitled to PCRA relief if ineffective assistance of counsel caused him to enter an involuntary plea. Whether the plea is voluntary under those circumstances is dependent upon counsel's advice being within the range of competence demanded of attorneys in criminal cases. *Commonwealth v. Johnson*, 868 A.2d 1278, 1281 (Pa. Super. 2005). The burden is upon the petitioner by a preponderance of the evidence to identify acts or omissions made by counsel that cannot be considered the result of reasonable professional judgment. Thus, counsel's performance is based on what was reasonable under the circumstances. An attorney's judgment must be reviewed from counsel's perspective at the time and should not be second-guessed if it falls within the realm of professional reasonableness. *Commonwealth v. McClellan*, 887 A.2d 291, 300 (Pa. Super. 2005). A chosen strategy will not be found to have lacked a reasonable basis unless it is proven that an alternative not chosen offered a potential for success substantially greater than the course actually pursued. *Commonwealth v. Williams*, 899 A.2d 1060, 1064 (Pa. 2006).

Defendant contends that he entered his plea to avoid the death penalty and that had counsel properly investigated the facts and the law, he would have advised Defendant that this was not a capital case. Counsel admitted that he advised Defendant to plead to avoid the death penalty but left the final decision whether to do so up to Defendant.

Here, the Commonwealth never filed an intent to seek the death penalty at the time of Arraignment on May 22, 2003 or June 23, 2003 as required by Pa.R.Crim.P 802. Furthermore, the Commonwealth did not seek leave to file a late notice of aggravating circumstances nor did it do so as of August 1, 2003 when Defendant tendered his plea. The Court has not been advised of any agreement between counsel to allow for late filing or the need for further investigation. Thus, at the time Defendant entered his plea, counsel should have advised him that in all likelihood the Commonwealth would not be pursuing the death penalty. If, as it appears, Defendant was under the belief that the death penalty was a real possibility at that time and entered a plea to avoid that possibility, counsel's stewardship was lacking for failing to clarify that belief.

Furthermore, counsel testified that he believed the Commonwealth would have pursued as an aggravating factor in committing the offense that "the defendant knowingly created a grave risk of death to another person in addition to the victim of the offense." 42 Pa. C.S.A. § 9711(d)(7). However, this Court was presented with no evidence that counsel investigated and found that any other person was within the zone of danger or was in jeopardy of suffering real harm, *Commonwealth v. Bolden*, 753 A.2d 793, 798 (Pa. Super. 2000), from the shots fired by Defendant within close range of the victim. Nor has it been suggested that any other aggravating factor could have been raised. Without that information, counsel could not have reasonably believed that the death penalty was viable. Failure to advise Defendant of that fact was not a reasonable strategy nor did it constitute effective assistance of counsel.

Even if this Court concludes that plea counsel was ineffective for not properly advising Defendant of the viability of the death penalty, Defendant must still establish that he was prejudiced by the advice given. In cases where ineffectiveness allegedly induces a plea, the test for establishing prejudice is not a stringent one. Defendant

“must show that it is reasonably probable that but for counsel’s errors, he would not have pleaded guilty and would have gone to trial.” *Commonwealth v. Hickman*, 799 A.2d 136, 141 (Pa. Super. 2002).

Defendant claims that he would not have entered his plea if he had known that the death penalty was not a possibility. I find him credible in that regard not only because of the testimony he provided at the PCRA hearing, but also because of his obvious reluctance to enter his plea on the other occasions before me.

Therefore, I am compelled to grant Defendant’s request to withdraw his plea and to schedule him for trial.³ See *Commonwealth v. Bradley*, 899 A.2d 365 (Pa. Super. 2006).

ORDER

AND NOW, this 22nd day of September, 2006, Defendant’s Amended Motion For Post Conviction Relief filed July 12, 2005 is granted. Defendant’s conviction is hereby vacated.

It is directed that Defendant be released from the Department of Corrections and placed in the Adams County Prison. He is denied bail. The sheriff shall make arrangements for transporting Defendant.

This matter is scheduled for trial during the term beginning December 4, 2006. Defendant is directed to appear at 9:00 A.M. in a courtroom designated that day for jury selection.

³ Because of this disposition, it is unnecessary to address the other issues Defendant raised in this matter.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-243 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 12th day of October, 2007, 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, with the improvement thereon, situate, lying and being in Highland Township, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

BEGINNING at a point in State Highway Route No. 116 leading from Fairfield to Gettysburg; thence running in said highway North 73-1/4 degrees East, 90 feet to another point in said highway; thence running by land now or formerly of J. Hayes Beard South 24 degrees East, 200 feet to an iron pin; thence running by land of same South 24 degrees West, 80 feet to a point in a road; thence running in said road along land now or formerly of J. Hayes Beard North 26 degrees West, 203 feet to a point in the aforesaid State Highway, the place of BEGINNING. CONTAINING 62 perches and 122 square feet.

TITLE TO SAID PREMISES IS VESTED IN William C. Becker, Jr. and Lavina V. Becker, a/k/a Vonnie Becker, husband and wife, by Deed from Annetta I. Cluck, widow, dated 09/28/1994, recorded 09/30/1994, in Deed Book 945, page 123.

Premises being: 3590 Fairfield Road, Gettysburg, PA 17325

Tax Parcel No. 20-D14-0069

SEIZED and taken into execution as the property of **William C. Becker, Jr. & Lavine V. Becker a/k/a Vonnie V. Becker a/k/a Vonnie Becker** 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 November 2, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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8/24, 31 & 9/7

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1305 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 12th day of October, 2007, 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 piece, parcel or tract of land, together with the improvements thereon erected, situate, lying and being in the Borough of Bonneauville, Adams County, Pennsylvania, more particularly bounded, limited and described as follows, to wit:

BEGINNING at a point on the right-of-way line of Ash Drive, a fifty (50) feet wide right-of-way, at corner of Lot No. 43 on the subdivision plan hereinafter referred to; thence along the right-of-way line of Ash Drive, the following two (2) courses and distances: [1] North fifty-one (51) degrees thirty-eight (38) minutes thirty-seven (37) seconds East, twenty-two and ninety-two hundredths (22.92) feet to a point; and [2] by a curve to the left having a radius of two hundred twenty-five and zero hundredths (225.00) feet, an arc distance of forty-eight and eighty-five hundredths (48.85) feet, and a long chord bearing and distance of North forty-five (45) degrees twenty-five (25) minutes twenty-five (25) seconds East, forty-eight and seventy-five hundredths (48.75) feet to a point at Lot No. 41 of Previously Approved Hickory Ridge Subdivision, Section 2; thence along Lot No. 41 and along Lot No. 77 on the subdivision plan hereinafter referred to, South fifty (50) degrees forty-seven (47) minutes thirty-one (31) seconds East, one hundred seven and eighty-one hundredths (107.81) feet to a point at Lot No. 47 on the subdivision plan hereinafter referred to; thence along Lot No. 47 and along Lot No. 46, South fifty-one (51) degrees thirty-eight (38) minutes thirty-seven (37) seconds West, ninety-four and sixty hundredths (94.60) feet to a point at corner of Lot No. 43, aforesaid; thence along Lot No. 43, North thirty-eight (38) degrees twenty-one (21) minutes twenty-three (23) seconds West, one hundred and zero hundredths (100.00) feet to a point on the right-of-way line of Ash Drive, the point and place of BEGINNING. CONTAINING 8,446 square feet, .1939 acres, and designated as Lot No. 42 on Final Subdivision Plan for Section Three of Hickory Ridge Development, prepared by Eric L. Dittenbaugh, P.L.S., dated August 26, 2004, last revised March 10, 2005, File No. 02038, which said plan is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 4021, page 178 (Plat Book 88, page 79).

IT BEING part of the premises which James A. Orndorff and Brenda G. Orndorff, his wife, by their deed dated July 15, 2005, and recorded July 19, 2005, in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 4047, page 302, granted and conveyed to H Ridge, L.P., Grantor herein. J.A. Myers Homes, LLC, joins in this deed to convey its interest in and to the improvements erected on the hereinabove described tract of land.

RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN Louis E. Bremer and Melissa A. Bremer, husband and wife, by Deed from H. Ridge, L.P. and J.A. Myers Homes, LLC, dated 03/10/2006, recorded 03/14/2006, in Deed Book 4343, page 74.

Premises being: 18 Ash Drive, Littlestown, PA 17340-0000

Tax Parcel No. 06-010-0037-000

SEIZED and taken into execution as the property of **Louis E. Bremer, Jr. & Melissa A. Bremer a/k/a Melissa A. Moser** 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 November 2, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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8/24, 31 & 9/7

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
NO. 07-S-979
Action to Quiet Title

MARK E. WEAVER, SR. and MAUREEN
S. WEAVER, husband and wife, Plaintiffs
vs.

HARRY VIENER and FANNIE M.
VIENER, husband and wife, their
respective heirs, executors, administra-
tors, successors and assigns, and JOHN
P. DEHAAS and PATSY A. DEHAAS,
husband and wife, Defendants

TO: Harry Viener and Fannie M. Viener,
husband and wife, their respective heirs,
executors, administrators, successors
and assigns:

NOTICE

YOU ARE NOTIFIED that the Plaintiffs
have commenced an action to quiet title
against you by complaint filed to the
above docket number on August 15,
2007, which action you are required to
defend.

You are required to plead to the said
complaint within twenty (20) days after
service has been completed by publica-
tion or judgment by default may be
entered against you.

If you wish to defend, you must enter a
written appearance personally or by
attorney and file your defenses or objec-
tions in writing with the Court. You are
warned that if you fail to do so, the case
may proceed without you and a judg-
ment may be entered against you with-
out further notice for the relief requested
by the Plaintiffs. You may lose money or
property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO
YOUR LAWYER AT ONCE. IF YOU DO
NOT HAVE A LAWYER, GO TO OR
TELEPHONE THE OFFICE SET
FORTH BELOW. THIS OFFICE CAN
PROVIDE YOU WITH INFORMATION
ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE
A LAWYER, THIS OFFICE MAY BE
ABLE TO PROVIDE YOU WITH INFOR-
MATION ABOUT AGENCIES THAT MAY
OFFER LEGAL SERVICES TO ELIGI-
BLE PERSONS AT A REDUCED FEE
OR NO FEE.

Court Administrator
Adams County Courthouse
Gettysburg, PA 17325
Telephone Number: 717-337-9846
Toll Free Number: 1-888-337-9846

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execu-
tion, Judgment No. 07-S-659 issuing out
of the Court of Common Pleas of Adams
County, and to me directed, will be ex-
posed to Public Sale on Friday, the 12th
day of October, 2007, at 10:00 o'clock in
the forenoon at the Sheriff's Office locat-
ed in the Courthouse, Borough of Gettys-
burg, Adams County, PA, the following
Real Estate, viz.:

ALL that certain property situated in
the Township of Mt. Pleasant, in the
County of Adams, Commonwealth of
Pennsylvania, and being described as
follows: 4-28. Being more fully described
in a deed dated 11/02/98 and recorded
11/02/98, among the land records of the
County and State set forth above, in
Deed Volume 1693 and Page 205.

Jeffrey B. Chipley and Dawn L.
Chipley, husband and wife.

Parcel Identification No: 32-004-0028-
000

Premises: 19 Wheatland Drive,
Gettysburg, PA 17325-0000, Mt. Pleasant,
Adams County, Pennsylvania

TITLE TO SAID PREMISES IS VEST-
ED IN Jeffrey B. Chipley, by Deed from
Jeffrey B. Chipley and Dawn L. Chipley,
husband and wife, dated 11/14/2005,
recorded 11/22/2005, in Deed Book
4217, page 262.

SEIZED and taken into execution as
the property of **Jeffrey B. Chipley** 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 November 2, 2007,
and distribution will be made in accord-
ance with said schedule, unless excep-
tions are filed thereto within 20 days after
the filing thereof. Purchaser must settle
for property on or before filing date.

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

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

8/24, 31 & 9/7

NOTICE BY THE ADAMS COUNTY
CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all
heirs, legatees and other persons con-
cerned 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 con-
firmation of accounts and entering
decrees of distribution on Tuesday,
September 11, 2007, at 9:00 a.m.

HENRICHS—Orphans' Court Action
Number OC-81-07. The First and Final
Account of Donald W. Hinrichs, Executor
of the Estate of William J. Hinrichs,
deceased, late of Straban Township,
Adams County, Pennsylvania.

SMITH—Orphans' Court Action
Number OC-86-07. The First and Final
Account of Jack Owens a/k/a John R.
Owens, Jr., Executor of the Estate of
Beulah M. Smith, deceased, late of
Straban Township, Adams County,
Pennsylvania.

MUDD—Orphans' Court Action
Number OC-92-07. The First and Final
Account of Molly Mudd Freedenberg,
Executor of the Estate of Margaret A.
Mudd, deceased, late of the Borough of
Gettysburg, Adams County, Pennsylvania.

HOBBS—Orphans' Court Action
Number OC-128-05. The First and Final
Account of Karl Hobbs, Lillian Hamer,
Rose Zita Herring (now Rose Z. Bream)
and Linda Steinle, Executors of the
Estate of Zita S. Hobbs, deceased, late
of Liberty Township, Adams County,
Pennsylvania.

HELDIBRIDLE—Orphans' Court
Action Number OC-87-07. The First and
Final Account of Donna J. Winters and
Tammie S. Stern, Co-Executors of the
Estate of Leatrice Mae Heldibridle,
deceased, late of Oxford Township,
Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

8/31 & 9/7

ESTATE NOTICES

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

FIRST PUBLICATION

ESTATE OF BURTON LESLIE GODDARD a/k/a BURTON L. GODDARD, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Personal Representative: Paul T. Hempel, c/o Patterson, Kiersz & Murphy, P.C., 239 East Main Street, Waynesboro, PA 17268-1681

Attorney: Patterson, Kiersz & Murphy, P.C., 239 East Main Street, Waynesboro, PA 17268-1681

ESTATE OF RICHARD L. LANGLEY, SR., DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Luv L. Lookingbill, 4 Colleen Trail, Fairfield, PA 17320

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

ESTATE OF VICKI A. STAUB, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Administrator: H. Frank Staub, III, 170 Baugher Drive, Hanover, PA 17331

Attorney: Crabbs & Crabbs, 202 Broadway, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF CLAIR A. BEAMER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Joann M. Ricciuto, 3322 Cross Country Dr., Wilmington, DE 19810

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

ESTATE OF MICHAEL ANTHONY JOSEPH KUHN, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Dale Thomas, 1460 Sell Station Road, Littlestown, PA 17340

Attorney: Thomas E. Miller, Esq., Miller & Shultis, P.C., 249 York Street, Hanover, PA 17331

ESTATE OF DEBRA LEFLER a/k/a DEBRA L. LEFLER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Brenda Kram, 56 Riverview Drive, Lottsburg, VA 22511

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

ESTATE OF GLADYS MARIE MECKLEY, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Co-Executors: Darlene M. Long, 2 Linden Avenue, Hanover, PA 17331; Jeffrey L. Meckley, 112 Friendly Drive, Hanover, PA 17331

Attorney: Kathleen M. Kotula, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore St., Gettysburg, PA 17325

ESTATE OF ETHEL MARGARET STULTZ, DEC'D

Late of Liberty Township, Adams County, Pennsylvania

Executors: Cecil Stultz, 17643 Tract Rd., Emmitsburg, MD 21727; Charles Stultz, 284 Stultz Rd., Fairfield, PA 17320; Doris Mallette, 96 Belmont Rd., Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF HAZEL MAY HARTMAN, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Adams County National Bank, Attn: Karen B. Arthur, Asst. Vice President & Trust Officer, Lincoln Square Office, P.O. Box 4566, Gettysburg, PA 17325

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

ESTATE OF JARED S. LUCABAUGH, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Administratrix: Ruth Elaine Keeney, c/o Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

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

ESTATE OF WILTON R. MILLER, DEC'D

Late of the Borough of New Oxford, Adams County, Pennsylvania

Administrator: Stephen J. Miller, 40 Highland Avenue, Abbottstown, PA 17301

Attorney: Larry W. Wolf, P.C., 215 Broadway, Hanover, PA 17331

ESTATE OF HAZEL M. MYERS, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Personal Representative: Michelle A. Leppo, 1030 Linden Avenue, McSherrystown, PA 17344

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

ESTATE OF JULIA B. MYERS, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executor: Adams County National Bank, Attn: Christine R. Settle, Asst. Vice President & Trust Officer, Lincoln Square Office, P.O. Box 4566, Gettysburg, PA 17325

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

ESTATE OF JOANNE M. POIST, DEC'D

Late of the Borough of New Oxford, Adams County, Pennsylvania

Executor: Michael G. Lookenbill, 341 Lincolnway West, New Oxford, PA 17350

Attorney: Larry W. Wolf, P.C., 215 Broadway, Hanover, PA 17331

Adams County Legal Journal

Vol. 49

September 14, 2007

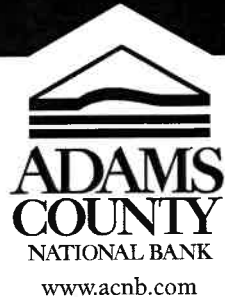
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CORNERSTONE VS. CUMBERLAND TWP.

In business since 1857.
For business since 1857.

Celebrating 150 years!
1857-2007



 Equal Housing Lender Equal Opportunity Lender Member FDIC.

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-716 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 19th day of October, 2007, 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 Freedom Township, Adams County, Pennsylvania, more particularly described as follows:

BEGINNING at an iron pin on the East side of State Highway Route 15 leading from Emmitsburg to Gettysburg; thence running along the East side of said State Highway North 26 degrees East, 300 feet to an iron pin at a post at the East side of said State Highway; thence running by land now or formerly of Glenn Witherow, South 64 degrees East, 201 feet to an iron pin (this course was inadvertently omitted in the prior Deed); thence running by land of the same South 26 degrees West, 300 feet to an iron pin; thence running by land of the same North 64 degrees West, 201 feet to an iron pin on the East side of said State Highway, the place of BEGINNING. CONTAINING 1 acre, 61 perches and 143 square feet.

IT BEING THE SAME TRACT OF LAND which Thakor J. Patel and Raju T. Patel, husband and wife, by Deed dated January 5, 2001, and about to be recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, sold and conveyed unto DISHA, INC., a Pennsylvania corporation, the Mortgagee herein.

Premises Being: 3180 Emmitsburg Road, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **DISHA, Inc.** 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 November 9, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after

the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/14, 21 & 28

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-640 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 19th day of October, 2007, 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 partly in Union Township and partly in the Borough of Littlestown, Adams County, Pennsylvania, bounded and limited as follows, to wit:

BEGINNING for a point along the southwesterly right-of-way line of Wheaton Drive and Lot No. 110 of the hereinafter referred to subdivision plan; thence along said Lot No. 110, South forty-five (45) degrees two (02) minutes thirty-six (36) seconds West, one hundred thirty-nine and ninety-six hundredths (139.96) feet to a point at lands now or formerly of Donald Smith; thence along said lands now or formerly of Donald Smith, North forty-five (45) degrees seventeen (17) minutes forty-one (41) seconds West, one hundred and zero hundredths (100.00) feet to a point at Lot No. 112; thence along said Lot No. 112, North forty-four (44) degrees forty-two (42) minutes nineteen (19) seconds East, one hundred forty and zero hundredths (140.00) feet to a point along the Southwesterly right-of-way line of Wheaton Drive, thence along the Southwesterly right-of-way line of Wheaton Drive, south forty-five (45) degrees seventeen (17) minutes forty-one (41) seconds East, eighty-six and thirty-three hundredths (86.33) feet to a point; thence continuing along same by a curve to the fifth which had a radius of two thousand four hundred fifty-six and

sixty-one hundredths (2,456.61) feet, an arc distance of fourteen and forty-nine hundredths (14.49) feet, the long chord of which is South forty-five (45) degrees seven (07) minutes thirty-two (32) seconds East, fourteen and forty-nine hundredths (14.49) feet to a point, the place of BEGINNING.

CONTAINING 14,058 square feet and being identified as Lot No. 111 on the final subdivision plan of Phase II, Meadowview Estates, which plan is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 60, page 50.

MAP #41-03-56

IMPROVEMENTS: Residential dwelling

Premises Being: 133 Wheaton Drive, Littlestown, PA 17340

SEIZED and taken into execution as the property of **Joanne M. Seeley & Shane E. Seeley** 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 November 9, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/14, 21 & 28

CORNERSTONE VS. CUMBERLAND TWP.

1. Where a Court has taken no additional evidence in a land development case, the Court's review is limited to determining whether or not the Board abused its discretion, committed an error of law, or made findings of fact not supported by substantial evidence.

2. Where a land development plan has been denied on a number of bases, the decision of the Board should not be overturned if rejection of a plan is supported by even one of the grounds set forth in the denial.

3. A preliminary plan must be approved if it meets all specific, objective requirements under a subdivision and land development ordinance.

4. When the preliminary plan contains only minor (or technical) defects which are correctable by amendment, it must be approved subject to a condition that necessary corrections be made.

5. The preliminary review process serves to protect the Township in that the final plan will only be approved if the Board concludes that the developer has satisfied all of the previously identified defects.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 06-S-368, CORNERSTONE DEVELOPMENT GROUP, INC., VS. THE BOARD OF SUPERVISORS OF CUMBERLAND TOWNSHIP.

Susan J. Smith, Esq., for Appellant
Cheryl L. Kovaly, Esq., for Appellee
George, J., September 27, 2006

OPINION

Cornerstone Development Group, Inc. ("Cornerstone") is the owner and developer of a roughly ninety (90) acre tract of land spanning Butler and Cumberland Townships by Route 34 in Adams County, Pennsylvania. Cornerstone submitted a preliminary land development plan for a one hundred fifty-seven (157) home residential community to the Board of Supervisors of Cumberland Township ("the Board"). After meeting on February 28, 2006, the Board voted to reject the plan, notifying Cornerstone of this decision via a letter dated March 1, 2006. Cornerstone files the instant appeal claiming that the Board erred in denying, rather than conditionally approving, the preliminary plan.

Where a Court has taken no additional evidence in a land development case, the Court's review is limited to determining whether or not the Board abused its discretion, committed an error of law, or made findings of fact not supported by substantial evidence. *Puleo v. Zoning Hearing Bd. of Schuylkill Township*, 722 A.2d 789, 790 n.2

(Pa. Commw. Ct. 1999). “Substantial evidence” has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Valley View Civic Ass’n v. Zoning Bd. of Adjustment*, 462 A.2d 637, 639 (Pa. 1983). Where a land development plan has been denied on a number of bases, the decision of the Board should not be overturned if rejection of a plan is supported by even one of the grounds set forth in the denial. *Herr v. Lancaster County Planning Comm’n*, 625 A.2d 164, 168-69 (Pa. Commw. Ct. 1993).

In rejecting Cornerstone’s plan, the Board listed two (2) separate reasons for denial.¹ Cornerstone, in turn, challenges both of these reasons. It is Cornerstone’s position that conditional approval, rather than outright denial, is the correct course of conduct in this instance, and that the Board erred when it denied the preliminary plan. The controlling case in this area, *Caco Three, Inc. v. Board of Supervisors of Huntington Township*, 845 A.2d 991 (Pa. Commw. Ct. 2004), seemingly supports Cornerstone’s position.

In *CACO*, this court affirmed the Board of Supervisors’ denial of CACO’s preliminary development plan, citing several reasons given by the Board in their denial letter. On appeal, the Commonwealth Court reversed, holding that the Board abused its discretion in that

¹The reasons given, in relevant part, are as follows:

a. Sewer

As you know, Cumberland and Butler Townships were unable to agree on the extension of public sewer to the development. Since a public sewer system was therefore not possible, the feasibility of constructing a separate private system and treatment works needed to be investigated and a report submitted setting forth the findings. This was not done as required by Section 503(3) of the Cumberland Township Subdivision and Land Development Ordinance. Nor was a revised plan submitted providing for sewer service where a public system is not possible.

b. Water

The application in question contemplates installation of public water facilities within the development. See Section 503 subsections 5 through 8. The Township has never received confirmation from the Gettysburg Municipal authority that it would provide public water to the development nor has a report been received relative to the feasibility of constructing a separate water supply system in accordance with subparagraph 6 of Section 503. For this additional reason, namely, provision for public and/or private water supply, the subject plan was denied.

none of the reasons relied upon justified the outright disapproval of the preliminary plan. In reaching this conclusion the Court opined that a preliminary plan must be approved if it meets all specific, objective requirements under a subdivision and land development ordinance. *CACO*, 845 A.2d at 993. [E]ven when a preliminary plan fails to comply fully with all objective, substantive ordinance requirements, the governing body may in its discretion grant a conditional approval. *Id.* at 993. Additionally, the Court stated that [w]hen the preliminary plan contains only minor [or technical] defects which are correctable by amendment, it must be approved subject to a condition that necessary corrections be made. *Id.* at 994.

Essentially, one must determine whether a specific defect can be effectively cured via subsequent amendment by the submitting party. If so, the plan must be approved, subject to the condition that the defect be cured before final approval is granted. Cornerstone alleges that the defects named by the Board cannot serve as a basis for denial of the preliminary plan because the alleged defects could be cured before the final plan approval process. I agree.

The mandates of *CACO* allow for the identification and amendment of defects, while maintaining the protection scheme inherent in the two stage review process. A reviewing Board, during the preliminary stages, can utilize the opportunity to clearly identify all amendable defects to be cured prior to final plan approval. These defects are then related to the developer, who alone shoulders the burden of achieving compliance with all identified requirements. Both parties then enter into the conditional modification period with an understanding of exactly what must be achieved prior to the final approval process. Additionally, the preliminary review process serves to protect the Township in that the final plan will only be approved if the Board concludes that the developer has satisfied all of the previously identified defects. The Board retains the final say while the developer is given a final chance to meet the Township's requirements.

With this said, it becomes apparent that the reasons cited by the Board in their March 1, 2006 denial letter, violate the *CACO* mandates. It is true that Cornerstone's plan failed to provide a finalized water and sewer network. However, this defect could be remedied prior to final plan approval, and I find no evidence in the record to

indicate otherwise. Granting conditional approval will in no way harm the Board. Should Cornerstone fail to provide the necessary water systems for final approval, the Board could then rightly reject the plan for failing to satisfy the Township Subdivision and Land Development Ordinance (“SALDO”).²

Because I find that the reasons relied upon by the Board do not justify the outright disapproval of the preliminary plan, I remand this matter to the Board with instruction that it approve the preliminary plan submitted by Cornerstone subject to a condition that the final plan must include verification that public water and sewer facilities service the properties.

ORDER OF COURT

AND NOW, this 27 day of September, 2006, Appellant’s appeal is sustained. This matter is remanded with instructions that the Board approve Appellant’s preliminary plan, subject to a condition that the final plan must include verification that public water and sewer facilities service the properties.

²Presently, both parties agree to treat as final the denial of the present plan should Cornerstone fail to remedy the present defects prior to the final approval process. In such an instance, Cornerstone would be required to submit a new plan for preliminary review rather than attempt to file modification, as any such modification would essentially alter the entire plan.

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 MARGARET C. CABLE, DEC'D**

Late of Union Township, Adams County, Pennsylvania

Administrator: Mary Margaret Hewes, 22 Fieldcrest Dr., Littlestown, PA 17340

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

ESTATE OF MADELINE V. CLINEDINST, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executors: Arlene Briggs, 510 Brysonia Road, Biglerville, PA 17307; David G. Clinedinst, 999C Brysonia-Wenksville Road, Biglerville, PA 17307

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

ESTATE OF MARGARET E. HENDRICKS, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Erik J. Hendricks, 185 Tiffany Lane, Gettysburg, PA 17325

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

ESTATE OF ELEANOR L. KNOTTS, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: William C. Knotts, 723 Chambersburg Road, Apt. A, Gettysburg, PA 17325

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

SECOND PUBLICATION**ESTATE OF BURTON LESLIE GODDARD a/k/a BURTON L. GODDARD, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Personal Representative: Paul T. Hempel, c/o Patterson, Kiersz & Murphy, P.C., 239 East Main Street, Waynesboro, PA 17268-1681

Attorney: Patterson, Kiersz & Murphy, P.C., 239 East Main Street, Waynesboro, PA 17268-1681

ESTATE OF RICHARD L. LANGLEY, SR., DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Luv L. Lookingbill, 4 Colleen Trail, Fairfield, PA 17320

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

ESTATE OF VICKI A. STAUB, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Administrator: H. Frank Staub, III, 170 Baugher Drive, Hanover, PA 17331

Attorney: Crabbs & Crabbs, 202 Broadway, Hanover, PA 17331

THIRD PUBLICATION**ESTATE OF CLAIR A. BEAMER, DEC'D**

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Joann M. Ricciuto, 3322 Cross Country Dr., Wilmington, DE 19810

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

ESTATE OF MICHAEL ANTHONY JOSEPH KUHN, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Dale Thomas, 1460 Sell Station Road, Littlestown, PA 17340

Attorney: Thomas E. Miller, Esq., Miller & Shultis, P.C., 249 York Street, Hanover, PA 17331

ESTATE OF DEBRA LEFLER a/k/a DEBRA L. LEFLER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Brenda Kram, 56 Riverview Drive, Lottsburg, VA 22511

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

ESTATE OF GLADYS MARIE MECKLEY, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Co-Executors: Darlene M. Long, 2 Linden Avenue, Hanover, PA 17331; Jeffrey L. Meckley, 112 Friendly Drive, Hanover, PA 17331

Attorney: Kathleen M. Kotula, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore St., Gettysburg, PA 17325

ESTATE OF ETHEL MARGARET STULTZ, DEC'D

Late of Liberty Township, Adams County, Pennsylvania

Executors: Cecil Stultz, 17643 Tract Rd., Emmitsburg, MD 21727; Charles Stultz, 284 Stultz Rd., Fairfield, PA 17320; Doris Mallette, 96 Belmont Rd., Gettysburg, PA 17325

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—EQUITY
NO. 07-SU-1045
Action to Quiet Title

BRICK POINT CONSTRUCTION, Plaintiff
vs.

PATRICIA ANNE TYRRELL, her heirs,
administrators, successors and assigns,
Defendant

TO: Patricia Anne Tyrrell, her heirs,
administrators, successors and assigns

TAKE NOTICE that on August 31, 2007, Brick Point Construction, filed a Complaint in Action to Quiet Title, against Patricia Anne Tyrrell, her heirs, administrators, successors and assigns, averring that Brick Point Construction is the owner of the real property described herein. The Complaint requests the Court to extinguish any possible interest you may have in said real estate. The subject property is a tract of land situate in Liberty Township, Adams County, Pennsylvania, being Lot No. 59 in Charnita Subdivision, Section AB, more particularly bounded and described as follows:

BEGINNING at a point in the cul-de-sac of Strausbaugh Trail at Lot No. 58; thence in the cul-de-sac and by said lot, South 35 degrees 18 minutes 33 seconds West, 269.40 feet to Lot No. 96; thence by said lot and by Lot No. 95, North 54 degrees 39 minutes 37 seconds West, 80 feet to Lot No. 60; thence by said lot and by Lot No. 55, North 27 degrees 26 minutes 53 seconds East, 253.87 feet to Lot No. 56; thence by said lot and by Lot No. 55, North 27 degrees 26 minutes 53 seconds East, 253.87 feet to Lot No. 56; thence by said lot and in the cul-de-sac of Strausbaugh Trail, South 63 degrees 32 minutes 56 seconds East, 116.11 feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section AB, Charnita" dated November 19, 1969, prepared by Evans, Hagan & Holdefer and recorded in Adams County Plat Book No. 1 at page 61.

BEING THE SAME WHICH Charnita, Inc., by deed dated September 18, 1970 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Deed Book 287 at page 646, sold and conveyed unto Patricia Anne Tyrrell, Defendant herein.

The Complaint requested the Court to enter a Decree and Order that the title of the property described above is in the

Plaintiffs, and that the Defendant be forever barred from asserting any right, lien, title or interest in the said land inconsistent with the interests of the Plaintiffs as set forth in their Complaint.

WHEREFORE, by Order dated September 4, 2007, the Court of Common Pleas of Adams County, Pennsylvania, has ordered that service of the Complaint be made on the above Defendant, her respective heirs, personal representatives, successors and assigns, by publication. Plaintiff will request the Court to enter a final judgment ordering that any possible legal interest the Defendant might have had in the property be extinguished.

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the Complaint filed in the Adams County Court of Common Pleas at No. 07-SU-1045 and described hereinabove, you must take action within **twenty (20) days** after this publication by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for the relief requested by Plaintiffs. You may lose property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Adams County Courthouse
Gettysburg, PA 17325
717-334-6781

Hartman & Yannetti
Bernard A. Yannetti, Esq.
Attorney for Plaintiffs
126 Baltimore Street
Gettysburg, PA 17325
717-334-3105

9/14

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-1094 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 19th day of October, 2007, 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 or parcel of land and premises situate, lying and being in the Township of Reading in the County of Adams and Commonwealth of Pennsylvania, and particularly described as follows:

MORE particularly described as Lot No. 424-A 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, Pennsylvania in Plan Book 1, Page 4 and subject to all legal highways, easements, right-of-way and restrictions of record.

Tax Parcel #: (36) 2-38A

Property Address: 20 Sherman Drive, East Berlin, PA 17316

SEIZED and taken into execution as the property of **Michael J. Shumberger** 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 November 9, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/14, 21 & 28

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September 21, 2007

No. 18, pp. 107-113

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NOVINGER'S VS. COLONIAL SURETY

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-716 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 19th day of October, 2007, 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 Freedom Township, Adams County, Pennsylvania, more particularly described as follows:

BEGINNING at an iron pin on the East side of State Highway Route 15 leading from Emmitsburg to Gettysburg; thence running along the East side of said State Highway North 26 degrees East, 300 feet to an iron pin at a post at the East side of said State Highway; thence running by land now or formerly of Glenn Witherow, South 64 degrees East, 201 feet to an iron pin (this course was inadvertently omitted in the prior Deed); thence running by land of the same South 26 degrees West, 300 feet to an iron pin; thence running by land of the same North 64 degrees West, 201 feet to an iron pin on the East side of said State Highway, the place of BEGINNING. CONTAINING 1 acre, 61 perches and 143 square feet.

IT BEING THE SAME TRACT OF LAND which Thakor J. Patel and Raju T. Patel, husband and wife, by Deed dated January 5, 2001, and about to be recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, sold and conveyed unto DISHA, INC., a Pennsylvania corporation, the Mortgagee herein.

Premises Being: 3180 Emmitsburg Road, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **DISHA, Inc.** 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 November 9, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after

the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/14, 21 & 28

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-640 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 19th day of October, 2007, 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 partly in Union Township and partly in the Borough of Littlestown, Adams County, Pennsylvania, bounded and limited as follows, to wit:

BEGINNING for a point along the southwesterly right-of-way line of Wheaton Drive and Lot No. 110 of the hereinafter referred to subdivision plan; thence along said Lot No. 110, South forty-five (45) degrees two (02) minutes thirty-six (36) seconds West, one hundred thirty-nine and ninety-six hundredths (139.96) feet to a point at lands now or formerly of Donald Smith; thence along said lands now or formerly of Donald Smith, North forty-five (45) degrees seventeen (17) minutes forty-one (41) seconds West, one hundred and zero hundredths (100.00) feet to a point at Lot No. 112; thence along said Lot No. 112, North forty-four (44) degrees forty-two (42) minutes nineteen (19) seconds East, one hundred forty and zero hundredths (140.00) feet to a point along the Southwesterly right-of-way line of Wheaton Drive, thence along the Southwesterly right-of-way line of Wheaton Drive, south forty-five (45) degrees seventeen (17) minutes forty-one (41) seconds East, eighty-six and thirty-three hundredths (86.33) feet to a point; thence continuing along same by a curve to the fifth which had a radius of two thousand four hundred fifty-six and

sixty-one hundredths (2,456.61) feet, an arc distance of fourteen and forty-nine hundredths (14.49) feet, the long chord of which is South forty-five (45) degrees seven (07) minutes thirty-two (32) seconds East, fourteen and forty-nine hundredths (14.49) feet to a point, the place of BEGINNING.

CONTAINING 14,058 square feet and being identified as Lot No. 111 on the final subdivision plan of Phase II, Meadowview Estates, which plan is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 60, page 50.

MAP #41-03-56

IMPROVEMENTS: Residential dwelling

Premises Being: 133 Wheaton Drive, Littlestown, PA 17340

SEIZED and taken into execution as the property of **Joanne M. Seeley & Shane E. Seeley** 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 November 9, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/14, 21 & 28

NOVINGER'S VS. COLONIAL SURETY

1. The surety is bound by the instrument of surety, that when, by its terms, the obligation of the surety is the same as that of the principal as soon as the principal is in default the surety may be sued immediately before any proceedings are had against the principal.

2. A surety agreement imposes joint and several liability.

3. An indispensable party is defined as "one whose rights are so directly connected with and affected by litigation that he must be a party of record to protect such rights and his absence renders any order or decree of court null and void for want of jurisdiction."

4. When determining whether a party is indispensable, the Pennsylvania Supreme Court has held that the following considerations are pertinent: (1) Do absent parties have a right or interest related to the claim; (2) If so, what is the nature of that right or interest; (3) Is that right or interest essential to the merits of the issue; and (4) Can justice be afforded without violating the due process rights of absent parties.

5. A surety can be sued under Pennsylvania law without a proceeding against his principal.

6. A surety is usually bound with his principal by the same instrument, executed at the same time and on the same consideration. He is an original promisor and debtor from the beginning and is held ordinarily to every known default of his principal.

7. A bond for "sums justly due" commits and makes a surety liable for interest that accrues from the time of default and not from the date when the surety has notice thereof.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 06-S-722, NOVINGER'S INC. VS. COLONIAL SURETY COMPANY.

Thomas S. Beckley, Esq. and Elizabeth S. Beckley, Esq., for Plaintiff
Roberta Binder Heath, Esq., for Defendant

Bigham, J., September 28, 2006

OPINION

STATEMENT OF FACTS

Presently, before this Court are the preliminary objections filed by Colonial Surety Company (hereinafter "Defendant") to the Complaint filed by Novinger's, Incorporated (hereinafter "Plaintiff"). Plaintiff filed a Complaint in Dauphin County on April 20, 2006 seeking to recover funds it is owed by J.C. Orr & Son, Incorporated (hereinafter "J.C."). J.C. was hired as the general contractor by the Conewago Valley School District to construct a new intermediate school in New Oxford, Pennsylvania. J.C. obtained a payment bond from the Defendant for the protection of claimants supplying labor and materials. The payment bond listed J.C. as the principal and Defendant as the surety of the bond. Plaintiff is

seeking to recover funds for their work completed on the project from the Defendant because J.C. has allegedly failed to pay the balance due of \$78,110.39 and failed to approve or reject a pending contract change order request of \$16,126.11.

Defendant filed preliminary objections and a supporting brief on May 25, 2006 requesting Plaintiff's complaint be dismissed based on the following seven objections:

- I. failure to join an indispensable party because J.C. is the named principal on the bond and general contractor on the project covered by the bond;
- II. failure to join an indispensable party because the bond sued upon was jointly executed and their assumpsit action arises from the terms of the subcontract;
- III. improper venue in Dauphin County because the project is located in Adams County and the payment bond covers work to be performed in Adams County;
- IV. lack of jurisdiction in Dauphin County because this is an action in assumpsit involving a project in Adams County;
- V. lack of jurisdiction in Dauphin County because the subcontractor's agreement provided for alternative dispute resolution;
- VI. improperly seeking an interest to which it is not entitled based on the language of the bond which does not permit recovery on a disputed claim; and
- VII. defective service of the complaint.

On June 9, 2006, Plaintiff and Defendant entered into a Joint Stipulation requesting Dauphin County to transfer the case to Adams County. On June 12, 2006, the Honorable Todd A. Hoover entered an Order transferring the case to Adams County. Pursuant to that Order, preliminary objections III and IV were disposed of and the remaining preliminary objections were sent to this Court for consideration.

On July 3, 2006 Plaintiff filed its brief in opposition to the preliminary objections in Adams County. This Court entered an order on July 6, 2006 acknowledging receipt of this transferred case and instructing both parties that the remaining preliminary objections would be decided upon the submitted briefs.

DISCUSSION

At the outset, Plaintiff argues this Court should only consider the preliminary objections that were briefed by the Defendant based on Local Rule 1028(c). Local Rule 1028(c) governs preliminary objections and subsection (A)(1) provides that: "If a supporting brief is not filed within ten (10) days of the filing of the preliminary objections, the preliminary objections shall be deemed withdrawn and, upon praecipe, the Court shall enter an Order directing the objector to file an appropriate pleading." In this case, Defendant filed its supporting brief at the same time they filed their preliminary objections in Dauphin County. Therefore, the time requirement imposed by Local Rule 1028(c) has been met and all objections raised and remaining will be considered.

INDISPENSABLE PARTY

The preliminary objection raised by Defendant, that J.C. is an indispensable party to this action, is overruled. Defendant argues J.C. is an indispensable party to this assumpsit action because J.C. was named as the principal of the bond and is listed as the general contractor for the project covered by the bond. Defendant cites to two common pleas cases in support of this argument: *Specialty Products and Insulating Co. v. Aetna Casualty & Surety Co.*, 110 Dauphin Cty. Rptr. 432 (Oct. 31, 1990) and *Rusynsky Admr. v. Conahan*, 30 Luz. L. 348 (1935).

In *Specialty Products*, the Court dealt with a sub-subcontractor who had contracted with the principal's subcontractor. The surety's principal became a guarantor who would be secondarily liable to the principal debtor. For the foregoing reasons, the Court found it necessary to join both the subcontractor and the principal to the case. 110 Dauphin Cty. Rptr. at 435. Our case is distinguishable from *Specialty Products*, because here Plaintiff dealt directly with J.C., the principal debtor to the Defendant surety. In *Rusynsky*, the Court held that the principal and the surety were both to be included in the action upon the bond. 30 Luz. L. at 349. However, Pennsylvania's writ of replevin with bond procedure that was used to decide the case has since been declared unconstitutional by The United States Supreme Court in *Fuentes v. Shevin*, 407 U.S. 67, 96 (1972) and should therefore not be cited as legal authority.

Plaintiff argues that the principal/general contractor is not an indispensable party to an action brought on a payment bond and cites

to the Public Workers Contractors' Bond, Suretyship law, and the Pennsylvania Rules of Civil Procedure for support. Section 4 of the Public Works Contractors' Bond of 1967 provides the basis for a subcontractor to bring an action on a payment bond if they have not been paid. 8 P.S. § 194. The Pennsylvania Superior Court recognized that this Bond Law was designed to provide a substitute remedy for subcontractors who are excluded from the protections afforded by the Mechanics' Lien Law of 1963, 49 P.S. § 1303. *Valley Forge Industries, Inc. v. Armand Const., Inc.* 374 A. 2d 1312, 1315 (Pa. Super. 1977), *transferred to* 394 A.2d 677 (Pa. Cmwlth.). Plaintiffs argue for this protection claiming subcontractors who are working on public property cannot place a mechanics lien on the property if they are not paid and therefore in that situation the subcontractors must be able to proceed directly against the surety of the bond.

Plaintiff also cites to Suretyship law in support of their argument that Defendant is not an indispensable party. Section 1 of Title 8 provides: "Every written agreement hereafter made by one person to answer for the default of another shall subject person to the liabilities of suretyship, and shall confer upon him the rights incident thereto..." 8 P.S. § 1. To support their argument based on Suretyship law Plaintiff cites to *Plummer v. Wilson*, 185 A. 311, 313 (Pa. 1936) where it was held that the obligations of sureties are the same as principals and both are primarily liable upon default. Plaintiff also cites to *123 Broad Street Corp. v. Cushman & Wakefield, Inc.*, 121 F.R.D. 42, 43 (E.D. Pa. 1988), Citing to *Downer v. U.S. Fid. & Guaranty Co.*, 46 F. 2d 733 (3rd Cir. 1931) where the court held that "the surety is bound by the instrument of surety, that when, by its terms, the obligation of the surety is the same as that of the principal as soon as the principal is in default the surety may be sued immediately before any proceedings are had against the principal." *Downer*, 46 F. 2d at 735.

Plaintiffs also argue that Pa.R.C.P 2227(a), cited by Defendant in their preliminary objections but not their brief, would not apply to a surety agreement because a surety agreement imposes "joint and several" liability. Pa.R.C.P. 2227(a) provides: "Persons having only a joint interest in the subject matter of an action must be joined on the same side as plaintiffs or defendants." *Id.* We agree with Plaintiff in that this rule would not be applicable to a surety agreement on the basis of joint and several liability.

Plaintiff also discounts the legal authority cited by Defendant by arguing Defendant unsuccessfully raised the same argument in Perry County before the Honorable Keith B. Quigley in the case captioned *Robert & Meck, Inc. v. Colonial Surety Co.*, Case No. 99-669 (2000).

An indispensable party is defined as “one whose rights are so directly connected with and affected by litigation that he must be a party of record to protect such rights and his absence renders any order or decree of court null and void for want of jurisdiction.” See *Sharkus v. Blue Cross of Greater Philadelphia*, 431 A.2d 883, 888 (Pa. 1981), Citing to *Columbia Gas v. Diamond Fuel Co.*, 346 A.2d 788 (Pa. 1975). When determining whether a party is indispensable, the Pennsylvania Supreme Court has held that the following considerations are pertinent: (1) Do absent parties have a right or interest related to the claim; (2) If so, what is the nature of that right or interest; (3) Is that right or interest essential to the merits of the issue; and (4) Can justice be afforded without violating the due process rights of absent parties. *Mechanicsburg Area School Dist. v. Kline*, 431 A.2d 953, 957 (Pa. 1981).

Defendant asserts that applying the criteria found in *Kline* will support their argument that J.C. is an indispensable party. However, upon the Court’s application of these criteria to the facts in this case, it is clear that J.C. cannot be an indispensable party. J.C. does have a right/interest because he is the principal/general contractor in both contracts and the nature of that right/interest is that of a principal/general contractor. However, these rights/interests are not essential to the merits of the issue because Colonial, acting as surety, share with J.C. the same rights/interests in the payment bond. Furthermore, J.C.’s rights/interests in the subcontract are not relevant here because the subcontract is not the contract at issue. The due process rights of the parties are not being violated because J.C. and Colonial share the same rights/interests, and Colonial, acting as surety, can adequately represent the rights/interests of J.C.¹ Therefore,

¹The Court in *C.Arena & Co. v White Horse Village, Inc.*, 1992 WL 368455 (E.D. Pa. 1992), held that by applying Fed.R.Civ.P. 19(b), “[u]nder Pennsylvania law, in an action by a subcontractor against a surety, the principal is not an indispensable party”. The Court also gave two explanations for its finding: (1) “the surety instrument obligates the surety directly to the creditors.” *Id.* at 4. And, (2) “the principal’s interests are generally adequately represented by the surety and if the principal feared otherwise then they could easily intervene.” *Id.* at 4.

because the rights or interests that J.C. holds in the case are not essential to the merits and its due process rights are not being violated by continuing the case without him, J.C. does not fit the criteria to be an indispensable party.

“[A] surety can be sued under Pennsylvania law without a proceeding against his principal.” *Robert & Meck, Inc. v. Colonial Surety Co.*, Case No. 99-669 (2000). The actual definition of surety implies the same “[a] surety is usually bound with his principal by the same instrument, executed at the same time and on the same consideration. He is an original promisor and debtor from the beginning, and is held ordinarily to every known default of his principal.” BLACK’S LAW DICTIONARY, 1441 (6th ed. 1990), emphasis added. Because Defendant is in fact a surety, Defendant may be sued for the debts of J.C. without J.C. being a party. Therefore, the preliminary objections of the Defendant asserting J.C. as an indispensable party are overruled.

JURISDICTION

Defendant argues this Court lacks jurisdiction because the Sub-Contractors Agreement between Plaintiff and J.C. contained a provision for alternative dispute resolution and a forum selection clause for all claims to be brought in Blair County, Pennsylvania. In this case, the contractual agreement being sued upon is the payment bond, not the subcontractor’s agreement. Therefore, the provisions within the subcontractor’s agreement regarding forum selection are not binding on the parties presently before this litigation.

Jurisdiction in Adams County is correct. This preliminary objection for lack of jurisdiction is overruled.

DEMURRER

Defendant’s objection of improperly seeking prejudgment interest is sustained. Defendant claims Plaintiff is seeking prejudgment interest that cannot be sought against a surety. Plaintiff, in support of its argument for prejudgment interest, cites to *Fort Pitt Bridge Works v. Continental Casualty Co.*, 240 A2.d 493 (Pa. 1968) where the Court held that a bond for “sums justly due” commits and makes a surety liable for interest that accrues from the time of default and not from the date when the surety had notice thereof. *Id.* at 494. While Plaintiff is correct that the Court in that case allowed the collection of prejudgment interest from a surety, it does not apply to this

particular case. Here, Plaintiff are not actually seeking interest that would be accruing, but instead are seeking monies that stem from a new contract change that has not yet been accepted nor rejected by J.C. Therefore, the preliminary objection of improperly seeking interest is sustained. Plaintiff may proceed in seeking the balance of the original contract as agreed by the parties in the amount of \$78,110.39 against Defendant but may not seek the \$16,126.11 for the pending contract.

SERVICE

Lastly, Defendant argues Plaintiff failed to properly serve the complaint because they believe its Pennsylvania office should have been served by personal service based on its reading of the Pennsylvania Rules of Civil Procedure Rule 424. We disagree with Defendant's belief that only its resident corporation could be served by personal service. Rule 424 allows service of original process to be made at any regular place of business or activity of the corporation. Pa.R.C.P. 424. Rule 404 allows service of original process outside of the Commonwealth to be sent through the mail as described in Rule 403. Pa.R.C.P. 404. Rule 403 outlines the procedure for sending original process by certified mail. Pa.R.C.P. 403. Therefore, the complaint was properly served when sent by certified mail to its business office in Montvale, New Jersey. Because service was proper, this preliminary objection is overruled.

Accordingly, the attached Order is entered.

ORDER

AND NOW, this 26th day of September 2006, in consideration of Defendant's Preliminary Objections to Plaintiff's Complaint, IT IS ORDERED THAT Defendant's Preliminary Objections I, II, V, and VII are overruled and Defendant's Preliminary Objection VI is sustained. The parties are directed to proceed in accordance with the applicable Pennsylvania Rules of Civil Procedure.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-682 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of October, 2007, 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 Huntington Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING for the Northwest corner hereof at a railroad spike found near the center of Township Road T-588 (Ground Oak Church Road) at corner of land now or formerly of Samuel J. Bricker; thence by said land of Bricker, South 64 degrees 55 minutes 39 seconds East, 140.70 feet to a concrete monument set at an iron pipe found at the Northeast corner hereof, which pipe is located at the Northwest corner of land now or formerly of Robbie Lynn Barrick; thence by said land of Barrick, by land now or formerly of Katherine A. Riley and running through an iron pipe found 146.94 feet from the end of this course, South 18 degrees 12 minutes 20 seconds West, 325.81 feet to a steel pin set at the Northeast corner of Lot No. 2 on the plan of lots herebelow identified; thence by said Lot No. 2 and running through a steel pin set 25.00 feet from the end of this course, North 64 degrees 54 minutes 24 seconds West, 179.76 feet to a railroad spike set in or near the center of aforementioned Township Road T-588; thence in said road, North 25 degrees 05 minutes 36 seconds East, 323.40 feet to the above-described place of BEGINNING. CONTAINING 1.190 Acres.

TITLE TO SAID PREMISES IS VESTED IN Clifford B. King, Jr. and Jennifer L. King, husband and wife, as tenants of an estate by the entireties, by Deed from Jennifer L. Hayes, now Jennifer L. King and Clifford B. King, Jr., her husband, dated 06/20/2004, recorded 06/30/2004, in Deed Book 3624, page 81.

Premises being: 75 Ground Oak Church Road, Gardners, PA 17324

Tax Parcel No. 01-22-G05-0014-B0-0000

SEIZED and taken into execution as the property of **Clifford B. King, Jr. & Jennifer L. King** 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 November 16, 2007, and distribution will be made in accordance with said schedule, unless

exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/21, 28 & 10/5

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-1094 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 19th day of October, 2007, 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 or parcel of land and premises situate, lying and being in the Township of Reading in the County of Adams and Commonwealth of Pennsylvania, and particularly described as follows:

MORE particularly described as Lot No. 424-A 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, Pennsylvania in Plan Book 1, Page 4 and subject to all legal highways, easements, right-of-way and restrictions of record.

Tax Parcel #: (36) 2-38A

Property Address: 20 Sherman Drive, East Berlin, PA 17316

SEIZED and taken into execution as the property of **Michael J. Shumberger** 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 November 9, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/14, 21 & 28

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-660 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of October, 2007, 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 Biglerville, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin at the intersection of Fourth Street and a public alley; thence by said Fourth Street South 3-1/2 degrees West, 120 feet to an iron pin; thence by land now or formerly of Joe Boyer, South 86-1/2 degrees East, 35 feet to a stake; thence by land now or formerly of C.H. Musselman, North 64 degrees West to an iron pin 161.7 feet; thence by land now or formerly of the Adams County Packing Co., North 69.7 feet North 3-1/2 degrees East to an iron pin; thence by a public alley, South 87-3/4 degrees East, 155 feet to the place of BEGINNING.

TITLE TO SAID PREMISES IS VESTED IN Frank Alvarado and Kimberly Alvarado, husband and wife, as tenants by an estate by the entireties, by Deed from Jeanne L. Motter and Kenneth I. Bream, Co-Executors of the Estate of Fred W. Bream, dated 07/30/2001, recorded 08/09/2001, in Deed Book 2368, page 106.

Premises being: 101 4th Street, Biglerville, PA 17307

Tax Parcel No. 05-06-0001

SEIZED and taken into execution as the property of **Frank Alvarado & Kimberly Alvarado a/k/a Kimberly K. Alvarado** 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 November 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/21, 28 & 10/5

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—EQUITY
NO. 06-S-872
Action to Quiet Title

KENNETH J. KEENEY and PATSY I.
KEENEY, husband and wife, Plaintiffs
vs.

LEROY & WINIFRED BRENNER, And
the Estates of Leroy & Winifred Brenner,
Their heirs, administrators, successors
and assigns, Defendants

TO: Leroy & Winifred Brenner, And the
Estates of Leroy & Winifred Brenner,
their heirs, administrators, successors
and assigns.

You are notified that an Order has
been entered on August 27, 2007, direct-
ing that within thirty (30) days after this
publication, you shall commence an
Action in Ejectment or other appropriate
action against the Plaintiffs above to
assert any claim you may have in and to
the lands herein described or be forever
barred from asserting any right, lien, title
or interest inconsistent with the interest
or claim set forth in Plaintiffs' Complaint
with respect to the land herein described:

ALL that tract of land situate, lying
and being in Carroll Valley
Borough, Adams County,
Pennsylvania, being Lot No. 96 in
Charnita Subdivision, Section R1,
more particularly bounded and
described as follows:

BEGINNING at a point in the
center of a Faircloth Trail at Lot
No. 95, thence by said lot South
eleven degrees fourteen minutes
forty seconds East, two hundred
twenty-five (225) feet to Lot No.
97; thence by said lot, North sixty-
three degrees twenty-three min-
utes West, two hundred twenty-
five (225) feet to a point in the
center of said Faircloth Trail;
thence in said Faircloth Trail,
North twenty-six degrees thirty-
seven minutes East, one hundred
ten and eight one-hundredths
(110.08) feet to a point; thence
continuing in said Faircloth Trail
North seventy-eight degrees forty-
five minutes twenty seconds East,
one hundred ten and eight one-
hundredths (110.08) feet to the
place of the BEGINNING.

The above description was
taken from a plan of lots labeled
"Section R1, of Charnita, Inc." dated
May 29, 1970, prepared by
Gordon L. Brown, R.S. and
recorded in Adams County Plat
Book No. 1 at page 83.

BEING THE SAME WHICH
Tax Claim Bureau by its deed
dated December 11, 1985, and
recorded December 12, 1985, in
the Office of the Recorder of
Deeds of Adams County,
Pennsylvania, in Record Box 415
at page 410, sold and conveyed
unto Alan E. Baker, one of the
Grantors herein.

Robinson & Koenig
/s/Kevin G. Robinson, Esq.
Attorney for Plaintiffs
60 East Middle Street
Gettysburg, PA 17325
717-334-3341

9/21

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—EQUITY
NO. 06-S-872
Action to Quiet Title

KENNETH J. KEENEY And PATSY I.
KEENEY, Plaintiffs

vs.

LEROY & WINIFRED BRENNER, And
the Estates of Leroy & Winifred Brenner,
Their heirs, administrators, successors
and assigns, Defendants

ORDER

AND NOW, this 27th day of August,
2007, it appearing that a Complaint with
Notice to Defendant was filed herein on
August 3, 2006, and that the same was
served on Defendants, Leroy & Winifred,
husband and wife, their heirs, adminis-
trators, successors and assigns, by pub-
lication pursuant to Order of Court dated
December 11, 2006, on dates set forth in
an Affidavit of Service filed of record; and
it further appearing that no appearance
or any answer or other pleading has
been filed herein on behalf of any
Defendants within the time allotted by
law for the same, and, therefore, upon
motion of Kevin G. Robinson, Esq., of
ROBINSON & KOENIG, attorney for
Plaintiffs, IT IS HEREBY ORDERED
AND DIRECTED that judgment by
default be and the same is hereby
entered in favor of Plaintiffs, Kenneth &
Patsy Keeney, and against Defendants,
Leroy & Winifred, husband and wife,
their heirs, administrators, successors
and assigns.

AND IT IS FURTHER ORDERED AND
DIRECTED that the said Defendants be
and the same hereby is 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 Carroll Valley Borough, formerly
Liberty Township, Adams County,
Pennsylvania, being Lot No. 95, bound-
ed and described as follows:

BEGINNING at a point in the center of
a Faircloth Trail at Lot No. 95, thence by
said lot South eleven degrees fourteen
minutes forty seconds East, two hundred
twenty-five (225) feet to Lot No. 97;
thence by said lot, North sixty-three
degrees twenty-three minutes West, two
hundred twenty-five (225) feet to a point
in the center of said Faircloth Trail;
thence in said Faircloth Trail, North twenty-
six degrees thirty-seven minutes East,
one hundred ten and eight one-hund-
redths (110.08) feet to a point; thence
continuing in said Faircloth Trail North
seventy-eight degrees forty-five minutes
twenty seconds East, one hundred ten
and eight one-hundredths (110.08) feet
to the place of the BEGINNING.

The above description was taken from
a plan of lots labeled "Section R1, of
Charnita, Inc." dated May 29, 1970, pre-
pared by Gordon L. Brown, R.S. and
recorded in Adams County Plat Book No.
1 at page 83.

BEING THE SAME WHICH Tax Claim
Bureau by its deed dated December 11,
1985, and recorded December 12, 1985,
in the Office of the Recorder of Deeds of
Adams County, Pennsylvania, in Record
Box 415 at page 410, sold and conveyed
unto Alan E. Baker, one of the Grantors
herein.

Unless the same Defendants shall
within thirty (30) days after publication of
the Notice of this Order commence an
Action in Ejectment or other appropriate
action to assert any claim he may have
against the Plaintiff herein; and upon the
failure of the Defendants to commence
such action against the Plaintiff within
thirty (30) days after said publication, the
Prothonotary of Adams County,
Pennsylvania, is directed upon praecipe
of the Plaintiff to enter final judgment
herein in favor of Plaintiff and against
Defendants pursuant to Pa. R.C.P.
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
the Recorder of Deeds of Adams County,
Pennsylvania, the same to be indexed in
the names of the Defendants, Leroy &
Winifred Brenner, husband and wife,
their heirs, administrators, successors
and assigns, as GRANTORS, and in the
name of the Plaintiffs, Kenneth & Patsy
Keeney as GRANTEES.

BY THE COURT:
/s/Judge Michael A. George
J.

9/21

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-648 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of October, 2007, 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 Straban Township, Adams County, Pennsylvania, having an address of 2080 Old Harrisburg Road, bounded and described as follows:

BEGINNING at a point in the center of State Highway Route 15 leading from Gettysburg to Harrisburg at land now or formerly of Irvin W. Grace; thence along same North 58 degrees West 225 feet to an iron pin; thence along same North 32 degrees East 90 feet to an iron pin; thence along other land of Paul H. Metz, et ux South 58 degrees East 225 feet to a point in center of said State Highway; thence along line of center of State Highway South 32 degrees West 90 feet to a point, the place of BEGINNING.

IT BEING the same which Lillian V. Swope, widow, by her attorney-in-fact, Connie R. Snyder, by deed dated August 27, 2003, and recorded August 28, 2003 in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 3270 at page 166, sold and conveyed unto Alan E. Cheese.

Premises Being: 2080 Old Harrisburg Road, Gettysburg, PA 17325

Parcel Number: 38-G10-0033-000

TITLE TO SAID PREMISES IS VESTED IN William Riordan, Jr., single person, dated 09/15/2005 and recorded 09/16/2005 in Book 4128 and Page 292.

SEIZED and taken into execution as the property of **William Riordan, Jr. a/k/a William J. Riordan, 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 November 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/21, 28 & 10/5

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-740 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of October, 2007, 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 THE FOLLOWING described tract of land situate, lying and being in the Borough of New Oxford, Adams County, Pennsylvania bounded and described as follows, to wit:

BEGINNING for a point on the Northern edge of West High Street at Lot No. 2 of the hereinafter referenced subdivision plan; thence along said Northern edge of West High Street South seventy-seven (77) degrees zero (00) minutes zero (00) seconds West eighteen and ninety-eight one-hundredths (18.98) feet to a point at Lot No. 4 of said plan; thence along same and through the center of a dividing wall North thirteen (13) degrees zero (00) minutes zero (00) seconds West one hundred thirty-one (131) feet to a point on the Southern edge of a twelve (12) feet wide private alley; thence along same North seventy-seven (77) degrees zero (00) minutes zero (00) seconds East twenty and seventy-four one-hundredths (20.74) feet to a point at Lot No. 2 of said plan; thence along same the following three (3) courses and distances: (1) South thirteen (13) degrees zero (00) minutes zero (00) seconds East ninety-four and sixty-seven one-hundredths (94.67) feet to a post; thence (2) South eleven (11) degrees ten (10) minutes nineteen (19) seconds West four and twenty-nine one-hundredths (4.29) feet to a point at the corner of the building; thence (3) through the center of a dividing wall South thirteen (13) degrees zero (00) minutes zero (00) seconds East thirty-two and forty-two one-hundredths (32.42) feet to a point on the Northern edge of West High Street, the point and place of BEGINNING. BEING KNOWN and identified as Lot No. 3 on a Plan by Boyer Surveys. Said Plan is recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Plan Book 38, Page 71.

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

Parcel Identification No: 34-004-0098A-000

Premises: 110 West High Street, New Oxford, PA 17350, New Oxford Borough, Adams County, Pennsylvania

TITLE TO SAID PREMISES IS VESTED IN Mario Ferreyra, by Deed from Cottage Products Partnership, a

Pennsylvania Corporation, dated 01/27/2006, recorded 01/31/2006, in Deed Book 4298, page 326.

SEIZED and taken into execution as the property of **Mario Ferreyra** 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 November 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/21, 28 & 10/5

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Corporation Bureau of the Pennsylvania Department of State, at Harrisburg, Pennsylvania, for the purpose of forming a domestic business corporation under the Pennsylvania Business Corporation Law of 1988 (P.L. 1444, No. 177), 15 Pa.C.S.A. § 1301 *et seq.*, as amended, having unlimited power to engage in and do any lawful act permitted thereunder.

The name of the corporation is GRIMES FLOORING, INC.

Wendy Weikal-Beauchat, Esq.
Beauchat & Beauchat, LLC
63 West High Street
Gettysburg, PA 17325

9/21

CERTIFICATE OF ORGANIZATION

NOTICE IS HEREBY GIVEN THAT a Certificate of Organization was filed with the Commonwealth of Pennsylvania, on or about August 28, 2007, for the purpose of obtaining a Certificate of Organization of a Limited Liability Company, organized under the General Association Act of 1988, Act of December 21, 1988, P.L. 1444, No. 177, § 2301, *et seq.*, as amended. The name of the Corporation is TIMELESS INVESTMENTS, LLC.

David R. Thompson
Attorney at Law
P.O. Box 587
Philipsburg, PA 16866

9/21

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-697 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of October, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot or piece of ground situate in Reading Township, County of Adams, Commonwealth of Pennsylvania, bounded and described as follows:

BEGINNING at a point in the centerline of an existing 12 foot wide gravel driveway (private) leading to Stoney Point Road (S.R. 1007) which point is North 80 degrees 19 minutes 00 seconds West 93.12 feet from an existing steel rod at the Northwestern corner of land now or formerly of Robert Swearman; thence running by other land now or formerly of Thomas R. Benton and Judy F. Benton and through a reference steel rod setback 17 feet from the start of this course South 4 degrees 6 minutes 00 seconds East, 219.69 feet to a pipe; thence by land of the same South 85 degrees 54 minutes 00 seconds West 200 feet to a copper weld rod; thence by the same and through a reference steel rod setback 21 feet from the end of this course North 4 degrees 8 minutes 00 seconds West 283.25 feet to a point in the centerline of the existing 12 foot gravel driveway (private); thence running in the centerline of the existing 12 foot gravel driveway (private) South 76 degrees 28 minutes 10 seconds East 209.86 feet to a point in the centerline of said gravel driveway; the point and place of BEGINNING.

Being the same premises which Ten Grand, Inc., by deed dated 11/4/2003 and recorded 11/20/2003 in Adams County in Book 3388 on Page 59 then granted and conveyed to Matthew G. Boeckel in fee.

Parcel Identification No: 36-K07-0010B-000

Premises: 564 Stoney Point Road, East Berlin, PA 17316, Reading Township, Adams County, Pennsylvania

TITLE TO SAID PREMISES IS VESTED IN Matthew G. Boeckel, by Deed from Ten Grand, Inc., a Pennsylvania Corporation, dated 11/04/2003, recorded 11/20/2003, in Deed Book 3388, page 59.

SEIZED and taken into execution as the property of **Matthew G. Boeckel** 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 November 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/21, 28 & 10/5

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-318 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of October, 2007, 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 Bonneauville, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a P.K. nail North of the center line of Township Road T-440, known as Pin Oak Drive, at corner of lands now or formerly of the Grantors herein; thence by same and through a water valve set back 14.8 feet from the beginning reference point, North 44 degrees 23 minutes 00 seconds West, 135 feet to a steel rod at corner of lands now or formerly of the Grantors herein; thence continuing by same, North 46 degrees 17 minutes 40 seconds East, 90 feet to an existing steel rod in concrete at corner of lands now or formerly of Lisa Walter, designated as Lot No. F on the hereinafter mentioned survey; thence continuing along said same lands, South 44 degrees 23 minutes 00 seconds East, 135 feet to a lietz spike set 4 feet North of the center line of Township Road T-440, known as Pin Oak Drive; thence continuing along the Northern edge of Township Road T-440, known as Pin Oak Drive, South 46 degrees 17 minutes 40 seconds West, 90 feet to a P.K. nail North of the center line of Township Road T-440, known as Pin Oak Drive, at corner of lands now or formerly of the Grantors herein, the place of BEGINNING. CONTAINING 12,150 square feet.

THE above description was taken from a draft of survey prepared by Adams County Surveyors, dated March 24, 1989, the subject lot herein described being designated as Lot G on said survey.

BEING a portion of a larger tract of land which John H. Barkley and Rebecca

L. Barkley, his wife, by their deed dated June 28, 1958, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 222 at page 7, sold and conveyed unto Paul J. Walter and Betty Jane Walter, husband and wife, the Grantors herein.

Property Being: 17 Pin Oak Drive

TITLE TO SAID PREMISES IS VESTED IN Paul J. Walter, Jr. and Doris M. Walter, H/W dated 06/01/1989 and recorded 06/02/1989 in Book 524 and page 379.

Parcel Number: 06-006-0009B-000

SEIZED and taken into execution as the property of **Paul J. Walter, Jr. & Doris M. Walter** 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 November 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/21, 28 & 10/5

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for KLEIN BUILDERS GROUP, INC. on November 4, 2005. The said corporation has been incorporated under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania.

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

9/21

ESTATE NOTICES

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

FIRST PUBLICATION**ESTATE OF JAMES W. BEITLER, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Executor: James C. Beitler, 13 Winter Drive, Gettysburg, PA 17325

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

ESTATE OF ROSARIA D. BOOZ, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executrix: Charlene J. Durany, 81 Reba Drive, New Oxford, PA 17350

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

ESTATE OF PHYLLIS G. CULP, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Co-Executors: Jeffrey R. Culp, 178 Norway Lane, Lebanon, PA 17042; James A. Culp, 1624 Clover Lane, York, PA 17403; Karen M. Holtzworth, 103 Hanover Street, Gettysburg, PA 17325

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

ESTATE OF KATHERINE P. DUBBS, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Vicki E. Hartlaub, 680 Hanover Pike, Littlestown, PA 17340

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

ESTATE OF PHILIP O. NETH, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Administrators c.t.a.: Barbara R. Neth, 85 Meade Drive, Gettysburg, PA 17325; Jerry R. Neth, 845 Chapel Road, Gettysburg, PA 17325

Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF BENJAMIN STROUD, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Pamela D. Stroud, 5 North Pine Street, Gettysburg, PA 17325

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

SECOND PUBLICATION**ESTATE OF MARGARET C. CABLE, DEC'D**

Late of Union Township, Adams County, Pennsylvania

Administrator: Mary Margaret Hewes, 22 Fieldcrest Dr., Littlestown, PA 17340

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

ESTATE OF MADELINE V. CLINEDINST, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executors: Arlene Briggs, 510 Brysonia Road, Biglerville, PA 17307; David G. Clinedinst, 999C Brysonia-Wenksville Road, Biglerville, PA 17307

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

ESTATE OF MARGARET E. HENDRICKS, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Erik J. Hendricks, 185 Tiffany Lane, Gettysburg, PA 17325

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

ESTATE OF ELEANOR L. KNOTTS, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: William C. Knotts, 723 Chambersburg Road, Apt. A, Gettysburg, PA 17325

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

THIRD PUBLICATION**ESTATE OF BURTON LESLIE GODDARD a/k/a BURTON L. GODDARD, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Personal Representative: Paul T. Hempel, c/o Patterson, Kiersz & Murphy, P.C., 239 East Main Street, Waynesboro, PA 17268-1681

Attorney: Patterson, Kiersz & Murphy, P.C., 239 East Main Street, Waynesboro, PA 17268-1681

ESTATE OF RICHARD L. LANGLEY, SR., DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Luv L. Lookingbill, 4 Colleen Trail, Fairfield, PA 17320

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

ESTATE OF VICKI A. STAUB, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Administrator: H. Frank Staub, III, 170 Baugher Drive, Hanover, PA 17331

Attorney: Crabbs & Crabbs, 202 Broadway, Hanover, PA 17331

Adams County Legal Journal

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September 28, 2007

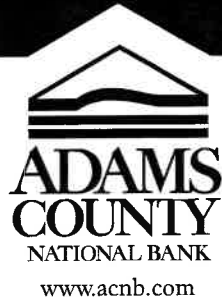
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RBL DEVELOPMENT VS. INSITE DEVELOPMENT

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

Celebrating 150 years!
1857-2007



 Equal Housing Lender. Equal Opportunity Lender. Member FDIC.

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-716 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 19th day of October, 2007, 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 Freedom Township, Adams County, Pennsylvania, more particularly described as follows:

BEGINNING at an iron pin on the East side of State Highway Route 15 leading from Emmitsburg to Gettysburg; thence running along the East side of said State Highway North 26 degrees East, 300 feet to an iron pin at a post at the East side of said State Highway; thence running by land now or formerly of Glenn Witherow, South 64 degrees East, 201 feet to an iron pin (this course was inadvertently omitted in the prior Deed); thence running by land of the same South 26 degrees West, 300 feet to an iron pin; thence running by land of the same North 64 degrees West, 201 feet to an iron pin on the East side of said State Highway, the place of BEGINNING. CONTAINING 1 acre, 61 perches and 143 square feet.

IT BEING THE SAME TRACT OF LAND which Thakor J. Patel and Raju T. Patel, husband and wife, by Deed dated January 5, 2001, and about to be recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, sold and conveyed unto DISHA, INC., a Pennsylvania corporation, the Mortgagee herein.

Premises Being: 3180 Emmitsburg Road, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **DISHA, Inc.** 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 November 9, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after

the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/14, 21 & 28

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-640 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 19th day of October, 2007, 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 partly in Union Township and partly in the Borough of Littlestown, Adams County, Pennsylvania, bounded and limited as follows, to wit:

BEGINNING for a point along the southwesterly right-of-way line of Wheaton Drive and Lot No. 110 of the hereinafter referred to subdivision plan; thence along said Lot No. 110, South forty-five (45) degrees two (02) minutes thirty-six (36) seconds West, one hundred thirty-nine and ninety-six hundredths (139.96) feet to a point at lands now or formerly of Donald Smith; thence along said lands now or formerly of Donald Smith, North forty-five (45) degrees seventeen (17) minutes forty-one (41) seconds West, one hundred and zero hundredths (100.00) feet to a point at Lot No. 112; thence along said Lot No. 112, North forty-four (44) degrees forty-two (42) minutes nineteen (19) seconds East, one hundred forty and zero hundredths (140.00) feet to a point along the Southwesterly right-of-way line of Wheaton Drive, thence along the Southwesterly right-of-way line of Wheaton Drive, south forty-five (45) degrees seventeen (17) minutes forty-one (41) seconds East, eighty-six and thirty-three hundredths (86.33) feet to a point; thence continuing along same by a curve to the fifth which had a radius of two thousand four hundred fifty-six and

sixty-one hundredths (2,456.61) feet, an arc distance of fourteen and forty-nine hundredths (14.49) feet, the long chord of which is South forty-five (45) degrees seven (07) minutes thirty-two (32) seconds East, fourteen and forty-nine hundredths (14.49) feet to a point, the place of BEGINNING.

CONTAINING 14,058 square feet and being identified as Lot No. 111 on the final subdivision plan of Phase II, Meadowview Estates, which plan is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 60, page 50.

MAP #41-03-56

IMPROVEMENTS: Residential dwelling

Premises Being: 133 Wheaton Drive, Littlestown, PA 17340

SEIZED and taken into execution as the property of **Joanne M. Seeley & Shane E. Seeley** 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 November 9, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/14, 21 & 28

RBL DEVELOPMENT VS. INSITE DEVELOPMENT

1. A contract is ambiguous if it is reasonably susceptible to different constructions and capable of being understood in more than one sense. Under ordinary principles of contract interpretation an ambiguous agreement is to be construed against its drafter.

2. Any analysis of the admissibility of a particular type of evidence must start with a threshold inquiry as to its relevance and probative value. It is critical, therefore, to determine whether the inference sought to be raised by evidence bears upon a matter at issue and whether the evidence renders the desired inference more probable than it would without the evidence.

3. The test concerning the amount of a legal fee in a mortgage foreclosure action must be its reasonableness, determined by the circumstances of the particular case.

4. A party seeking to recover for damages has the burden of proving those damages by a fair preponderance of evidence.

5. The recognition of the propriety of a percentage based legal fee occurs exclusively in cases where the contractual documents specify the percentage based fee which is applicable.

6. Although the contractual documents clearly provide entitlement to reasonable attorney fees, the setting of some arbitrary figure by the fact finder would be nothing more than impermissible speculation.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 05-S-326, RBL DEVELOPMENT CORPORATION VS. INSITE DEVELOPMENT, LLC.

Glenn C. Vaughn, Esq., for Plaintiff

Mark D. Bradshaw, Esq., for Defendant

George, J., September 29, 2006

OPINION

Insite Development, LLC (“Insite”) appeals from this Court’s Order dated March 13, 2006, wherein the Court found that RBL Development Corporation (“RBL”) was entitled to judgment of mortgage foreclosure in regard to the tract of land known as Eagle View Mobile Home Park located in Berwick Township, Adams County, Pennsylvania. Insite’s Rule 1925 Statement of Matters Complained of on Appeal appears to raise three issues:

- 1) The Trial Court erred in failing to construe an ambiguity in the note against RBL;
- 2) The Court erred in concluding that the precondition to collection under the note was satisfied; and
- 3) The Court erred in precluding the testimony of Dr. Hugh Archer, Ph.D.

Insite has filed a Cross Appeal challenging the Trial Court’s denial of an award of counsel fees in their favor.

The factual background of this matter is adequately summarized in this Court's Findings of Fact and Order dated March 13, 2006 and, therefore, will not be substantially repeated herein. The standard of review for an appellate court reviewing the conclusions in a non-jury trial is well settled. "When examining a trial court's conclusions in a non-jury trial, [the appellate court] may reverse the trial court only if its finds of fact are predicated on an error of law or are unsupported by competent evidence in the record." *Skurnowicz v. Lucci*, 798 A.2d 788, 793 (Pa.Super. 2002)

At the heart of the first two issues raised by Insite is language in the note which indicated that payment under the note is "preconditioned upon lender obtaining sewer and/or water capacity for an additional 157 pads for the Eagle View Mobile Home Park." (See Plaintiff's Exhibit #1.) Insite argues that this language is ambiguous and should be construed against RBL as drafter of the note. When construing the note in their favor, Insite concludes that RBL's evidence is insufficient to establish that this precondition had been satisfied.

It is well established that when the terms of a contract are clear and unambiguous, the intent of the parties is to be ascertained from the written document itself. *Kripp v. Kripp*, 849 A.2d 1159, 1163 (Pa. 2004). If words in the contract are left undefined, the words are to be given their ordinary meaning. *Id.* When, however, an ambiguity exists, parol evidence is admissible irrespective of whether the ambiguity is created by the language of the instrument or created by extrinsic or collateral circumstances. *Steuart v. McChesney*, 444 A.2d 659, 663 (Pa. 1982). A contract is ambiguous if it is reasonably susceptible to different constructions and capable of being understood in more than one sense. *Id.* Under ordinary principles of contract interpretation, an ambiguous agreement is to be construed against its drafter. *Insurance Adjustment Bureau, Inc. v. Allstate Insurance Company*, 2006 Pa. Lexis 1556, 13 (Pa. 2006). While unambiguous contracts are interpreted by the Court as a matter of law, ambiguous writings are interpreted by the finder of fact. *Community College of Beaver County v. Community College of Beaver County, Society of the Faculty (PSEA/NEA)*, 375 A.2d 1267, 1275 (Pa. 1977).

Applying this instruction, I found that the language of the note as it related to "obtaining sewer and/or water capacity" was ambiguous

in light of the multi-layered regulatory process necessary to legally operate such a utility. Testimony at trial revealed a two-phased process: 1) the initial issuance of a construction permit by the Department of Environmental Protection allows the permit applicant to begin construction of the water service infrastructure; and 2) following the completion of construction, the permit applicant must obtain an operation permit from D.E.P. prior to actual operation of the facility. The note at issue does not provide definition or guidance as to whether obtaining water capacity sufficient to service the additional 157 pads related to capacity to obtain a construction permit as compared to capacity to obtain an operation permit.

In ascertaining the intent of the parties in regard to this ambiguity, I found a number of factors to be relevant. Foremost among those considerations was the previous history of interaction between the parties. Specifically, prior to the transfer of the subject property from RBL to Insite, the sales agreement required RBL to obtain a development plan for the first phase of the project consisting of 114 pads. During this process, RBL obtained the construction permit from D.E.P. to construct wells to service the 114 pads. Critically, settlement on the property occurred without the issuance of an operation permit by D.E.P. for service to the 114 pads. Moreover, RBL had no part in preparing the infrastructure or obtaining an operation permit which was ultimately obtained by Insite for use of the initial pads. This history reflects that the parties contemplated the production of a construction permit for the additional 157 pads as the triggering point for payment under the note.

This interpretation is confirmed by the parties' actions subsequent to RBL's securing a construction permit for the additional 157 pads. After the construction permit for the additional 157 lots was obtained on October 18, 2001, the parties had numerous discussions through late 2004 concerning Insite's obligation for payment under the note. Throughout those various discussions, Insite never contested their obligation under the note, but rather attempted to avoid foreclosure through numerous representations that payment would be forthcoming and/or efforts to entice RBL to restructure the note. Only after such efforts became futile did Insite take issue with whether "capacity" had been met pursuant to the contractual terms. Insite's acknowledgment of its obligation under the note for approximately a three-year period is instructive as to their understanding of the terms of the note.

Finally, Insite's interpretation of the note is illogical. As indicated above, testimony revealed that before an operation permit may be obtained from D.E.P., the infrastructure for the facility must be completed. Insite's argument that the note required RBL to obtain an operation permit as a condition of payment would essentially permit Insite to unilaterally avoid its obligation. By refusing to undertake construction of the infrastructure or, in the alternative, prohibiting RBL from undertaking construction of the infrastructure, Insite effectively controlled RBL's ability to obtain an operation permit and, ultimately, make payment under the note. Based on the testimony at trial, I concluded that the parties did not intend such unilateral control over the obligations in the note.

Moreover, Insite's interpretation has the effect of placing substantial expense on RBL to complete the infrastructure before the note came due. Although the cost of completing this infrastructure is unknown, experience teaches that it is extremely unlikely that RBL assumed this substantial cost as part of their obligation to recover under the note. Such an interpretation clearly frustrates any incentive to RBL in entering the agreement thereby making it unlikely that such a result was intended.

Insite's argument that the ambiguities in the note should be construed against RBL is not persuasive. Initially, I note that Insite's 1925 Statement misrepresents this Court's finding of fact. Although this Court found as a fact that RBL recommended the language in the note, I also found that the note was actually drafted by Insite. Thus, when read literally, the rule of contract construction that a document should be construed against its drafter actually works against Insite as drafter of the subject documents. Importantly, the line of cases in which this rule arises addresses the interpretation of insurance contracts prepared by an insurer. Instantly, the bargaining power of the respective parties is much more equal as evidenced by the cooperative effort in preparation of the documents at issue. Under these circumstances, I cannot find, as a matter of law, that RBL's involvement in suggesting language in the note necessitates interpretation of the contract in favor of Insite. Insite obviously had equal, if not greater, opportunity to interpret and define any vague terms in the note which it drafted.

Moreover, the rule of law suggesting that ambiguous terms in a contract be construed against its drafter does not override the primary

obligation of the Court which is to ascertain the intent of the parties. Such a conclusion would make contract interpretation a hollow ritual in that once a Court found ambiguous terms in a contract, it must thereafter, automatically rule against the drafting party. I find no support in Pennsylvania jurisprudence for this conclusion.

Assuming, arguendo, that the language of the note should be construed against RBL, I still find, based on credible testimony, that the water capacity condition was satisfied by obtaining construction permits for the additional 157 pads. Since there is more than ample support in the record for this Court's conclusion that water capacity existed to service development of an additional 157 pads, Insite's argument that this precondition was not met is meritless. The construction permit issued by D.E.P. on October 18, 2001 permitted construction of infrastructure sufficient to service the additional 157 pads. Moreover, the construction permit represented that if the water facility was constructed in accordance with the application, an operation permit would be issued. Absent Insite's failure to proceed with the construction pursuant to the permit, lack of water capacity and service for the remaining 157 pads would not be an issue.

Insite's final allegation of error concerns this Court's limitation of the testimony of Dr. Hugh Archer. Insite, however, does not specifically identify what testimony was precluded. A review of the transcript reveals that despite objection from RBL's counsel, Dr. Archer's testimony was unrestricted with the exception of one inquiry. The specific question to which the Court prohibited testimony is as follows:

Q. What is the significance of obtaining an operating permit, what does it permit - -

Mr. Vaughn: Objection.

The Court: That objection is sustained.

Trial Transcript p. 96. Insite suggests that the testimony which would have been offered in response to this question was factual in nature and thus the Court erred in concluding that the testimony was an expert opinion.¹

Any analysis of the admissibility of a particular type of evidence must start with a threshold inquiry as to its relevance and probative

¹ In reviewing the preclusion of this evidence, it is important to keep in mind that Dr. Archer was not tendered nor qualified to testify as an expert witness.

value. *Commonwealth v. Walzack*, 360 A.2d 914, 918 (Pa. 1976). It is critical, therefore, to determine whether the inference sought to be raised by evidence bears upon a matter at issue and whether the evidence renders the desired inference more probable than it would without the evidence. *Commonwealth v. Miller*, 407 A.2d 860, 865 (Pa. Super. 1979). A trial court's exclusion of irrelevant evidence cannot possibly prejudice a party and therefore is not a basis for relief. See *Peled v. Meridan Bank*, 710 A.2d 620, 626 (Pa. Super. 1998).

Undoubtedly, the controlling factual issue before the Court involved defining the intention of the parties under the terms of the note. Insite's inquiry does not even remotely bear upon this issue. The significance that Dr. Archer, who is not a party to the agreement, places on securing an operating permit does not, in any way, relate to the intent of the parties.

Insite suggests that the testimony is relevant because it goes to the ultimate issue of whether all conditions precedent under the note were satisfied. I found this argument unpersuasive. Dr. Archer, as mentioned, was not testifying as an expert. Yet, the inquiry at issue requests an opinion as to the significance of the operating permit issued by D.E.P. His lay opinion is irrelevant as the permit issued by D.E.P. speaks for itself as to its significance. Moreover, the Court may take judicial notice of any statutory or regulatory significance resulting from issuance of the permit. *Philadelphia Electric Company v. Commonwealth of Pennsylvania, Department of Revenue*, 481 A.2d 375, 378 (Pa. Cmwlth. 1984). Dr. Archer's personal opinion does not assist this inquiry in any way. Absent some expertise in a field for which he has been qualified as an expert, the line of questioning offered by Insite is nothing more than an improper and irrelevant opinion.

The genesis of this issue arises in Insite's failure to identify Dr. Archer as an expert witness in pre-trial and discovery proceedings. Insite attempted to avoid the ramifications of sanctions by improperly dressing Dr. Archer's opinion testimony in the cloth of a lay factual witness. If the Court committed error in examination of Dr. Archer, the error was in permitting Dr. Archer to render any testimony concerning his interpretation of the process involved in obtaining an operating permit from D.E.P.

Finally, I fail to recognize what prejudice, if any, Insite suffered by the Court's preclusion of Dr. Archer's testimony. In his offer, counsel

for Insite represented that Dr. Archer would describe the two-step process involved in operating a water facility consisting of the issuance of a construction permit and a subsequent operating permit. This permitting process is generally found under DEP's regulations. (Title 25, Chapter 109.501 et seq.) The fact that a construction permit, not an operation permit, had been issued for the additional 157 pads was not lost on the Court. Once the Court determined that the parties intended the ambiguous terms of the contract to equate capacity with the issuance of a construction permit, further inquiry in this area was irrelevant. Moreover, even if relevant, Insite was not prejudiced as this Court, in reaching a verdict, considered the regulatory procedure which Dr. Archer's testimony was offered to explain.

RBL's Cross Appeal challenges this Court's failure to award counsel fees in their favor. Pursuant to the terms of the mortgage, RBL sought counsel fees in the amount of \$27,500. They claim this fee based upon language in the note and mortgage which provided that upon default, the borrower is responsible for "reasonable legal fees." Based upon this language RBL argues that it is entitled to legal fees equal to five (5%) percent of the principal amount of the mortgage.

The determination as to what constitutes a fair and reasonable attorney fee is both a delicate and a difficult question. In determining whether a fee is fair and reasonable, the finder of fact should take into consideration:

the amount of work performed; the character of the services rendered; the difficulty of the problems involved; the importance of the litigation; the amount of money or value of the property in question; the degree of the responsibility incurred; whether the fund involved was "created" by the attorney; the professional skill and standing of the attorney in his profession; the results he was able to obtain; the ability of the client to pay a reasonable fee for services rendered; and, very importantly, the amount of money or value of the property in question.

LaRocca Estate, 246 A.2d 337, 339 (Pa. 1968). Although the *LaRocca* guidelines arise in the context of evaluating estate legal fees, I see no reason to distinguish this instruction since the Superior Court has recognized that the test concerning the amount of a legal fee in a mortgage foreclosure action "must be its reasonableness,

determined by the circumstances of the particular case”. *CitiCorp Mortgage, Inc. v. Morrisville Hampton, Village Realty Limited Partnership*, 662 A.2d 1120, 1123 (Pa. Super. 1995).

A review of the trial testimony reveals that there was absolutely no evidence at trial permitting the fact finder to reach any conclusion in regard to an amount of legal fees or their reasonableness. The only evidentiary mention of legal fees is found in the testimony of Patrick Barry as follows:

- Q. What is owed to RBL Development Corporation by Insite Development at this time?
- A. The principal of \$550,000 with six percent interest and reasonable attorney fees of five percent.

Trial Transcript, page 41. It is hornbook law that a party seeking to recover for damages has the burden of proving those damages by a fair preponderance of evidence. *Empire Properties, Inc. v. Equireal, Inc.*, 674 A.2d 247, 304 (Pa. Super. 1996). The current record is woefully inadequate to permit such an award.

In reaching this conclusion, it is important to distinguish that line of cases which have found percentage based attorney fees to be reasonable. The recognition of the propriety of a percentage based legal fee occurs exclusively in cases where the contractual documents specify the percentage based fee which is applicable. (See *Philadelphia Acceptance Corp. v. Krapp*, 35 Pa. D&C 3d 101(Pa.Com.Pl. 1984.) Instantly, the parties have not contracted such a percentage based fee. Thus, there is a paucity of information upon which the fact finder may determine what percentage of amount due under the note is reasonable as compensation for legal fees. A diligent search has also failed to reveal any precedent for non-contractual imposition of a specific percentage as a matter of law.

RBL suggests that Insite implicitly consented to the imposition of legal fees in the amount of five (5%) percent by failing to affirmatively deny allegations in the complaint or object to references in counsel’s pre-trial memorandum and opening statements. I find this argument to be equally unpersuasive.

Initially, I note that the complaint fails to include any concise statement that legal fees of five (5%) percent are due under the note or mortgage. Rather, the claim for legal fees is buried in the paragraph which purports to relate to “interest.” (See Complaint,

paragraph 15.) Nevertheless, Insite's answer specifically denied that any payment was due RBL. I am unable to conclude that these pleadings constitute a deemed admission in favor of RBL. RBL's argument that representations made during pre-trial conference or in an opening statement may be considered as evidence is contrary to law. *Davis v. Capital Bakeries, Inc.*, 1986 WL 501511 (Pa.Com.Pl. 1986). In essence, RBL impermissibly seeks to escape its obligation to establish damages through admissible evidence. Finally, it is nonsensical to suggest, as RBL has, that in order for Insite to preserve a challenge to the sufficiency of the evidence, they must object to RBL's failure to present that evidence.

Importantly, in utilizing my own experience in these matters, I am unable to conclude that RBL's requested legal fees in the amount of \$27,500 is reasonable. This matter involves rather routine litigation without extensive or complicated pleadings. Pre-trial proceedings were rather limited with no significant issues or argument. The sole pre-trial motion was presented to the Court on the morning of trial and resolved pre-trial. Only four witnesses were called at a non-jury trial that lasted approximately five hours. Although trial testimony revealed pre-litigation negotiations by counsel, there is no basis to conclude from the record that these activities were voluminous, time consuming, or complex. Under these circumstances, an award of \$27,500 for attorney fees would be nothing more than a windfall to RBL. Although the contractual documents clearly provide entitlement to reasonable attorney fees, the setting of some arbitrary figure by the fact finder would be nothing more than impermissible speculation. *Omicron Systems, Inc. v. Weiner*, 860 A.2d 554, 565 (Pa. Super. 2004).

For the foregoing reasons, affirmance of the verdict in this matter is recommended.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-682 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of October, 2007, 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 Huntington Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING for the Northwest corner hereof at a railroad spike found near the center of Township Road T-588 (Ground Oak Church Road) at corner of land now or formerly of Samuel J. Bricker; thence by said land of Bricker, South 64 degrees 55 minutes 39 seconds East, 140.70 feet to a concrete monument set at an iron pipe found at the Northeast corner hereof, which pipe is located at the Northwest corner of land now or formerly of Robbie Lynn Barrick; thence by said land of Barrick, by land now or formerly of Katherine A. Riley and running through an iron pipe found 146.94 feet from the end of this course, South 18 degrees 12 minutes 20 seconds West, 325.81 feet to a steel pin set at the Northeast corner of Lot No. 2 on the plan of lots heretobelow identified; thence by said Lot No. 2 and running through a steel pin set 25.00 feet from the end of this course, North 64 degrees 54 minutes 24 seconds West, 179.76 feet to a railroad spike set in or near the center of aforementioned Township Road T-588; thence in said road, North 25 degrees 05 minutes 36 seconds East, 323.40 feet to the above-described place of BEGINNING. CONTAINING 1.190 Acres.

TITLE TO SAID PREMISES IS VESTED IN Clifford B. King, Jr. and Jennifer L. King, husband and wife, as tenants of an estate by the entireties, by Deed from Jennifer L. Hayes, now Jennifer L. King and Clifford B. King, Jr., her husband, dated 06/20/2004, recorded 06/30/2004, in Deed Book 3624, page 81.

Premises being: 75 Ground Oak Church Road, Gardners, PA 17324

Tax Parcel No. 01-22-G05-0014-B0-0000

SEIZED and taken into execution as the property of **Clifford B. King, Jr. & Jennifer L. King** 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 November 16, 2007, and distribution will be made in accordance with said schedule, unless

exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/21, 28 & 10/5

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-1094 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 19th day of October, 2007, 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 or parcel of land and premises situate, lying and being in the Township of Reading in the County of Adams and Commonwealth of Pennsylvania, and particularly described as follows:

MORE particularly described as Lot No. 424-A 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, Pennsylvania in Plan Book 1, Page 4 and subject to all legal highways, easements, right-of-way and restrictions of record.

Tax Parcel #: (36) 2-38A

Property Address: 20 Sherman Drive, East Berlin, PA 17316

SEIZED and taken into execution as the property of **Michael J. Shumberger** 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 November 9, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/14, 21 & 28

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-660 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of October, 2007, 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 Biglerville, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin at the intersection of Fourth Street and a public alley; thence by said Fourth Street South 3-1/2 degrees West, 120 feet to an iron pin; thence by land now or formerly of Joe Boyer, South 86-1/2 degrees East, 35 feet to a stake; thence by land now or formerly of C.H. Musselman, North 64 degrees West to an iron pin 161.7 feet; thence by land now or formerly of the Adams County Packing Co., North 69.7 feet North 3-1/2 degrees East to an iron pin; thence by a public alley, South 87-3/4 degrees East, 155 feet to the place of BEGINNING.

TITLE TO SAID PREMISES IS VESTED IN Frank Alvarado and Kimberly Alvarado, husband and wife, as tenants by an estate by the entireties, by Deed from Jeanne L. Motter and Kenneth I. Bream, Co-Executors of the Estate of Fred W. Bream, dated 07/30/2001, recorded 08/09/2001, in Deed Book 2368, page 106.

Premises being: 101 4th Street, Biglerville, PA 17307

Tax Parcel No. 05-06-0001

SEIZED and taken into execution as the property of **Frank Alvarado & Kimberly Alvarado a/k/a Kimberly K. Alvarado** 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 November 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/21, 28 & 10/5

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-648 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of October, 2007, 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 Straban Township, Adams County, Pennsylvania, having an address of 2080 Old Harrisburg Road, bounded and described as follows:

BEGINNING at a point in the center of State Highway Route 15 leading from Gettysburg to Harrisburg at land now or formerly of Irvin W. Grace; thence along same North 58 degrees West 225 feet to an iron pin; thence along same North 32 degrees East 90 feet to an iron pin; thence along other land of Paul H. Metz, et ux South 58 degrees East 225 feet to a point in center of said State Highway; thence along line of center of State Highway South 32 degrees West 90 feet to a point, the place of BEGINNING.

IT BEING the same which Lillian V. Swope, widow, by her attorney-in-fact, Connie R. Snyder, by deed dated August 27, 2003, and recorded August 28, 2003 in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 3270 at page 166, sold and conveyed unto Alan E. Cheese.

Premises Being: 2080 Old Harrisburg Road, Gettysburg, PA 17325

Parcel Number: 38-G10-0033-000

TITLE TO SAID PREMISES IS VESTED IN William Riordan, Jr., single person, dated 09/15/2005 and recorded 09/16/2005 in Book 4128 and Page 292.

SEIZED and taken into execution as the property of **William Riordan, Jr. a/k/a William J. Riordan, 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 November 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/21, 28 & 10/5

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-740 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of October, 2007, 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 THE FOLLOWING described tract of land situate, lying and being in the Borough of New Oxford, Adams County, Pennsylvania bounded and described as follows, to wit:

BEGINNING for a point on the Northern edge of West High Street at Lot No. 2 of the hereinafter referenced subdivision plan; thence along said Northern edge of West High Street South seventy-seven (77) degrees zero (00) minutes zero (00) seconds West eighteen and ninety-eight one-hundredths (18.98) feet to a point at Lot No. 4 of said plan; thence along same and through the center of a dividing wall North thirteen (13) degrees zero (00) minutes zero (00) seconds West one hundred thirty-one (131) feet to a point on the Southern edge of a twelve (12) feet wide private alley; thence along same North seventy-seven (77) degrees zero (00) minutes zero (00) seconds East twenty and seventy-four one-hundredths (20.74) feet to a point at Lot No. 2 of said plan; thence along same the following three (3) courses and distances: (1) South thirteen (13) degrees zero (00) minutes zero (00) seconds East ninety-four and sixty-seven one-hundredths (94.67) feet to a post; thence (2) South eleven (11) degrees ten (10) minutes nineteen (19) seconds West four and twenty-nine one-hundredths (4.29) feet to a point at the corner of the building; thence (3) through the center of a dividing wall South thirteen (13) degrees zero (00) minutes zero (00) seconds East thirty-two and forty-two one-hundredths (32.42) feet to a point on the Northern edge of West High Street, the point and place of BEGINNING. BEING KNOWN and identified as Lot No. 3 on a Plan by Boyer Surveys. Said Plan is recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Plan Book 38, Page 71.

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

Parcel Identification No: 34-004-0098A-000

Premises: 110 West High Street, New Oxford, PA 17350, New Oxford Borough, Adams County, Pennsylvania

TITLE TO SAID PREMISES IS VESTED IN Mario Ferreyra, by Deed from Cottage Products Partnership, a

Pennsylvania Corporation, dated 01/27/2006, recorded 01/31/2006, in Deed Book 4298, page 326.

SEIZED and taken into execution as the property of **Mario Ferreyra** 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 November 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/21, 28 & 10/5

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on September 6, 2007, for the purposes of obtaining a Certificate of Incorporation of a Pennsylvania nonprofit corporation to be organized under the provisions of the Pennsylvania Nonprofit Corporation Law of 1988.

The name of the corporation is 15 WEST MAIN CORP. The purpose of the corporation is the operation of restaurant/hotel business.

Puhl, Eastman & Thrasher
Attorneys

9/28

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that Stephen R. Mailand, Esq., intends to apply in open Court for admission to the Bar of Adams County on the 15th day of November, 2007, and that he intends to practice law as an attorney at 511 Russell Tavern Road, Gettysburg, Adams County, Pennsylvania.

9/28, 10/5 & 12

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-697 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of October, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot or piece of ground situate in Reading Township, County of Adams, Commonwealth of Pennsylvania, bounded and described as follows:

BEGINNING at a point in the centerline of an existing 12 foot wide gravel driveway (private) leading to Stoney Point Road (S.R. 1007) which point is North 80 degrees 19 minutes 00 seconds West 93.12 feet from an existing steel rod at the Northwestern corner of land now or formerly of Robert Swearman; thence running by other land now or formerly of Thomas R. Benton and Judy F. Benton and through a reference steel rod setback 17 feet from the start of this course South 4 degrees 6 minutes 00 seconds East, 219.69 feet to a pipe; thence by land of the same South 85 degrees 54 minutes 00 seconds West 200 feet to a copper weld rod; thence by the same and through a reference steel rod setback 21 feet from the end of this course North 4 degrees 8 minutes 00 seconds West 283.25 feet to a point in the centerline of the existing 12 foot gravel driveway (private); thence running in the centerline of the existing 12 foot gravel driveway (private) South 76 degrees 28 minutes 10 seconds East 209.86 feet to a point in the centerline of said gravel driveway; the point and place of BEGINNING.

Being the same premises which Ten Grand, Inc., by deed dated 11/4/2003 and recorded 11/20/2003 in Adams County in Book 3388 on Page 59 then granted and conveyed to Matthew G. Boeckel in fee.

Parcel Identification No: 36-K07-0010B-000

Premises: 564 Stoney Point Road, East Berlin, PA 17316, Reading Township, Adams County, Pennsylvania

TITLE TO SAID PREMISES IS VESTED IN Matthew G. Boeckel, by Deed from Ten Grand, Inc., a Pennsylvania Corporation, dated 11/04/2003, recorded 11/20/2003, in Deed Book 3388, page 59.

SEIZED and taken into execution as the property of **Matthew G. Boeckel** 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 November 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/21, 28 & 10/5

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-318 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of October, 2007, 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 Booneville, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a P.K. nail North of the center line of Township Road T-440, known as Pin Oak Drive, at corner of lands now or formerly of the Grantors herein; thence by same and through a water valve set back 14.8 feet from the beginning reference point, North 44 degrees 23 minutes 00 seconds West, 135 feet to a steel rod at corner of lands now or formerly of the Grantors herein; thence continuing by same, North 46 degrees 17 minutes 40 seconds East, 90 feet to an existing steel rod in concrete at corner of lands now or formerly of Lisa Walter, designated as Lot No. F on the hereinafter mentioned survey; thence continuing along said same lands, South 44 degrees 23 minutes 00 seconds East, 135 feet to a lietz spike set 4 feet North of the center line of Township Road T-440, known as Pin Oak Drive; thence continuing along the Northern edge of Township Road T-440, known as Pin Oak Drive, South 46 degrees 17 minutes 40 seconds West, 90 feet to a P.K. nail North of the center line of Township Road T-440, known as Pin Oak Drive, at corner of lands now or formerly of the Grantors herein, the place of BEGINNING. CONTAINING 12,150 square feet.

THE above description was taken from a draft of survey prepared by Adams County Surveyors, dated March 24, 1989, the subject lot herein described being designated as Lot G on said survey.

BEING a portion of a larger tract of land which John H. Barkley and Rebecca

L. Barkley, his wife, by their deed dated June 28, 1958, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 222 at page 7, sold and conveyed unto Paul J. Walter and Betty Jane Walter, husband and wife, the Grantors herein.

Property Being: 17 Pin Oak Drive

TITLE TO SAID PREMISES IS VESTED IN Paul J. Walter, Jr. and Doris M. Walter, H/W dated 06/01/1989 and recorded 06/02/1989 in Book 524 and page 379.

Parcel Number: 06-006-0009B-000

SEIZED and taken into execution as the property of **Paul J. Walter, Jr. & Doris M. Walter** 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 November 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/21, 28 & 10/5

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on August 23, 2007.

The name of the corporation is **UPPER ADAMS MEALS ON WHEELS, INC.**

The corporation has been incorporated under the Pennsylvania Nonprofit Corporation Law of 1988, as amended.

John R. White
Campbell & White, P.C.

112 Baltimore Street
Gettysburg, PA 17325
Attorneys for the Corporation

9/28

NOTICE

NOTICE IS HEREBY GIVEN that East Berlin Borough and Hamilton Township, Adams County, Pennsylvania intend to file with the Secretary of the Commonwealth of Pennsylvania Articles of Incorporation for East Berlin Area Joint Authority (the "Authority") on October 15, 2007, in accordance with the Municipality Authorities Act, as amended, 53 Pa.C.S. §5601 et seq. (the "Municipality Authorities Act").

A summary of the ordinances creating the Authority is as follows:

East Berlin Borough, Adams County, Pennsylvania Ordinance No. 2007-3:

The title of the Ordinance is "AN ORDINANCE DEFINING THE INTENTION OF THE BOROUGH OF EAST BERLIN TO ORGANIZE IN CONJUNCTION WITH THE TOWNSHIP OF HAMILTON A MUNICIPAL AUTHORITY UNDER THE PROVISIONS OF THE MUNICIPALITY AUTHORITIES ACT FOR THE PURPOSE OF PROVIDING WATER AND SEWER SERVICE IN EAST BERLIN BOROUGH AND A PORTION OF HAMILTON TOWNSHIP, SUCH AUTHORITY TO BE KNOWN AS THE 'EAST BERLIN AREA JOINT AUTHORITY'; TO APPOINT A GOVERNING BODY AND AUTHORIZING THE EXECUTION AND FILING OF THE ARTICLES OF INCORPORATION AND FURTHER PROVIDING FOR THE SERVICE AREA OF THE AUTHORITY."

Section 1 states that the Borough intends to form, in conjunction with Hamilton Township, Adams County, Pennsylvania, a municipal authority under the provisions of the Municipality Authorities Act.

Section 2 authorizes the President and Secretary of Borough Council to execute the Articles of Incorporation of the Authority.

Section 3 sets forth the purpose of the Authority.

Section 4 appoints the governing body of the Authority.

Section 5 grants the President and Secretary of Borough Council all powers necessary to effectuate incorporation of the Authority.

Section 6 sets forth the powers of the Authority.

Section 7 states that the Authority is for the benefit of the public welfare of the Borough.

Section 8 states that nothing contained in the Ordinance shall limit the powers of the Borough or Borough Council.

Section 9 discusses the effect of a finding of partial invalidity on the Ordinance.

Exhibit "A" to the Ordinance is the proposed Articles of Incorporation of the Authority.

Hamilton Township, Adams County, Pennsylvania Ordinance No. 115:

The title of the Ordinance is "AN ORDINANCE DEFINING THE INTENTION OF THE TOWNSHIP OF HAMILTON TO ORGANIZE IN CONJUNCTION WITH THE BOROUGH OF EAST BERLIN A MUNICIPAL AUTHORITY UNDER THE PROVISIONS OF THE MUNICIPALITY AUTHORITIES ACT FOR THE PURPOSE OF PROVIDING WATER AND SEWER SERVICE IN EAST BERLIN BOROUGH AND A PORTION OF HAMILTON TOWNSHIP, SUCH AUTHORITY TO BE KNOWN AS THE 'EAST BERLIN AREA JOINT AUTHORITY'; TO APPOINT A GOVERNING BODY AND AUTHORIZING THE EXECUTION AND FILING OF THE ARTICLES OF INCORPORATION AND FURTHER PROVIDING FOR THE SERVICE AREA OF THE AUTHORITY."

Section 1 states that the Township intends to form, in conjunction with East Berlin Borough, Adams County, Pennsylvania, a municipal authority under the provisions of the Municipality Authorities Act.

Section 2 authorizes the Chairwoman and Secretary of the Board of Supervisors to execute the Articles of Incorporation of the Authority.

Section 3 sets forth the purpose of the Authority.

Section 4 appoints the governing body of the Authority.

Section 5 grants the Chairwoman and Secretary of the Board of Supervisors all powers necessary to effectuate incorporation of the Authority.

Section 6 sets forth the powers of the Authority.

Section 7 states that the Authority is for the benefit of the public welfare of the Township.

Section 8 states that nothing contained in the Ordinance shall limit the powers of the Township or the Board of Supervisors.

Section 9 discusses the effect of a finding of partial invalidity on the Ordinance.

Exhibit "A" to the Ordinance is the proposed Articles of Incorporation of the Authority.

A summary of the Articles of Incorporation of the Authority is as follows:

The preamble states that East Berlin Borough and Hamilton Township adopted ordinances authorizing formation of the Authority pursuant to the Municipality Authorities Act.

Section 1 states that the name of the Authority is the "East Berlin Area Joint Authority".

Section 2 states that the Authority is formed under the Municipality Authorities Act.

Section 3 states that East Berlin Borough previously formed an authority.

Section 4 states that East Berlin Borough and Hamilton Township are the incorporating authorities and references the names and addresses of the members of the East Berlin Borough Council and Hamilton Township Board of Supervisors.

Section 5 sets forth the names, addresses and terms of the first members of the governing board of the Authority.

Section 6 references the certification of publication for creating the Authority.

Section 7 states that Authority shall have a term of existence of 50 years.

Section 8 allocates the membership of the governing board of the Authority among the incorporating municipalities.

Section 9 sets forth the service area of the Authority.

Exhibit "A" sets forth the names and addresses of the members of the East Berlin Borough Council and Hamilton Township Board of Supervisors.

Exhibit "B" sets forth the names, addresses and terms of the first members of the governing board of the Authority.

Exhibit "C" will consist of the proofs of publication of this notice.

Exhibit "D" depicts the service area of the Authority.

9/28

ESTATE NOTICES

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

FIRST PUBLICATION

ESTATE OF ANDREW JOHN BAUER-LINE, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executrix: Gloria R. Bauerline, 3565 Hanover Road, Gettysburg, PA 17325

Attorney: Ronald J. Hagarman, Esq., 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ETHEL L. MIKESSELL, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executors: Edward M. Mikesell, 684 Basehoar Rd., Littlestown, PA 17340; Raymond D. Mikesell, 169 W. King Street, Littlestown, PA 17340

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

ESTATE OF GEORGE C. WILT, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: M & T Bank and Harriet W. Hahn, c/o 48 South Duke Street, York, PA 17401

Attorney: Bruce C. Bankenstein, Esq., 48 South Duke Street, York, PA 17401

SECOND PUBLICATION

ESTATE OF JAMES W. BEITLER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Charles C. Beitler, 13 Winter Drive, Gettysburg, PA 17325

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

ESTATE OF ROSARIA D. BOOZ, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executrix: Charlene J. Durany, 81 Reba Drive, New Oxford, PA 17350

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

ESTATE OF PHYLLIS G. CULP, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Co-Executors: Jeffrey R. Culp, 178 Norway Lane, Lebanon, PA 17042; James A. Culp, 1624 Clover Lane, York, PA 17403; Karen M. Holtzworth, 103 Hanover Street, Gettysburg, PA 17325

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

ESTATE OF KATHERINE P. DUBBS, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Vicki E. Hartlaub, 680 Hanover Pike, Littlestown, PA 17340

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

ESTATE OF PHILIP O. NETH, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Administrators c.t.a.: Barbara R. Neth, 85 Meade Drive, Gettysburg, PA 17325; Jerry R. Neth, 845 Chapel Road, Gettysburg, PA 17325

Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF BENJAMIN STROUD, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Pamela D. Stroud, 5 North Pine Street, Gettysburg, PA 17325

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

THIRD PUBLICATION

ESTATE OF MARGARET C. CABLE, DEC'D

Late of Union Township, Adams County, Pennsylvania

Administrator: Mary Margaret Hewes, 22 Fieldcrest Dr., Littlestown, PA 17340

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

ESTATE OF MADELINE V. CLINEDINST, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executors: Arlene Briggs, 510 Brysonia Road, Biglerville, PA 17307; David G. Clinedinst, 999C Brysonia-Wenksville Road, Biglerville, PA 17307

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

ESTATE OF MARGARET E. HENDRICKS, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Erik J. Hendricks, 185 Tiffany Lane, Gettysburg, PA 17325

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

ESTATE OF ELEANOR L. KNOTTS, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: William C. Knotts, 723 Chambersburg Road, Apt. A, Gettysburg, PA 17325

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

**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, October 9, 2007, at 9:00 a.m.

SELLERS—Orphans' Court Action Number OC-94-07. The First and Final Account of Thomas Ferrence, Executor of the Estate of Martha M. Sellers, deceased, late of Oxford Township, Adams County, Pennsylvania.

McMASTER—Orphans' Court Action Number OC-102-07. The First and Final Account of Janet Rinehart, Executor of the Estate of Loretta Agnes McMaster, deceased, late of the Borough of Abbottstown, Adams County, Pennsylvania.

KLINE—Orphans' Court Action Number OC-100-07. The First and Interim Account of LeRoy D. Kline Jr., Administrator of the Estate of Harvey W. Kline, deceased, late of Adams County, Pennsylvania.

KLINE—Orphans' Court Action Number OC-101-07. The First and Interim Account of LeRoy D. Kline Jr. and Ray E. Bange, Executors of the Estate of Marie C. Kline, deceased, late of Adams County, Pennsylvania.

WOLF—Orphans' Court Action Number OC-72-07. The First and Final Report of PNC Bank, N.A., formerly Gettysburg National Bank, Guardian of the Estate of Christopher C. Wolf.

Kelly A. Lawver
Clerk of Courts

9/28 & 10/5

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that on September 7, 2007, a certificate was filed under the Fictitious Name Act, Act of December 16, 1982, P.L. 1309, No. 295, 52, 54 Pa.C.S.A. §301, et seq., in the Office of the Secretary of the Commonwealth of Pennsylvania, setting forth that Alan J. Stock, 245 Orchard Dr., Hanover, PA 17331, and Louise S. Gebhart, 432 George St., Hanover, PA 17331, are the only persons owning or interested in a business known as 208 REALTY PARTNERSHIP, and the location where the business is and will be located is 208 Lincoln Way East, New Oxford, PA 17350.

G. Steven McKonly, Esq.

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