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SNYDER HARDWARE VS. STRABAN TWP. ZHB

Our Trust department
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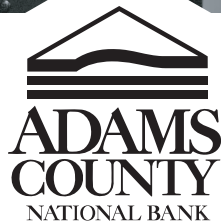
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IN THE COURT OF
COMMON PLEAS OF
LANCASTER COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION
2008 - 1970

IN RE: BABY BOY KNAUB, aka, ASHER
AIDEN COSTAS, A Minor

TO: Damien Knaub

You are hereby notified that a Petition to Involuntary Termination of Parental Rights has been filed against you, asking the Court to terminate all rights you have to your child, BABY BOY KNAUB, aka, ASHER AIDEN COSTAS (born July 24, 2008). The Court has set a hearing to consider ending your rights to your child. That hearing will be held in Court Room No. 6 (Orphans' Court Room), on the Third Floor of the Lancaster Co. Court House, situate at 50 N. Duke St., Lancaster, PA, said hearing to be held on 01/22/09, at 9:15 o'clock a.m. If you do not appear at this hearing, the Court may decide that you are not interested in retaining your rights to your child and your failure to appear may affect the Court's decision on whether to end your rights to your child. You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you, and your rights to your child may be ended by the Court without your being present.

You are also notified that following the hearing to consider ending your rights to your children, an adoption hearing may be held, as a result of which the Court may decree that an adoption take place whereby your child shall be adopted by another and all parental rights with respect to the child shall be placed in another.

YOU HAVE THE RIGHT TO BE REPRESENTED AT THE HEARING BY A LAWYER. YOU SHOULD TAKE THIS PAPER 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
Court Administrator's Office
Lancaster Co. Court House
50 N. Duke St.
Lancaster, PA 17602
Telephone No. 717-299-8041

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1313 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 30th day of January, 2009, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that improved lot of ground situate on the East side of Fourth Street in the Borough of Gettysburg, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a steel rod on the East property line of Fourth Street at lands of Gettysburg Area School District, which steel rod is more particularly set forth on the subdivision plan hereinafter referred to; thence by lands of Gettysburg Area School District, South 68 degrees East, 125.48 feet to a steel rod; thence continuing by lands of Gettysburg Area School District, South 5 degrees 4 minutes 50 seconds West, 59.74 feet to a steel rod; thence by lands formerly of Clair F. Ditzler, now lands of John P. DeHaas and Patsy A. DeHaas, Lot No. 2, North 85 degrees 30 minutes 40 seconds West, 119.92 feet to a steel rod on the East property line of Fourth Street; thence along the East property line of Fourth Street, North 5 degrees East, 97.50 feet to a steel rod, the point and place of BEGINNING, CONTAINING 9,430 square feet.

1) Vested by Warranty Deed, dated 11/18/2004, given by The CIT Group Consumer Finance, Inc. to William Guilmain, Jr., married, their heirs and assigns and recorded 12/3/2004 in Book 3792 Page 244.

Tax Parcel: (16) 005-0003-000

Premises Being: 421 North Fourth Street, Gettysburg, Pa 17325-1610

SEIZED and taken into execution as the property of **William Guilmain, 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 February 20, 2009, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after

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

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

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

12/24, 1/2 & 9

LEGAL NOTICE-ANNUAL MEETING

The annual meeting of the policyholders of the Protection Mutual Insurance Company of Littlestown will be held at the office located at 101 South Queen Street in Littlestown, PA, between the hours of 1:00 and 2:00 p.m., on January 10th, 2009 to elect directors and to transact any other business properly presented.

Attest: Marilyn Q. Butt
President & Treasurer; Director
12/19, 24, 1/2 & 9

INCORPORATION NOTICE

ARC RACECARS INC. has been incorporated under the provisions of the Pennsylvania Business Corporation Law of 1988.

Eugene Steger & Associates, PC
411 Old Baltimore Pike
Suite 101
Chadds Ford, PA 19317

1/9

SNYDER HARDWARE VS. STRABAN TWP. ZHB

1. A zoning board's written decision is sufficient if it provides an adequate explanation of its resolution of the factual questions involved, and sets forth its reasoning in such a way as to show its decision was reasoned and not arbitrary.

2. A special exception is a use that is expressly permitted provided the applicant meets certain enumerated standards.

3. The applicant for a special exception has the burden of proving that the proposed special exception use satisfied the standards in the zoning ordinance.

4. As a general principle, it is presumed a proposed use is consistent with the promotion of local concerns relating to general health, safety, and welfare. This presumption shifts the burden to any objectors to prove that the proposed use is detrimental to those concerns. However, the Commonwealth Court further recognized that a zoning ordinance may alter this general presumption by providing that the burden rests on the applicant with regard to issues of detriment to the health, safety, and welfare of the community.

5. This Court may not substitute an interpretation of the evidence for that of the zoning board. It is the board who is the sole judge of the credibility of witnesses and the weight to be afforded the testimony. In this regard, a zoning board is free to reject even uncontradicted testimony it finds lacking in credibility.

6. The standard to be observed by the zoning hearing board is whether the plan as submitted complies with specific ordinance requirements at the time the plan comes before it; statements as to what "could" be done fail to evidence compliance.

7. Even if an applicant demonstrates that it can comply with the ordinance requirements and promises to do so, the AHB does not err in denying the application. Simply put, a concept plan is insufficient to warrant the granting of a special exception; rather, to be entitled to receive a special exception, the applicant must come forward with evidence detailing its compliance with the necessary requirements.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 07-S-786, SNYDER HARDWARE, INC., T/A SNYDER DEVELOPERS, VS. ZONING HEARING BOARD OF STRABAN TOWNSHIP.

Glenn C. Vaughn, Esq., for Appellant

Chester G. Schultz, Esq., for Zoning Hearing Board

Walton V. Davis, Esq., Township Solicitor

George, J., February 26, 2008

OPINION

Snyder Hardware, Inc. ("Snyder") appeals from the decision of the Straban Township Zoning Hearing Board ("Board") denying their request for special exception. Straban Township ("Straban") has intervened in the litigation. For the reasons set forth below, the decision of the Board is affirmed.

On February 26, 2007, Snyder submitted application to the Board seeking special exception under the Straban Township Zoning

Ordinance for the development of approximately 680 acres along both sides of Red Bridge Road just south of Beaver Run Road, Straban Township, Adams County. The proposal called for the development of 660 units in a cluster residential design. The property at issue is located in a rural residential (“R-R”) zoning district pursuant to the Straban Township Zoning Ordinance.

Pursuant to the Ordinance, any development plan containing ten or more units or lots is required to apply for a special exception under Section 301(B).¹ After hearing, the Board denied Snyder’s request for special exception on several different grounds. Initially, the Board found that Snyder failed to carry the burden of proof in satisfying the criteria for a special exception under the Ordinance. Specifically, the Board found that Snyder failed to provide credible evidence concerning sufficient infrastructure to support the development. The Board found a paucity of information concerning fire, police, and ambulance protection; adequate public sewer and water facilities; and other public utilities. Additionally, the Board found a lack of meaningful information concerning the suitability of the road system to support such a development. Finally, the Board held that the application was inconsistent with the open space requirement under the Ordinance and that the pedestrian scale lighting plan accompanying the development plans presented safety issues.

Snyder, in their appeal, raises a multi-front assault on the Board’s decision. Initially, Snyder claims that the Board’s decision was procedurally defective under the provisions of the Ordinance. Snyder suggests, as a matter of law, that the procedural defect requires a “deemed approval” of the special exception. Snyder next argues that the Board committed an error of law and abuse of discretion in finding that the applicant failed to present evidence of all specific objective requirements for a special exception under the Ordinance. Snyder suggests that the Board misapplied the burden of proof as they suggest that the burden rests upon objecting parties in raising general policy concerns. They conclude that since the hearing record lacked the presentation of any such evidence by any objecting party,

¹ Subsequent to the zoning hearing, the Township has codified their Ordinances. The codified section number related to special exceptions is Section 140-7B(1). For consistency with the record, throughout this Opinion, the Court will cite the original Ordinance section which will be accompanied by a footnote identifying the codified section number.

the Board was obligated to approve the special exception. Finally, Snyder suggests that even should the Board have correctly determined that sufficient proof to satisfy the criteria for the special exception was lacking, they were required to approve the special exception with appropriate conditions rather than denying the application. I will address each of these issues seriatim.

The Straban Township Zoning Ordinance provides, in pertinent part, that when an application to the Zoning Hearing Board is denied:

[t]he decision shall be accompanied by findings of fact and conclusions based thereon together with the reasons therefor. Conclusions based on any provisions of this Ordinance or any law, ordinance, rule or regulation shall contain a reference to the provisions relied on and the reasons why the conclusion is deemed appropriate in light of the facts found.

Straban Township Zoning Ordinance, Section 902(B)(10).² This provision in the Ordinance mirrors the requirements of the Municipalities Planning Code as they relate to decisions of a zoning hearing board. See 53 P.S. § 10908(9). Snyder does not take issue with the timeliness of the decision nor with the presence of findings of fact and conclusions of law within the decision. Rather, Snyder challenges the decision's specificity in setting forth findings of fact and conclusions of law. Notably, Snyder fails to set forth any authority in support of this argument.

A zoning board's written decision is sufficient if it provides an adequate explanation of its resolution of the factual questions involved, and sets forth its reasoning in such a way as to show its decision was reasoned and not arbitrary. *Borough of Youngsville v. Zoning Hearing Bd. of Borough of Youngsville*, 450 A.2d 1086, 1089 (Pa.Cmwlth. 1982). Where a zoning board's decision is clear and substantially reflects application of the law governing variances the decision is sufficient to enable effective review. *Taliaferro v. Darby Twp. Zoning Hearing Bd.*, 873 A.2d 807, 816 (Pa.Cmwlth. 2005), *appeal denied*, 887 A.2d 1243 (Pa.) citing *In re Avanzato*, 403 A.2d 198 (Pa.Cmwlth. 1979).

²Section 140-61B(11).

Applying this instruction currently, I find the Board's decision more than sufficient to present effective review. As evidence of this conclusion, we need look no further than Snyder's item-by-item assault on the Board's decision. The decision makes specific factual findings and specific reference to the section of the Ordinance which sets forth the criteria which the Board found to be lacking in the application. The decision also explains that the application's failure to comply with the open space requirements of the Ordinance is due to a board finding of lack of contiguous open space. When read in its entirety, there is no doubt as to the factual findings and conclusions reached by the Board.

Moreover, even had I determined that the written facts and findings were insufficient, Snyder's request for a "deemed approval" is contrary to Appellate authority. In *Romesburg v. Fayette County Zoning Hearing Bd.*, 727 A.2d 150, 152 (Pa.Cmwlth. 1999), the issue of when a "deemed approval" is appropriate was thoroughly discussed:

Pursuant to Section 908(9) of the Code, 53 P.S. § 10908(9), the Board is required, within forty-five days of the last hearing on an application before a zoning board, to render a decision on a matter and communicate that decision to the applicant in writing. *Mullen v. Zoning Hearing Bd. of Collingdale Borough*, 691 A.2d 998 (Pa.Cmwlth. 1997). Otherwise, assuming that the applicant has not agreed to an extension of time, and even if the applicant was informed orally of a decision, there is a deemed approval of the application due to untimeliness. *Id.* It is not necessary that the written decision be accompanied by the usual written appurtenances of an opinion. *Id.* Despite language in the statute indicating otherwise, precedent clearly indicates that a decision, not supported by written facts and findings, is still valid; the decision is not deemed to be in favor of the applicant solely because the findings of fact and conclusions of law are late or absent. *Packard v. Commonwealth*, 426 A.2d 1220 (1981); *Heisterkamp v. Zoning Hearing Bd. of City of Lancaster*, 34 Pa. Cmwlth. 539, 383 A.2d 1311 (1978). It is decision itself that must be made within forty-five days. *Packard*.

727 A.2d 150, 152. Although remand to the zoning hearing board is an appropriate remedy where a decision's findings of fact and conclusions are deficient, see *Mill-Bridge Realty, Inc. v. Zoning Bd. of Adjustment and Amish-Dutch Inns, Inc.*, 286 A.2d 483, 486 (Pa.Cmwlth. 1972), remand is not necessary instantly since all parties have adequately framed the issues and identified the Board's findings and conclusions which are the subject of this dispute. Accordingly, Snyder is not entitled to any relief on this issue.³

Snyder next argues that the Board committed an error of law by improperly placing the burden of proof on them in regard to addressing general policy considerations. Snyder argues that their initial burden, as applicants, is limited to establishing that the kind of use proposed is permitted in the district by special exception; that the proposal meets the specific special exception requirements of the Ordinance; and that the proposal meets specific requirements for the proposed use generally. Once these elements are satisfied by the applicant, Snyder suggests that the burden shifts to the objectors, if any, to establish that general policy concerns are sufficient to warrant denial of the application. Snyder concludes that the Board committed an error of law because the reasons cited by the Board for denial fall within the category of general policy concerns for which they have no burden to refute until evidence raising those concerns is submitted by an objecting party. Although Snyder's argument may find support in the law, it is misapplied to the circumstances of this matter.

As mentioned, Snyder's application before the Board was one for special exception. A special exception is a use that is expressly permitted provided the applicant meets certain enumerated standards. *Southdown, Inc. v. Jackson Twp. Zoning Hearing Bd.*, 809 A.2d 1059, 1064 N.6 (Pa.Cmwlth. 2002). The rules which determine whether a special exception is to be granted are enumerated in the ordinance itself. *Broussard v. Zoning Bd. of Adjustment of City of Pittsburgh*, 831 A.2d 764, 769 (Pa.Cmwlth. 2003). It is the function of the board to determine that such specific facts, circumstances, and

³Snyder, in their Brief, appears to take issue with the Board's decision being signed by the Solicitor rather than the individual Board members. There is no merit to Snyder's concern in this regard. See *Mullen v. Zoning Hearing Bd. of Collingdale Borough*, 691 A.2d 998, 1000-1001 (Pa.Cmwlth. 1997) (it is not necessary that a decision be accompanied by the usual written impertinences of an opinion nor that the decision contain signatures of the board's members as the decision may be communicated by an agent of the board in place of the members themselves).

conditions exist which comply with the standards of the ordinance and merit the granting of the exception. *Id.*

The applicant for a special exception has the burden of proving that the proposed special exception use satisfies the standards in the zoning ordinance. *Greth Dev. v. Zoning Hearing Bd.*, 918 A.2d 181, 186 (Pa.Cmwlth. 2007). Once an applicant has made out a *prima facie* case, the burden shifts to any objectors to present sufficient evidence that the proposed use has a detrimental effect on the public health, safety, and welfare. *Id.* Typically, an applicant for a special exception need not address general policy considerations such as sewage capacity. *Schatz v. New Britain Township Zoning Hearing Bd. of Adjustment*, 596 A.2d 294, 298 (Pa.Cmwlth. 1991). However, where such provisions are specifically required by the zoning ordinance, a special exception may be denied if the applicant fails to establish it can meet those requirements. *Greth Dev. v. Zoning Hearing Bd.*, *supra*, citing *East Manchester Twp. Zoning Hearing Bd. v. Dallmeyer*, 609 A.2d 604 (Pa.Cmwlth. 1992).

Recently, the Commonwealth Court reaffirmed the general principle that in considering a request for special exception, it is presumed a proposed use is consistent with the promotion of local concerns relating to general health, safety, and welfare. This presumption, as properly noted by Snyder, shifts the burden to any objectors to prove that the proposed use is detrimental to those concerns. *Elizabethtown/Mt. Joy Associates, L.P. v. Mount Joy Twp. Zoning Hearing Bd.*, 934 A.2d 759 (Pa.Cmwlth. 2007). However, the Commonwealth Court further recognized that a zoning ordinance may alter this general presumption by providing that the burden rests on the applicant with regard to issues of detriment to the health, safety, and welfare of the community. *Id.* A.2d at 764, F.N. 6. The Court instructed that in such instances, the applicant bears the initial burden of persuasion. *Id.* Although partially citing authority in this area, Snyder ignores the clear legal precedent requiring an applicant to present proof of compliance with an ordinance's criteria for a special exception even where they may otherwise fall within the ambit of general policy consideration.

The criteria governing the application before the Court is set forth in Ordinance Section 902(E).⁴ Among those criteria is a requirement that

⁴Section 140-61E.

the applicant establish that “[a]dequate public facilities are available to serve the proposed use (e.g., schools, fire, police and ambulance protection, sewer, water and other utilities, vehicular access, etc.). Ordinance Section 902(E)(4).⁵ Thus, it is clear that under the authority of *Elizabethtown*, Snyder bears the burden of persuasion on this issue.

After hearing, the Board concluded that Snyder’s presentation lacked credible evidence in regard to the criteria set forth in subparagraph (4) of the Ordinance. In reviewing the Board’s determination, I note that this Court may not substitute an interpretation of the evidence for that of the zoning board. *Vanguard Cellular Systems, Inc. v. Zoning Hearing Bd. of Smithfield Twp.*, 568 A.2d 703, 707 (Pa.Cmwlth. 1989). It is the function and obligation of a zoning hearing board to weigh the evidence before it. *Spargo v. Zoning Hearing Bd. of the Municipality of Bethel Park*, 563 A.2d 213, 218 (Pa.Cmwlth. 1989). It is the board who is the sole judge of the credibility of witnesses and the weight to be afforded the testimony. *Manayunk Neighborhood Council v. Zoning Bd. of Adjustment of City of Philadelphia*, 815 A.2d 652, 658 (Pa.Cmwlth. 2002), *appeal denied*, 833 A.2d 145 (Pa. 2003). In this regard, a zoning board is free to reject even uncontradicted testimony it finds lacking in credibility. *Nettleton v. Zoning Bd. of Adjustment of City of Pittsburgh*, 828 A.2d 1033, 1041 (Pa. 2003). Where the record contains substantial evidence, this Court is bound by the Board’s findings resulting from resolutions of credibility. *Macioce v. Zoning Hearing Bd. of Borough of Baldwin*, 850 A.2d 882, 887 (Pa. Cmwlth. 2004), *appeal denied*, 863 A.2d 1150 (Pa. 2004).

An exhaustive review of the record reveals that the Board’s conclusions find support in the record. The Board’s determination that the applicant failed to provide facts about fire protection, police protection, ambulance protection, public sewer facilities, public water facilities, other public utilities, and vehicular access is substantiated by the record. For instance, in regard to the issue of public sewer facilities, the applicant represented that sewer service will be provided and “in concept” is “intended” to be treated at an approved community sewage treatment plant.⁶ Snyder’s presentation is similarly cavalier in regard to other public services. Although broadly

⁵Section 140-61E(4).

⁶Hearing Transcript, pg. 8, 25. Applicant’s Exhibit 1, pg. 5.

proclaiming that “[a]dequate public facilities will be available for the proposed community,”⁷ Snyder presents no substance in support of that proclamation. In response to questioning by Snyder’s council, the sole witness on behalf of the applicant, Randall J. Wright, indicated that he “believed” the services were available. Hearing Tr., pg. 35. Upon cross-examination by the Township’s Solicitor, Wright conceded that he had not spoken with any officials from the respective school district, ambulance service provider, or fire company servicing the proposed development. Hearing Tr., pg. 40. Wright also conceded that there has been no traffic study in regard to the impact of the development. Hearing Tr., pg. 53. In regard to water service, Wright could provide no specifics in regard to available water or the proposed location for water storage. Hearing Tr., pg. 38, 59.⁸

I find the recent Commonwealth Court decision in *Elizabethtown*, *supra*, to be controlling. In *Elizabethtown*, on a similar record, the Commonwealth Court affirmed a decision of the Mt. Joy Township Zoning Hearing Board denying an application for special exception. The Commonwealth Court upheld the board’s determination that uncorroborated statements made by the developer were insufficient to meet the criteria set forth in the ordinance. The Court noted that “the standard to be observed by the zoning hearing board is whether the plan as submitted complies with specific ordinance requirements at the time the plan comes before it.” *Elizabethtown*, *supra*, A.2d at 765, citing *Edgmont Twp. v. Springton Lake Montessori School, Inc.*, 622 A.2d 418 (Pa.Cmwlt. 1993). The Court concluded that statements as to what “could” be done failed to evidence compliance with the criteria of the *Elizabethtown* Ordinance. Similarly, I find the Board’s rejection of Snyder’s broad claims to be within their prerogative to weigh the evidence. Since the Board found a lack of credible evidence in regard to the specific criteria of the Ordinance, the

⁷ Applicant’s Exhibit 1, pg. 7.

⁸ Hearing testimony indicated that any water service system would require storage capacity. The testimony indicated that the extent or size of the storage facilities was presently unknown. In their Brief, the Township suggests that a determination of whether Snyder’s proposal complies with the open space requirements of the Ordinance is impossible in light of the inability to calculate the size of the water and sewage treatment systems in relation to their impact on the amount of available open space. While I find the Township’s argument meritorious, it is not necessary to conduct further discussion in light of the resolution herein above. *Zoning Hearing Bd. v. Bd. of Supervisors*, 804 A.2d 1274, 1278 (Pa.Cmwlt. 2002).

application was properly denied. *Sheetz, Inc. v. Phoenixville Borough Council*, 804 A.2d 113, 115 (Pa.Cmwlth. 2002), *appeal denied*, 820 A.2d 706 (Pa. 2003).

Snyder finally argues that even if the special exception criteria under the Ordinance have not been satisfied, the Board was required to conditionally approve the special exception. Unfortunately for Snyder, the Commonwealth Court clearly ruled contrary to Snyder's position in *Elizabethtown*, *supra*.

Even if an applicant demonstrates that it can comply with the ordinance requirements and promises to do so, the ZHB does not err in denying the application. Simply put, a concept plan is insufficient to warrant the granting of a special exception; rather, to be entitled to receive a special exception, the applicant must come forward with evidence detailing its compliance with the necessary requirements. "Evidence is not a 'promise' that the applicant will comply because that is a legal conclusion the [ZHB] makes once it hears what the applicant intends to do and then determines whether it matches the requirements set forth in the ordinance." *Edgmont Twp.*, 622 A.2d at 419.

Thus, there simply is no duty on a zoning hearing board to grant a special exception with conditions. The proper function of conditions is to reduce the adverse impact of a use allowed under a special exception, not to enable the applicant to meet his burden of showing that the use which he seeks is one allowed by the special exception. (citations omitted)

Elizabethtown v. Mt. Joy Twp. Zoning, *supra*, A.2d at 768. Since this reasoning is consistent with ample Appellate authority, the attached Order is entered.

ORDER

AND NOW, this 26th day of February, 2008, the decision of the Straban Township Zoning Hearing Board is affirmed.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 08-S-360 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 30th day of January, 2009, 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 Mount Pleasant Township, Adams County, Pennsylvania, being more particularly bounded and described as follows:
Lot No. 120

BEGINNING at a point on the edge of a 50 foot right of way known as Cannon Lane at corner of Lot No. 119 as shown on the hereinafter referred to draft of survey; thence in and along Cannon Lane, South 11 degrees 12 minutes 51 seconds West, 45.00 feet to a point on the edge of a 50 foot wide right of way known as Cannon Lane at corner of Lot No. 121; thence along said Lot No. 121, and running through the center of a party wall in a five unit townhouse separating said Lot No. 121 and the lot hereby described, North 78 degrees 47 minutes 09 seconds West, 153.57 feet to a point on the edge of Alley No. 5 as more fully shown on the hereinafter referred to subdivision plan; thence along said Alley No. 5 on a curve to the right, the radius of which is 345.00 feet, having an arc distance of 45.13 feet, and a chord bearing and distance of North 07 degrees 22 minutes 22 seconds East, 45.13 feet to a point along Alley No. 5 at corner of Lot No. 119; thence along said Lot No. 119, South 78 degrees 47 minutes 09 seconds East, 156.59 feet to the point on the edge of a 50 foot right of way known as Cannon Lane at corner of Lot No. 119 as shown on the hereinafter referred to draft of survey, the point and place of BEGINNING, CONTAINING 6,956.6 square feet, or 0.1597 acre.

TITLE TO SAID PREMISES IS VESTED IN Steve Jack and Nahdia Jack, h/w, by Deed from Philip T. Gebhart, a single man and Steven A. Gebhart and Lisa A. Gebhart, his wife, dated 12/01/2005, recorded 12/05/2005, in Deed Book 4232, page 163.

Tax Parcel: (32) 012-0036

Premises Being: 53 Cannon Lane, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **Steve Jack & Nahdia Jack** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the

Sheriff in his office on February 20, 2009, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

12/24, 1/2 & 9

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 08-N-631 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 30th day of January, 2009, 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 land situate in Mount Joy Township, Adams County, Pennsylvania, being more particularly described as Lot Number 315 on a plan of lots of Lake Heritage Subdivision duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Miscellaneous Deed Book 4 at Page 233, and subject to all legal highways, easements, rights of way and restrictions of record.

Tax Parcel # (31) 004-0100-000

Premises Being: 315 Heritage Drive Gettysburg, PA 17325

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 20, 2009, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

12/24, 1/2 & 9

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 08-S-1174 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 30th day of January, 2009, 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 Biglerville Borough, County of Adams, Commonwealth of Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point on the North curb line of East York Street; thence by land now or formerly of E. C. Fidler, North 30 degrees 30 minutes West, 190 feet to a point at land now or formerly of G. W. Koser; thence by the same, North 59 degrees 30 minutes East, 120 feet to a point; thence by land now or formerly of E. C. Fidler, South 30 degrees 30 minutes East, 190 feet to a point by said curb line, South 59 1/2 degrees West, 120 feet to the above-described place of BEGINNING.

TITLE TO SAID PREMISES IS VESTED IN Diane M. Fitzgerald, unmarried, by Deed from Edward M. Fitzgerald and Ruthie L. Fitzgerald, his wife, dated 09/28/2001, recorded 09/28/2001 in Book 2417, Page 137.

Tax Parcel: (05) 002-0004-000

Premises Being: 332 East York Street, Biglerville, PA 17307-9496

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 20, 2009, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

12/24, 1/2 & 9

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1081 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 30th day of January, 2009, 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 parcel of land in the Township of Mt. Joy, Adams County, Commonwealth of Pennsylvania, as more fully described in Deed Book 4622, Page 192, ID # H16-68B. Being known and designated as all that tract of land situate, lying and being in Mt. Joy Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the center of Township Road T-428, known as Bowers Road, at corner of land now or formerly of Brenda Lee Dinapoli, designated as Lot No. 2 on the plan of lots referred to below; thence by said land of Brenda Lee Dinapoli, designated as Lot No. 2, North 69 degrees, 19 minutes, 44 seconds West, 209.40 feet to a point; thence by Lot No. 5 on the plan of lots referred to below, North 6 degrees, 56 minutes, 53 seconds East, 166.56 feet to a point; thence by other lands now or formerly of Brenda Lee Dinapoli, South 66 degrees, 12 minutes, 49 seconds East, 233.14 feet to a point in the center of Township Road T-428, South 14 degrees, 29 minutes, 59 seconds West, 150 feet to a point in the center of said road, the place of BEGINNING, CONTAINING 34,197 square feet.

The above description was taken in part from a plan of lots prepared by Donald E. Worley, RS., dated August 23, 1977, recorded in Plat Book 19 at Page 9, designated the above as Lot No. 3 and a portion of Lot No. 4.

Deed from the John Hart and Betty Hart Revocable Living Trust, by John Hart and Betty Hart, husband and wife, as Trustees of the John H as set forth in Deed Book 4622, Page 192 dated 10/20/2006 and recorded 10/30/2006, Adams County Records, Commonwealth of Pennsylvania.

BEING KNOWN AS: 54 Bowers Road (Mount Joy Township), Littlestown, PA 17340

PROPERTY ID NO.: (30) H 16-0068 B

TITLE TO SAID PREMISES IS VESTED IN Raymond E. Bosley and Karen L. Bosley, husband and wife by deed from the John Hart and Betty Hart Revocable Living Trust, by John Hart and Betty Hart, husband and wife, as trustees of the John Hart and Betty Hart Revocable dated 10/20/2006 recorded 10/30/2006 in Deed Book 4622 Page 192.

SEIZED and taken into execution as the property of **Raymond E. Bosley & Karen L. Bosley** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 20, 2009, 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.

1/2, 9 & 16

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 08-S-1087 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 30th day of January, 2009, 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 lying and situate in Liberty Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a railroad spike in the center of public highway leading from Fairfield to Emmitsburg at land now or formerly of Wilbur F. Sites; thence in the center of said highway, South 42 degrees 55 minutes East, 81.4 feet to a railroad spike in the center of said highway; thence in the center of said highway, South 31 degrees 18 minutes East, 210.7 feet to a point in the center of said highway; thence by land now or formerly of Russell Hartman, South 36 degrees 14 minutes West, 76.4 feet to an iron pin; thence by land now or formerly of Lloyd Hartman, North 71 degrees 50 minutes West, 242.7 feet to an iron pin; thence by land now or formerly of Wilbur F. Sites, North 8 degrees 5 minutes East, 155 feet to an iron pin; thence by the same, North 52 degrees 32 minutes East, 110 feet to a railroad spike in the center of the aforementioned public highway, the place of BEGINNING, CONTAINING 1 Acres 20 perches.

TITLE TO SAID PREMISES IS VESTED IN Robert C. Humphrey, Jr. and Deborah A. Humphrey, h/w, by Deed from Robert C. Humphrey, Jr., dated 10/24/2001, recorded 11/07/2001, in Deed Book 2455, page 291.

Tax Parcel: (25) C16-0035A-000

Premises Being: 491 Tract Road, Fairfield, PA 17320

SEIZED and taken into execution as the property of **Robert C. Humphrey, Jr. a/k/a Robert Humphrey & Deborah A. Humphrey a/k/a Deborah Humphrey a/k/a Deborah A. Rice a/k/a Deborah Ann Rice** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 20, 2009, 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.

1/2, 9 & 16

DISSOLUTION NOTICE

NOTICE IS HEREBY GIVEN to all creditors and claimants of GS&G BUILDERS, INC., a business corporation, that the shareholders have approved a proposal that the corporation dissolve voluntarily and that the Board of Directors is now engaged in winding up and settling the affairs of the Corporation under the provisions of Section 1975 of the Pennsylvania Business Corporation Law of 1988.

Duncan & Hartman, P.C.
William A. Duncan
I.D. # 22080
1 Irvine Row
Carlisle, PA 17013
717-249-7780

1/9

ESTATE NOTICES

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

FIRST PUBLICATION

ESTATE OF EDGAR LEE PORTER
a/k/a E. LEE PORTER, DEC'D

Late of the Borough of Gettysburg,
Adams County, Pennsylvania

Executrix: Ann Pietrzak, c/o Jennifer A.
Messa, Esq., 130 W. Lancaster
Ave., Wayne, PA 19087-0191

Attorney: Jennifer A. Messa, Esq.,
Davis Bennett & Spiess LLC, 130 W.
Lancaster Ave., P.O. Box 191,
Wayne, PA 19087-0191

ESTATE OF BENJAMIN Z. SCHWARTZ,
DEC'D

Late of Cumberland Township, Adams
County, Pennsylvania

Executrix: Susan Rogers, 287 Table
Rock Road, Gettysburg, PA 17325

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

SECOND PUBLICATION

ESTATE OF KENNETH E. APPLER,
DEC'D

Late of Mt. Pleasant Township, Adams
County, Pennsylvania

Executor: Kenneth E. Appler, Jr., 735 A
Frederick Street, Hanover, PA 17331

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

ESTATE OF LESTER L. COOL, DEC'D

Late of Mt. Joy Township, Adams
County, Pennsylvania

Administrator: Michael D. Cool, 263
Berwick Road, Abbottstown, PA
17301

Attorney: Amy E. W. Ehrhart, Esq.,
Mooney & Associates, 230 York
Street, Hanover, PA 17331

ESTATE OF DONNA C. MASTERS,
DEC'D

Late of Hamiltonban Township, Adams
County, Pennsylvania

Executrix: Linda M. Rosenberry, c/o R.
Thomas Murphy & Associates, PC,
114 West Third Street, Waynesboro,
PA 17268

Attorney: R. Thomas Murphy, Esq., R.
Thomas Murphy & Associates, PC,
114 West Third Street, Waynesboro,
PA 17268

THIRD PUBLICATION

ESTATE OF ERMA M. AUMON, DEC'D

Late of Oxford Township, Adams
County, Pennsylvania

David R. Klunk, 534 East King Street,
Littlestown, PA 17340

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

ESTATE OF JOHN HORNER, DEC'D

Late of the Borough of Bendersville,
Adams County, Pennsylvania

Executor: William H. Horner, P.O. Box
166, Bendersville, PA 17306

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

ESTATE OF PAUL E. MILLER, JR.,
DEC'D

Late of Cumberland Township, Adams
County, Pennsylvania

Executrix: Tammy E. Riley, 571 Oxford
Road, Gardners, PA 17324

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

ESTATE OF PATRICIA ANN WARFIELD,
DEC'D

Late of Cumberland Township, Adams
County, Pennsylvania

Ellen M. Hartle, 1237 Pinch Valley,
Westminster, MD 21158

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1210 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 30th day of January, 2009, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a concrete nail in the right-of-way limits of Township Road T-394 at corner of land now or formerly of Fred Hartman; thence by said land, North 74 degrees 14 minutes 00 seconds West, 331.45 feet to an iron pipe at lands now or formerly of Pitzer Bros. Fruit Farms, Inc.; thence by same, North 36 degrees 20 minutes 30 seconds East, 288.00 feet to an iron pipe; thence by same, South 88 degrees 11 minutes 00 seconds East, 305.65 feet to a spike in the right-of-way limits of Township Road T-394; thence in same, South 30 degrees 34 minutes 30 seconds West, 103.15 feet to a point; thence in same, South 25 degrees 06 minutes 30 seconds West, 2346.85 feet to a concrete nail, the place of BEGINNING. CONTAINING 2.1100 acres.

BEING the same premises which Ray C. Gee and Beatrice M. Gee, by Raymond W. Newman, Sheriff of Adams County, in the Commonwealth of Pennsylvania, by his deed dated May 28, 2002, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Record Book 2675 at page 248, granted and conveyed unto Conesco Finance Servicing Corporation.

Parcel Identification No.: (29) F 05-0009D-000

RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN Lillian M. Armon, by Deed from Conesco Finance Consumer Discount Company, dated 10/22/2002, recorded 10/29/2002, in Deed Book 2854, page 83.

Premises Being: 40 Clines Church Road, Aspers, PA 17304

SEIZED and taken into execution as the property of **Lillian Loubier f/k/a Lillian M. Armon** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 20, 2009,

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.

1/2, 9 & 16

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 08-N-630 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 30th day of January, 2009, 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 land situated in Straban Township, Adams County, Pennsylvania, being more particularly described as Lot No. 416 on a plan of lots of Lake Heritage Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County in Miscellaneous Volume 4 at Page 427, and subject to all legal highways, easements, rights of way and restrictions of record.

Being Premises: 416 Heritage Drive Gettysburg, PA 17325

Tax I.D. # (39) 004-0026

SEIZED and taken into execution as the property of **George H. Simeone & Jodi F. Simeone** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 20, 2009, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

12/24, 1/2 & 9