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IN THIS ISSUE

BECKER ET AL VS. STRABAN TWP. ET AL

This opinion is continued from the last issue (January 20, 2012) and continues to the next issue (February 3, 2012).

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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DISSOLUTION NOTICE

NOTICE IS HEREBY GIVEN that the Shareholders and Directors of KOSTA DINO'S PIZZA & SUBS, INC., a Pennsylvania corporation, that has been inactive for several years but was most recently conducting business at 226 Steinwehr Avenue, Gettysburg, Pennsylvania 17325, has approved a proposal that the corporation voluntarily dissolve and that the Board of Directors engage in winding up and settling the affairs of the corporation. This notice of the dissolution proceedings is given pursuant to Section 1975 of the Pennsylvania Business Corporation Law of 1988 as amended.

Robert E. Campbell, Esq.
Campbell & White, P.C.
112 Baltimore Street
Gettysburg, PA 17325

1/27

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

Number 11-SU-1228

Fannie Mae (Federal National Mortgage Association), Plaintiff

v.

Allen R. Smith Jr. and Stacey A. Smith, Defendants

TO: ALLEN R. SMITH JR. AND STACEY A. SMITH

TYPE OF ACTION:
CIVIL ACTION/COMPLAINT IN MORTGAGE FORECLOSURE

PREMISES SUBJECT TO FORECLOSURE: 66 ROBIN TRAIL, FAIRFIELD, PENNSYLVANIA 17320

NOTICE

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

YOU SHOULD TAKE THIS NOTICE 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 INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Donald Fennimore
Court Administrator
Adams County Courthouse
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(717) 337-9846

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FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that ENDLESS EARTH TRAVEL filed a Fictitious Name Registration with the Pennsylvania Department of State on November 1, 2011 under the provisions of the Pennsylvania Business Corporation Law of 1988.

Matthew E. Teeter, Esq.
Teeter, Teeter & Teeter
108 West Middle Street
Gettysburg, PA 17325
717-334-2195

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INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Pennsylvania Department of State on November 1, 2011 to incorporate CODORI GOULET ENTERPRISES, INC., a business corporation incorporated under the provisions of the Pennsylvania Business Corporation Law of 1988.

Matthew E. Teeter, Esq.
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Gettysburg, PA 17325
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1/27

DISSOLUTION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Dissolution-Domestic were filed on January 3, 2012 with the Department of State of the Commonwealth of Pennsylvania, for the purposes of dissolving the non-profit business corporation known as THE CENTER/EL CENTRO, under the provisions of the Pennsylvania Non-Profit Corporation Law statutes at 15 Pa. C.S. § 5977 et seq., as amended.

John J. Murphy III, Esq.
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Continued from last issue (1/20/2012)

SCOPE OF REVIEW

In zoning cases where the trial court does not receive any additional evidence, the scope of review is limited to determining whether the Board committed an error of law or a manifest abuse of discretion. *Little Teasers Inc. v. Zoning Hearing Bd. of Adams County, Pa.*, 42 A.C.L.J. 176, 178 (1999) (citations omitted). "Determinations as to the credibility of witnesses and the weight to be given to the evidence are matters left solely to the Board in performance of its fact-finding role." *Shamah v. Hellam Twp. Zoning Hearing Bd.*, 648 A.2d 1299, 1304 (Pa. Cmwlth. 1994). The court does not substitute its own interpretation of the evidence for that of the Board. *Pietropaolo v. Zoning Hearing Bd. of Lower Merion Twp.*, 979 A.2d 969, 976 (Pa. Cmwlth. 2009). "A conclusion that the governing body abused its discretion may be reached only if its findings of fact are not supported by substantial evidence." *Sutliff Enterprises, Inc. v. Silver Spring Twp. Zoning Hearing Bd.*, 933 A.2d 1079, 1081 n.1 (Pa. Cmwlth. 2007). Evidence is substantial when a reasonable mind could accept it as adequate to support a conclusion. *Little Teasers*, 42 A.C.L.J. at 178. The Board is responsible for interpreting its own ordinance, and its interpretation of its own ordinance is entitled to great deference. *Pietropaolo*, 979 A.2d at 976.

DISCUSSION

This case consists of four consolidated appeals from decisions of the Straban Township Zoning Hearing Board, all regarding property located at 2440 Old Harrisburg Road. The ultimate issue, relevant to the disposition of each appeal, is whether the subject property is a lawful preexisting nonconforming use or whether that use has been abandoned. Appellant in his *Land Use Appeal Notices* and briefs to this Court appears to take issue with many aspects of the Zoning Hearing Board's decisions. Appellant's stated issues on appeal were not concise and were often interwoven with new facts proposed by Appellant that were not in the Record. The Court has attempted to determine Appellant's actual issues on appeal and has responded to each herein.

Case Consolidation

Preliminarily, Appellant takes issue with the consolidation of Appellant's four appeals with this Court. Pennsylvania Rule of Civil Procedure No. 213(a) states:

> In actions pending in a county which involve a common question of law or fact or which arise from the same transaction or occurrence, the court on its own motion or on the motion of any party may order a joint hearing or trial of any matter in issue in the actions, may order the actions consolidated, and may make orders that avoid unnecessary cost or delay.

Pa. R.C.P. 213.

Two of the four appeals (cases 2008-S-675 and 2008-S-1274) were consolidated by Judge George's Order of Court of November 13, 2008 to which Appellant filed no objection. That Order specifically recognized the possibility of the filing of a third appeal regarding a certificate of nonconformity and directed that such an appeal would be consolidated with the first two appeals for disposition by the Court. The Court has decided to consolidate 2008-S-675 and 2008-S-1274 with both of the appeals filed in 2010. All four appeals deal with the same questions of law and fact, and, therefore, will be considered together.

No Deemed Decision

In Appellant's *Land Use Appeal Notices* for both 2010-S-381 and 2010-S-382, he contends entitlement to a deemed decision in his favor because, in his opinion, the Board's decision was untimely. Appellant argues that because the last hearing before the Board was held December 8, 2009, and because the Pennsylvania Municipalities Planning Code (MPC) requires a written decision within 45 days after the last hearing, the Board's decision of February 9, 2010 was untimely and therefore Appellant is deemed to have prevailed on both appeals. The MPC at 53 P.S. § 10908(9) states, in part:

> The board or the hearing officer, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within 45 days after the last hearing before the board or hearing officer…. [W]here the board fails to render the decision within the period required by this subsection or fails to commence, conduct or complete the required hearing as provided in subsection (1.2), the decision shall be deemed to have been rendered in favor of the applicant *unless the applicant has agreed in writing or on the record to an extension of time*.

53 P.S. § 10908(9) (Emphasis added).

During the December 8, 2009 hearing, Appellant requested a 20-day period prior to the start of the 45-day decisional period so that he could file any memorandum with the Board he so desired. Specifically, the following exchange occurred:

> ATTORNEY WILCOX: Does either side want to present any memorandums or anything to the Board?
>
> MR. BECKER: I would very much like to, sir.
>
> ATTORNEY WILCOX: If you want to do that, then we would want agreement to the effect that our 45-day time period to issue the written decision will not commence until a certain date.
>
> MR. BECKER: Of course.
>
> ATTORNEY WILCOX: How much time are you interested in this?
>
> ATTORNEY DAVIS: I am not.
>
> ATTORNEY WILCOX: How much time will you need to submit?
>
> MR. BECKER: Could you give me 20 days, sir?
>
> ATTORNEY WILCOX: That's fine. Then the 45 days will start 20 days from today. Is that agreeable to you?
>
> MR. BECKER: It is, sir.[56]

Clearly, Appellant agreed with the Board that the 45-day period for it to issue a decision would not begin to run until after the 20-day time period expired. Thus, the period within which to render a decision commenced on December 28, 2009 and would have expired on February 11, 2010. The decision was rendered on February 9, 2010. Considering it was his request that created the delay, Appellant's argument that the Board's "late" decision results in a deemed decision in his favor is misguided. Thus, Appellant's argument that the appeals in 2010-S-381 and 10-S-382 were deemed in his favor is without merit.

The 2010 Appeals

Appellant next argues that the Enforcement Notice of case 2010-S-381 does not meet the requirements of the MPC, 53 P.S. § 10616.1. Per subsection (c) of Section 10616.1, the enforcement notice is, at a minimum, required to set forth the following information:

> (1) The name of the owner of record and any other person against whom the municipality intends to take action.

[56] See transcript of December 8, 2009, page 91-2.

(2) The location of the property in violation.
(3) The specific violation with a description of the requirements which have not been met, citing in each instance the applicable provisions of the ordinance.
(4) The date before which the steps for compliance must be commenced and the date before which the steps must be completed.
(5) That the recipient of the notice has the right to appeal to the zoning hearing board within a prescribed period of time in accordance with procedures set forth in the ordinance.
(6) That failure to comply with the notice within the time specified, unless extended by appeal to the zoning hearing board, constitutes a violation, with possible sanctions clearly described.

53 P.S. § 10616.1(c).

The actual enforcement notice of October 1, 2009[57] contains the names of the owners of record as The Hanoverian Trust and Mr. Becker, thereby satisfying (1) above. It also satisfies (2) by including the location of the property. Under the section "Statement of Violation and Applicable Ordinance Provisions," the enforcement notice cites Section 140-26A of the Zoning Ordinance and declares the violation to be the use of the property as a motel when such a use is not permitted in the applicable zoning district.[58]

The notice also states that "[t]he use of the property as a motel is a violation of § 140-11(B)(1)" of the Zoning Ordinance. That Section lists the uses permitted in a MU-2 zoning district but motels are not included in the list. Appellant argues that the notice does not comply with subsection (c)(3) because it does not "cite" the discontinuance provision of the zoning ordinance, Section 140-26D(1). Subsection (c)(3) requires the specific violation to be stated. The Commonwealth Court has determined that the word "cite," as used in this subsection, "means a specific numerical reference to the ordinance section which

[57] Bd. Exhibit #1 of 12/8/09, the "Enforcement Notice."

[58] Section 140-26A of the Zoning Ordinance addresses the subject of "continuation" and states the following: "[a]ny nonconforming use existing on the effective date of this chapter or created by an amendment to this chapter may be continued although such use does not conform to the provisions of this chapter. Change in ownership or possession of this use or property shall not prevent the continuance of the nonconforming use."

the township asserts the landowners have violated." *Twp. of Maidencreek v. Stutzman*, 642 A.2d 600, 602 (Pa. Commw. Ct. 1994). This Court finds that the notice satisfies the requirements of subsection (c)(3) because the notice lists the violation and makes reference to both Section 140-26A and Section 140-11(B)(1) of the Township's zoning ordinances.

In the instant case, the Township's enforcement notice was predicated on Appellant's use of the subject property as a motel, in violation of section 140-11(B)(1). While it is true that the Township's ZO/CEO stated in the notice that he had previously notified Appellant that the property could not be used as a motel because the prior motel use was abandoned, the Township adhered to the requirements of the MPC by giving Appellant an enforcement notice with a citation to the ordinance section allegedly violated, specifically Section 140-11(B)(1). *Id.* at 602.

The notice also states that "[w]ithin thirty (30) days of the mailing of this Enforcement Notice, the above named parties shall cease the operation of the motel (rental units)," satisfying the requirements of subsection (4). Furthermore, the notice also contains a separate paragraph entitled "Right for Appeal," which meets the requirements of subsection (5).

Finally, the notice contains another section titled "Consequences of Failure to Timely Comply." This paragraph appears to comport with subsection (6), and states that the Township may prosecute Appellant for a violation of the code if Appellant fails to comply with the notice, and if Appellant does not file an appeal, or if Appellant files an appeal which is denied. The paragraph also clearly states that the Township may prosecute for the violation and states that the Township may seek a fine of $1,000 for each day of the violation.

Appellant takes issue with the listed fine and correctly makes reference to 53 P.S. § 10617.2(a). Enforcement Remedies, which states that the violator of a zoning ordinance, upon being found liable in a civil enforcement proceeding commenced by the municipality, shall pay a judgment of not more than $500 per violation, with each day that a violation continues being a separate violation. Subsection (c)(6) requires that possible sanctions be clearly described.

Here, the Township ZO/CEO erred when he stated that the sanction could be $1,000 per day instead of $500 per day. The Court

finds this error to be harmless and did not prejudice Appellant because the notice alerted him to a possible penalty greater than is permitted.[59] The Board found that the enforcement notice provided Appellant fair notice of the issues coming before the Board and met the requirements of the MPC in respect to content. The Court sees no reason to disturb the Board's conclusions on this matter.

Appellant next argues that the enforcement notice ignored the instruction of *Appeal of Haller Baking Co.*, 145 A. 77 (Pa. 1928) and *Latrobe Speedway, Inc. v. Zoning Hearing Board of Unity Township*, 720 A.2d 127 (Pa. 1998). Since the origination of zoning, Pennsylvania courts have consistently held that a use entitled to recognition as a nonconforming use does not lose that protection unless the use is "abandoned." *Appeal of Assoc. Contractors, Inc.*, 138 A.2d 99, 100 – 01 (Pa. 1958); *Haller Baking*, 145 A. 77, 79 – 80. Abandonment requires proof of both the intent to abandon and actual abandonment. *See Latrobe*, 720 A.2d at 131 – 32. Although disuse and disrepair may indicate abandonment, more is required to show an actual and intentional abandonment. *Id.* "Non-use alone will not satisfy a party's burden to prove abandonment." *Finn v. Zoning Hearing Bd. of Beaver Borough*, 869 A.2d 1124, 1127 (Pa. Commw. Ct. 2005). The burden of proof of abandonment is on the party asserting it. *Pappas v. Zoning Bd. of Adjustment of City of Philadelphia*, 589 A.2d 675, 677 (Pa. 1991). A municipality asserting abandonment of a lawful preexisting nonconforming use has the burden to prove intent to abandon the nonconforming use and actual abandonment. *Zitelli v. Zoning Hearing Bd. of Borough of Munhall*, 850 A.2d 769, 771 (Pa. Commw. Ct. 2004). The applicability of *Haller Baking* and *Latrobe* to the enforcement notice of case 2010-S-381 is central to the issue of the abandonment of the preexisting nonconforming motel use in all of the appeals.

Before this Court examines the other issues, we must first determine the core issue and decide whether the Board abused its discretion or committed an error of law when it affirmed the denial of the certificate of nonconformity for the subject property.

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[59] In his July 12, 2010 Brief, Appellant stated, "[i]t would be a stretch to argue that the [previously discussed] errors in the enforcement notice warranted striking it." Brief of Heywood Becker Contra the Decision of the Board Affirming the Enforcement Notice and Denying the Subject Appeal, p. 5.

Section 140.26D of the Township's Zoning Ordinance contains a discontinuance provision. Both the 2006 version and the current version of section 140.26D use the following language:

> (1). A nonconforming use shall not be reestablished if such use has been discontinued for any reason for a period of one year or more (except in cases where the discontinuance was caused by circumstances beyond the control of the owner) or if such use has been changed to or replaced by a conforming use. Intent to resume a nonconforming use shall not confer the right to do so.

Straban Township Zoning Ordinance Section 140.26D

As previously discussed, the burden of proving abandonment of a use lies with the entity asserting it. Thus, where, as here, the municipality asserts that the property's use was abandoned, it has the burden of establishing intent and actual abandonment. However, municipal ordinances can contain discontinuance provisions which provide that when a use is discontinued for a period of time, the intent to abandon is presumed. In *Latrobe*, our Supreme Court set forth the following test for abandonment when a zoning ordinance contains a discontinuance provision:

> Failure to use the property for a designated time provided under a discontinuance provision is evidence of the intention to abandon. The burden of persuasion then rests with the party challenging the claim of abandonment. If evidence of a contrary intent is introduced, the presumption is rebutted and the burden of persuasion shifts back to the party claiming abandonment.
>
> What is critical is that the intention to abandon is only one element of the burden of proof on the party asserting abandonment. The second element of the burden of proof is actual abandonment of the use for the prescribed period. This is separate from the element of intent.

Latrobe, 720 A.2d at 132.

Thus, the time designated for discontinuance creates a presumption of intent to abandon. In Straban Township, that period is <u>one year or more</u>. The Township and Appellant stipulated that the use of a motel at the property was a lawful preexisting nonconforming use at the time of the introduction of zoning in the Township in 1992. The

Township asserts that the lawful preexisting nonconforming use was abandoned by the previous owners, the McKennas, years prior to the purchase of the property by Appellant in October 2004. The Township, therefore, has the burden to prove that the prior landowner both intended to abandon the nonconforming use, and actually abandoned the use. *Zitelli*, 850 A.2d at 771.

The Board analyzed abandonment in its written decision affirming the denial of the certificate of nonconformity. The Board found that the subject property was not used as a motel for a period of time greater than one year. Specifically, the Board found that the property was used as a motel as late as March 1997, and that the use of a motel was discontinued by the spring of 1998 when the SEO sent out the May 1, 1998 letter requiring the sewage problems to be fixed before any further use of the property as a motel would be allowed. The Board also found that the property remained in this condition until Appellant purchased the property and remedied the sewage problems, approximately seven years after the use was discontinued.

There is ample evidence in the record to support the Board's finding that the property's use was discontinued for greater than one year and thus meet the presumption of intent to abandon. The prior owners, the McKennas, took no action to effectuate repairs of the septic system during the seven years of nonuse. There is no evidence to suggest that such repairs were burdensome or financially prohibitive. During this time, the doors of the motel units were left open, water service had been cut to the units, and no one was staying in the motel units. The owners also failed to pay the mortgage and taxes on the property.

Because the Township met its initial burden on intent to abandon, the burden of persuasion then shifted to Appellant to show a contrary intent. *Latrobe*, 720 A.2d at 132. Appellant argues that any discontinued use during this time period was beyond the control of the McKennas, and therefore the exception to the discontinuance provisions should apply. "Where discontinuance of a use occurs due to events beyond the owner's control . . . there is no actual abandonment." *Metzger v. Bensalem Twp. Zoning Hearing Bd.*, 645 A.2d 369, 371 (Pa. Commw. Ct. 1994). "A showing of actual abandonment by the landowner is not proved by a mere temporary discontinuance of the business which is the result of forces or events beyond his control including…the financial inability of the owner to carry on due to

general economic depression, and cessation of business during repair of the property." *Smith v. Bd. of Zoning Appeals of City of Scranton*, 459 A.2d 1350, 1353 (Pa. Commw. Ct. 1983).

The Board found that the McKennas actually intended to abandon the motel use of the property. The record supports the Board's conclusion. Appellant offered evidence at the hearing of a conformed copy of an affidavit signed by the McKennas dated June 2008. The Board reviewed the contents of that exhibit, which included: a description of the use of the property in 1997, difficulties with the property manager, the foreclosure action, an inability to pay taxes and make mortgage payments, and a statement of intent and belief that the motel use of the property never changed from their date of purchase of the property in 1979 until the property was transferred to Appellant.

The Board found the document to be unpersuasive on the issues of actual use and nonuse of the property. The Board did not believe that the McKennas were unaware of SEO Shultz's letter of May 1, 1998, and found Mr. Shultz's testimony to be credible. Appellant offered no evidence other than his own testimony to show a contrary intent by the prior owners; however, the Township offered ample evidence to prove that the McKennas actually intended to abandon the property.

For a period of seven years, the subject property was not used as a motel. During that time, there was no running water or septic system, and therefore, no functioning toilet or bath facilities on the premises. The basement had flooded and the property experienced significant deterioration. Unsurprisingly, the motel had no guests during this time. The SEO testified to not seeing anyone living in the motel units. Appellant testified that the motel had occupants when he purchased the property, but there is no evidence that any occupant held a status other than that of squatter.[60]

Thus, even if Appellant met his burden of persuasion with the introduction of the McKenna affidavit, and rebutted the presumption of intent to abandon, the Township met its burden by proving that the McKennas actually intended to abandon the use of a motel on the subject property. This background does not describe a minor economic interference with the usage. There is no credible evidence that the McKennas took any reasonable steps to keep the motel an

[60] In fact, Appellant acknowledged that he "kicked" those people off the property. This action is inconsistent with the theory that they were rent-paying guests of the motel.

ongoing operation; it is as if they simply turned their backs and walked away. Therefore, the Township has fulfilled the first element of *Latrobe* by showing a presumption of intent to abandon and an actual intent to abandon the use of a motel at the subject property.

In order to meet the second element of *Latrobe*, the Township must also prove an actual abandonment of the use. The Board concluded that the Township carried its burden on this issue.

The subject property ceased to be used as a motel in 1998 after Mr. Shultz's May 1, 1998 letter required the occupation of the motel units to cease until the septic system was repaired. After Appellant's purchase of the property, a septic service was hired to restore the system to operable condition by cleaning out the obstructions in the system. Although Mr. Shultz testified that he did not think this cleaning would actually fix the problems of the septic system, it is hard to imagine why the McKennas would not have attempted, in any fashion, to fix the septic system in order for the motel use to resume operation. The McKennas had moved to Florida and relied on their property manager to run the property. While there is evidence as to the problems between the McKennas and one of their property managers, the McKennas took no active role in continuing the use of the property as a motel.[61] As previously discussed, the doors of the units were left open and there were no water or toilet facilities. Three rear units of the property sustained significant damage because the roof was inadequate. The damage was so severe that Appellant had to replace the studs and the roof over these rooms after he acquired ownership. Eventually, the McKennas stopped paying taxes on the property and the mortgage fell into foreclosure.

Appellant argues that the facts of this case are most similar to those present in *Latrobe* where the property owner failed to use the property as a racetrack for a period of more than one year (the period of time listed in the discontinuance provision of that ordinance). *Id.*, at 132. The property owner successfully rebutted the presumption of intent to abandon the property with evidence that the property was assessed as a racetrack, that the property owner continued to pay

[61] The litigation between the McKennas and Yingling is insightful. The McKennas wanted Yingling off the property and claimed that he was not serving their interests. Knowing that Yingling was not fulfilling their expectations concerning the property they nevertheless did nothing to further their claim. After being denied a preliminary injunction the record is as bare as Mother Hubbard's cupboard concerning any steps taken by the McKennas indicating an intent to keep the motel use viable.

yearly property taxes for the property as a racetrack, that no attempt to dismantle or convert the structure was made, and that the owner had negotiated with at least 23 different parties for the sale or lease of the premises as a racetrack. *Id.*

However, unlike *Latrobe*, the prior owners of the subject property in the instant matter ceased paying yearly property taxes on the property. Additionally, before Appellant purchased the property from the prior owners, the evidence shows only one attempt by the McKennas to sell the property, which was never consummated. No other evidence of any active, ongoing effort to rent the units or market the property for sale was presented. Even if Appellant presented enough evidence to rebut the presumption of intent to abandon, the Township provided sufficient evidence of actual intent to abandon the property, unlike in *Latrobe* where the municipality failed to present further evidence and failed to sustain its burden of actual abandonment for the prescribed period.

The facts of the instant matter are more similar to those present in *Zitelli* where the current property owner purchased the property over three years after it became vacant and was boarded up by the municipality. *Id.* at 772. The property was "in an advanced state of disrepair and deterioration." *Id.* at 773. Boarding up the property rendered it unfit for human habitation. *Id.* The zoning ordinance contained a 12 month discontinuance provision. *Id.* at 772. The Commonwealth Court held that any nonconforming use of the property was discontinued more than 12 months prior to the property owner's purchase. *Id.* The evidence that the property had been boarded up and not inhabited was sufficient to find actual abandonment of that nonconforming use. *Id.* The burden shifted to the property owner to disprove actual abandonment. *Id.* The property owner gave evidence of repairs made to the property more than three years after the boarding up and vacating of the property, but this evidence did not disprove actual abandonment because the repairs were made after the use was already abandoned. *Id.* at 772 – 73.

Similar to *Zitelli*, Appellant in the instant matter purchased the property years after the preexisting nonconforming use was abandoned. Furthermore, Appellant also made repairs to the property only after purchase. In both cases, action by the municipality rendered the property unusable for its nonconforming use. In the instant case, the SEO's letter required cessation of operation of the motel until the

septic system was fixed; while in *Zitelli*, the municipality boarded up the property so it could not be inhabited. As in *Zitelli*, Appellant's actions to correct the problems with the septic system, obtain permits and certificates, and make the subject property usable as a motel cannot revive a nonconforming use abandoned by a previous owner.

Appellant, like the landowner in *Zitelli*, argues that forces beyond the prior owner's control caused an involuntary discontinuance of the use of the motel. In *Zitelli*, the Commonwealth Court found that the abandonment occurred prior to the alleged events beyond the owner's control. *Id.* at 772. In the instant case, the Board found, and this Court agrees, that the discontinuance and abandonment of the motel use at the subject property was not beyond the prior owners' control. The sewage facility malfunctioned, and the McKennas took no known steps to remedy the malfunction. The McKennas were certainly aware of sewage issues on the property because they referenced sewage overflow in their April 24, 1997 Complaint against the Yinglings which was more than 12 months before the SEO's letter to cease usage of the motel. Revealingly, Appellant was able to secure a septic service to repair the system without much difficulty or significant expense. While the McKennas did have tax issues dating back to the beginning of the discontinuance, the evidence suggests that these tax issues would not be sufficient enough to force the McKennas to discontinue the use of the subject property as a motel. Instead, the inference is that the tax and mortgage defaults occurred because of the abandonment, not that the abandonment was caused by economic depression beyond the owners' control.

Accordingly, this Court finds that the Board's conclusion that the Township carried its burden of proof to establish that the prior owners of the property intended to abandon the use of the property as a motel prior to the date Appellant purchased the property, and that the Township carried its burden of proof to establish that the use of the property as a motel was actually abandoned prior to Appellant purchasing the property, are both supported by substantial evidence. The Board did not commit an abuse of its discretion or an error of law in so concluding. The Board correctly affirmed the denial of the certificate of nonconformity because the nonconforming use had been abandoned.

Continued to next issue (2/3/2012)

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 DAVID D. HOOD, DEC'D

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

Executor: Brady G. Hood, 28 Valley Road, Shrewsbury, PA 17361

ESTATE OF DOROTHY E. SCHROEDER, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executrix: Karen A. Decker, 874 Elderwood Avenue, Tipp City, OH 45371

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

SECOND PUBLICATION

ESTATE OF MARION C. SLAYBAUGH, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executor: Glenn A. Slaybaugh, 960 Yellow Hill Road, Biglerville, PA 17307

ESTATE OF WALTER J. SMITH, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executor: Susan M. Wessel, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

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

ESTATE OF GLORIA A. ZIEGLER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Elizabeth A. Wiles, 5 Cannon Lane, Gettysburg, PA 17325

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

THIRD PUBLICATION

ESTATE OF HELEN B. BRIGGS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Susan C. Briggs Smith, c/o Douglas H. Gent, Esq., 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 BETTY J. CREZNIC, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Janel Creznic Fox, 719 Skyview Drive, York, PA 17406-3271

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

ESTATE OF ALFRED J. GRUNDY a/k/a ALFRED JOHN GRUNDY, DEC'D

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

Executrix: Susan Altobelli, 1176 Big Mount Road, Dover, PA 17315

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331