

Adams County **Legal Journal**

Vol. 53

January 20, 2012

No. 36, pp. 246-257

IN THIS ISSUE

BECKER ET AL VS. STRABAN TWP. ET AL

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

*Karen Arthur
Trust Officer*



**Trust and investment services from
a bank with a long history of trust.**

For more information or a free
consultation, please call 717.339.5062.

Member FDIC



ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published weekly by Adams County Bar Association, John W. Phillips, Esq., Editor and Business Manager.

Business Office – 117 BALTIMORE ST RM 305 GETTYSBURG PA 17325-2313. Telephone: (717) 334-1553

Copyright© 1959 by Wm. W. Gaunt & Sons, Inc., for Adams County Bar Association, Gettysburg, PA 17325.

All rights reserved.

DISSOLUTION NOTICE

NOTICE IS HEREBY GIVEN that the members and directors of ST. PAUL'S EVANGELICAL LUTHERAN CHURCH OF McSHERRYSTOWN, a Pennsylvania Nonprofit Corporation, with an address at 414 Main Street, McSherrystown, Pennsylvania have adopted a Plan of Voluntary Dissolution and have started winding up its affairs in accordance with Section 5975 of the Pennsylvania Nonprofit Corporation Law of 1988, as amended.

Becker & Strausbaugh, P.C.

Arthur J. Becker, Jr., Esq.

Torren C. Ecker, Esq.

Attorneys for St. Paul's Evangelical
Lutheran Church of McSherrystown

1/20

BECKER ET AL VS. STRABAN TWP. ET AL

1. 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. 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.

2. 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.”

3. Although disuse and disrepair may indicate abandonment, more is required to show an actual and intentional abandonment. Nonuse alone will not satisfy a party’s burden to prove abandonment.

4. A municipality asserting abandonment of a lawful preexisting nonconforming use has the burden to prove intent to abandon the nonconforming use and actual abandonment.

5. 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.

6. 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.

7. The Pennsylvania Supreme Court held that a use does not need to be in actual operation on the date of the adoption of a zoning ordinance permitting continuation of existing uses so long as circumstances show the owner’s intent to continue that use.

8. The purpose of an enforcement notice is to alert the property owner of the specific violation being alleged by the municipality not to set forth a legal analysis of the nuances of every theory that a property owner might advance.

In the Court of Common Pleas of Adams County, Pennsylvania;
Civil; Nos. 2008-S-675, 2008-S-1274, 2010-S-381, 2010-S-382;
HEYWOOD BECKER ET AL VS. STRABAN TOWNSHIP
ZONING HEARING BOARD AND STRABAN TOWNSHIP.

Heywood Becker, Plaintiff, *pro se*

Clayton R. Wilcox, Esq., for Straban Township Zoning Hearing Board

Walton V. Davis, Esq., for Straban Township

Kuhn, P.J., August 18, 2011

OPINION

Heywood Becker, trustee of Hanoverian Trust, (Appellant) appeals the decisions of the Straban Township Zoning Hearing Board (Board) denying his appeal of the February 5, 2008 letter from the Zoning Officer¹, denying his appeal of the Zoning Enforcement Notice of April 8, 2008², denying his appeal of the Enforcement

¹ 2008-S-675.

² 2008-S-1274.

Notice of October 1, 2009³, and denying his appeal of the rejection of his request for a Certificate of Non-Conformity.⁴ For the reasons set forth below, the decisions of the board are affirmed.

PROCEDURAL AND RECORD BACKGROUND

Heywood Becker, Appellant, is trustee of Hanoverian Trust and as such currently owns the subject property at 2440 Old Harrisburg Road, Straban Township, Adams County, once known as “Cleveland’s Motel.”⁵

Zoning was first introduced in Straban Township on August 24, 1992; revised December 4, 2006; and most recently updated on November 2, 2009 after the events that led to this appeal. The subject property was used as a motel prior to the introduction of zoning in the township and, therefore, was a lawful preexisting nonconforming use at that time.⁶ As late as March 28, 1997, the property was still being used as a motel with rooms rented out to guests.⁷ The property is currently located in the MU-2 zoning district, a mixed use neighborhood district.⁸ Under Section 140-11(B)(1) of the township zoning ordinance, the use of a motel in this district is not permitted.⁹ Use as a motel was also prohibited under the township’s prior ordinance.¹⁰ No certificate of non-conformity has ever been issued for the subject property.¹¹

Edward J. McKenna and his wife, Patricia E. McKenna, had been the owners of the subject property since July 30, 1979.¹² The McKennas eventually moved to Florida and employed property managers to run the motel.¹³ At some point the McKennas entrusted the day-to-day operation of the motel to Robert Yingling, as property manager, who lived on the grounds of the motel.¹⁴

³ 2010-S-381.

⁴ 2010-S-382.

⁵ Transcript of 12/8/09 at 33 and Bd. Exhibit #1 of 12/8/09 “Certificate of Non-Conformity Application”; Board Findings of Fact #1, 2/9/10.

⁶ Transcript of 11/23/09 at 9; Board Finding of Fact #4 and 8, 2/9/10.

⁷ Transcript of 12/8/09 at 83 and Township Exhibit #5.

⁸ Transcript of 12/8/09 at 4-5.

⁹ Transcript of 12/8/09 at 12.

¹⁰ Transcript of 12/8/09 at 12.

¹¹ Transcript of 12/8/09 at 13.

¹² See *McKenna, et ux. v. Yingling, et us.*, 40 A.C.L. J. 159 (1997) and Township Exhibit #2.

¹³ Transcript of 12/8/09 at 82; Board Exhibit #1 of 12/8/09 “Certificate of Non-Conformity Application” and Township Exhibit #4.

¹⁴ See *McKenna*, 40 A.C.L.J. at 159 and Transcript of 12/8/09.

On April 24, 1997, the McKennas filed a complaint in equity against Mr. Yingling and his wife, asking for a preliminary injunction against Mr. Yingling from holding himself out as the owner of the subject property, amongst other things.¹⁵ On June 1, 1996, Mr. McKenna and the Yinglings had executed a “Contract for Deed,” but the sale was never consummated.¹⁶ Ultimately, this Court found that the McKennas failed to meet the requirements for a preliminary injunction.¹⁷

On May 1, 1998, Township Sewage Enforcement Officer, Dean A. Shultz, wrote a letter to Mr. McKenna and Mr. Yingling regarding a malfunctioning septic system at the subject property.¹⁸ Mr. Shultz had been the primary Sewage Enforcement Officer (SEO) for Straban Township since 1974.¹⁹ Since 1995, the SEO had been investigating sewage malfunctions at the subject property. A map of the property was prepared in 1995, and the SEO updated the map on many of his visits to the property through 1998.²⁰ After complaints were made to the Pennsylvania Department of Environmental Protection (DEP) about the malfunctioning sewage system, the SEO wrote the May 1, 1998 letter.²¹ The letter stated, in part, that “[t]he motel, house and mobile homes that are not occupied cannot be occupied and existing dwellings or mobile homes, when vacated, cannot be reoccupied until an approved septic system or sewage treatment system meeting all PA DEP requirements is installed.”²²

The SEO returned to the site several times following the issuance of the May 1, 1998 letter, including a visit on July 10, 1998. On this date, the SEO observed that no one was living in the motel units. He also observed that the doors of the motel units were open, and by physically checking the spigots, that the water service had been cut off to the units.²³ The SEO observed that the sewage malfunction

¹⁵ *McKenna*, 40 A.C.L.J. at 159. More specifically, the McKennas sought to enjoin the Yinglings from collecting rents, making changes to the property, allowing sewage to overflow and maintaining junk on the premises.

¹⁶ *Id.* at 160.

¹⁷ *Id.* at 162.

¹⁸ Transcript of 12/8/09 at 73 and Township Exhibit #4.

¹⁹ He was also the first SEO certified in Pennsylvania. Transcript of 12/8/09 at 72.

²⁰ Transcript of 12/8/09 at 78 and Township Exhibit #5.

²¹ Transcript of 12/8/09 at 73; Board Findings of Fact #10, 2/9/10.

²² Township Exhibit #4.

²³ Transcript of 12/8/09 at 75.

had been resolved because the water was turned off, eliminating the malfunction created by water under pressure going into the house through a septic tank.²⁴ The SEO also observed a couple people in one of the houses at the subject property. There were mattresses on the floor, cans on the kitchen table, and the people appeared to be squatting in the house.²⁵

The SEO stopped at the site several more times over the years, for the purpose of verifying that no one was living in the units of the property. On these return visits, the SEO observed that no one was living at the property, that the doors of the motel were open, and that there was no malfunction of the sewage system.²⁶ The SEO continued to visit the subject property periodically through and beyond the year 2005.²⁷ The SEO did not see anyone using the hotel buildings between the years of 1998 and 2005 when he made his periodic visits, except for some people that may have been coming and going from a white building adjacent to the motel.²⁸

Appellant sent a letter to Robert L. Coleman, the Township's Zoning Officer/Code Enforcement Officer (ZO/CEO), on February 10, 2004, indicating interest in acquiring the property and referred to the motel buildings, recreational camping sites and mobile homes on the subject property as "functionally and structurally obsolete" and "blighted." Appellant proposed "to demolish and remove all vestiges of these structures and uses" in order to replace them with townhomes.²⁹ Appellant did not acquire the deed to the subject property until October 13, 2004 and only recorded the same on January 27, 2005. Appellant had purchased the mortgage from PNC Bank for \$30,000. At the time of purchase, the mortgage was in "serious default" because the McKennas had not paid on the mortgage in several years. Appellant acquired the deed from the McKennas in lieu of execution. Appellant also paid approximately \$50,000 in back property taxes the McKennas owed on the property.³⁰ Appellant

²⁴ *Id.*

²⁵ *Id.*

²⁶ Transcript of 12/8/09 at 76; Board Findings of Fact #11, 2/9/10.

²⁷ *Id.*

²⁸ Transcript of 12/8/09 at 77.

²⁹ Transcript of 12/8/09 at 36-7; Township Exhibit #1; Board Findings of Fact #11, 2/9/10.

³⁰ Transcript of 12/8/09 at 34-6; Board Findings of Fact #8,11,13; 2/9/10.

testified that when he purchased the subject property, the buildings on the property, except for the front house, were occupied. Appellant also testified that he “kicked everybody out” and the property became vacant.³¹

On August 3, 2005, Appellant appealed the tax assessment on the subject property. Attached to the Appeal Form was Appellant’s “Affidavit of Value of the Property Known as the Cleveland Motel.” The Property Type on the Appeal Form was listed as “Commercial: Use Motel.” The stated Basis for Appeal on the Appeal Form was “All motel units and houses and mobile homes and RV sites ordered to be vacated in 1998 by Straban S.E.O. due to improperly functioning septic systems.”³² In the Affidavit of Value, Appellant related two agreements to sell the property. The first was a verbal offer to sell to Brett Yingling for \$100,000 in November 2004; the second was an agreement to sell for \$120,000 to a Mr. and Mrs. Avila. The Affidavit of Value states that neither sale was consummated. The unsigned agreement of sale of the subject property from Appellant to Mr. Yingling attached to this document does not describe the subject property as a “motel.”³³ As a result of Appellant’s tax assessment appeal, the assessed value of the property was reduced from \$161,448 to \$76,953.³⁴ In the instant proceedings Appellant testified to three potential purchasers of the property: Mr. and Mrs. Avila, Mr. and Mrs. Garcia, and a third person whose name Appellant could not remember.³⁵ Appellant offered no other evidence as to any offers or agreements to sell the subject property.

Appellant hired Peck’s Septic Service to inspect and evaluate the septic system of the property. The inspection and evaluation was performed between June and August 2005. Peck’s Septic Service purportedly cleared impacted materials from the septic tanks, cleaned tanks, and removed outlet line obstructions. According to a letter from Mr. Peck to Appellant, the tank and drain lines and the outlet line were completely clogged. The letter also contained Mr. Peck’s opinion that the obstructions and clogs in the septic system

³¹ Transcript of 12/8/09 at 43; Board Findings of Fact #14, 2/9/10.

³² Transcript of 12/8/09 at 37-9; Township Exhibit #3; Board Findings of Fact #13, 2/9/10.

³³ Transcript of 12/8/09 at 37-9 and Township Exhibit #3.

³⁴ Transcript of 12/8/09 at 43 and Township Exhibit #3.

³⁵ Transcript of 12/8/09 at 60-1 and 70.

would have led to the observed sewage malfunctions and that the property was brought into conformity with the Pennsylvania Sewage Facilities Act and requirements of DEP.³⁶ Mr. Shultz, the SEO, testified that in septic systems with an absorption area such as at the subject property, “cleaning out the pipes isn’t going to correct” the sewage problem. He also testified that it was his belief that if the system appeared to be working after it was cleaned, it was because the system had dried up after not being used, and that when the ground gets wet, the system will malfunction again. He stated “[o]n that basis, once you start using those systems again and it gets wet, it’s a very high probability and probably almost a 100 percent it is going to happen – they are going to go bad again.”³⁷

On or around July 7, 2005, the SEO had a telephone conversation with Appellant who wanted to know what was in the SEO’s file regarding the property.³⁸ The SEO sent Appellant everything that was in the file and discussed the problems existing with the property. On July 13, 2005, Appellant sent a letter to the SEO asking if the SEO had anything else in the file. The SEO replied that he had already provided him with everything from the file. The SEO also instructed Appellant to contact the Township for verification and to check for any other information. That was his last correspondence with Appellant.³⁹

Appellant testified that on October 18, 2005, he sent a letter to Mr. Coleman, the ZO/CEO, regarding damage to the three rear rooms of the motel resulting from not having a sufficient roof. The studs and the roof were replaced. Appellant testified that he chose to turn these three rooms into an electrical room and a manager’s suite. The number of rooms in the motel was reduced from 15 to 12 with the transition of the three damaged and repaired rooms into the manager’s suite and electrical room.⁴⁰

³⁶ Transcript of 12/8/09 at 17; Becker Exhibit #1; Board Findings of Fact #16 and 17, 2/9/10.

³⁷ Transcript of 12/8/09 at 79-80.

³⁸ The Transcript of 12/08/09 page 76 – 77 recalls Mr. Shultz’s testimony as “I’m aware of this because there was a gentleman named Heywood Eric *Coleman*. We had a long conversation on the telephone about this property. . . . I sent him everything that was in my file...[t]hen on July 13, 2005 Heywood Becker sent me a letter...he wanted to know if I had anything more in my file...I said, I gave you what I had in my personal file.” (Emphasis added). Clearly, the reference to Heywood Eric Coleman in the transcript refers to the Appellant Trustee Heywood Becker.

³⁹ Transcript of 12/8/09 at 76-7; Board Findings of Fact #12, 2/9/10.

⁴⁰ Transcript of 12/8/09 at 66-70.

In or about September 2006, Appellant pursued obtaining a building permit and certificate of occupancy for the property from the Pennsylvania Department of Labor & Industry.⁴¹ In the instant proceedings Appellant submitted, for the record, a letter from his architect to the Department of Labor & Industry, together with the building permit application. Appellant also submitted the Building Permit which was issued on April 21, 2008 and the Certificate of Occupancy for the subject property issued in early 2009.⁴²

On February 5, 2008, Mr. Coleman, the ZO/CEO, sent a letter to Appellant stating that the subject property could not be used as a motel, that the prior motel use was abandoned, and that he would deny an application to register the motel use at the property as a pre-existing nonconforming use if Appellant were to apply for such registration.⁴³ On March 3, 2008, Appellant appealed Mr. Coleman's February 5, 2008 letter by filing the *Application to the Zoning Hearing Board for a Zoning Hearing*. Appellant's justification for appeal in Paragraph 6(b) stated "[a]lleged zoning enforcement notice dated February 5, 2008. There has been no abandonment of the motel use as the SEO demanded that the motel use be effectively ceased in 1998."⁴⁴ Subsequently, on March 8, 2008, Appellant filed *Amendment of My Application to the Zoning Hearing Board Mailed February 29, 2008* asking the Board to withdraw his handwritten statement in Paragraph 6(b) of the appeal and to accept his March 8, 2008 letter in its place.⁴⁵

A hearing before the Board regarding Appellant's appeal of the February 5, 2008 letter from Mr. Coleman was conducted on April 8, 2008. On April 15, 2008, the Board issued its decision finding that the letter dated February 5, 2008, from Mr. Coleman to Appellant was not intended by the Zoning Officer to be an enforcement notice and, therefore, was not the basis for any enforcement action against Appellant.

Meanwhile, on or about April 8, 2008, Mr. Coleman had sent a Zoning Enforcement Notice to Appellant regarding a sign on the

⁴¹ The Application contained a question whether the municipality had a zoning ordinance to which Appellant replied in the affirmative. However, he did not respond to the question whether a permit was acquired from the municipality.

⁴² Transcript of 12/8/09 at 55-6 and 61 and Becker Exhibit #3 and #4.

⁴³ Applicant's No. 1 of 4/8/08.

⁴⁴ Applicant's No. 3 of 4/8/08.

⁴⁵ Applicant's No. 2 of 4/8/08.

subject property.⁴⁶ On May 7, 2008, the Board received Appellant's *Application to the Zoning Hearing Board for a Zoning Hearing* for the appeal of the Zoning Enforcement Notice of April 8, 2008 regarding the sign at issue.

On May 12, 2008, Appellant filed a *Land Use Appeal Notice* with this Court docketed at 2008-S-675, appealing the decision of the Board regarding the February 5, 2008 letter from Mr. Coleman to Appellant. Appellant argued in the *Land Use Appeal Notice* that the Board failed to explicitly reverse the decision of the Zoning Officer and failed to order the Township to return the \$500 filing fee to appellant.

A hearing before the Board on Appellant's appeal of the April 8, 2008 Zoning Enforcement Notice regarding the sign was conducted on June 24, 2008. This hearing revealed that since at least 1979 a small sign structure, consisting of a brick planter type base with a single metal pole protruding, was located near the entranceway of the property to advertise the location of the motel. In March 2008, Appellant attached a two-sided rectangular sign to the pole structure advertising a studio motel facility without first obtaining a permit from the Township. The zoning ordinance required an application be made and a permit issued by the Township in order to erect a sign.⁴⁷ Mr. Coleman notified Appellant of the violation. Appellant attempted unsuccessfully to cover the sign with a tarp. Finally, on April 8, Mr. Coleman issued his enforcement notice. Subsequently, but prior to the hearing, Appellant offered to remove the sign if Mr. Coleman would agree not to prosecute the violation. Appellant ultimately removed the rectangular sign but not the structure.

On July 22, 2008, the Board held a decisional meeting and on August 5, 2008, the Board's Decision regarding the April 8, 2008 Zoning Enforcement Notice issued, denying Appellant's appeal of the Zoning Enforcement Notice. The Board found that Appellant was required to apply for and obtain a sign permit, that Appellant erected a sign without first obtaining a permit, and that failure to acquire the permit was a clear violation of the Zoning Ordinance, even if the property was a valid preexisting nonconforming use. The "sign" was installed "when the advertising face was attached to the

⁴⁶ Transcript of 6/24/08 at 53.

⁴⁷ Transcript of 6/24/08 at 10.

sign post,” not when the single pole was erected. The Board declined to discuss the nonconforming use issue in its decision.⁴⁸

On September 3, 2008, Appellant filed a *Land Use Appeal Notice* to this Court, docketed at 2008-S-1274, appealing the August 5, 2008 decision of the Board regarding the Zoning Enforcement Notice of April 8, 2008. Appellant argued in this *Land Use Appeal Notice* that the Board’s findings of fact were incorrect. Most significantly, Appellant argued that “[t]he sign structure is a valid, preexisting, nonconforming structure, and changing the wording on a sign attached to such a structure does not require a permit.”⁴⁹

On November 13, 2008, the Honorable Michael A. George issued an Order consolidating cases 2008-S-675 and 2008-S-1274. The Order stayed proceedings on these two consolidated appeals for one year and allowed for consolidation of a third case, if Appellant chose to pursue an application for a certificate of nonconformity, and had exhausted all appeals on such application.

On October 1, 2009, Mr. Coleman, the ZO/CEO, investigated the subject property and observed that Unit #5 was occupied by a young lady, with whom he spoke. Mr. Coleman also left his card on another door, and later received two messages from a man who stated he was in Unit #6.⁵⁰ Pursuant to Mr. Coleman’s investigation and finding that the subject property was occupied, he sent an Enforcement Notice to Appellant on October 1, 2009. The basis of Mr. Coleman’s Enforcement Notice was that the property was allegedly in violation of Straban Township Zoning Ordinance §140-11(B)(1) for operating as a motel despite the motel use having been abandoned years ago.⁵¹

Appellant applied for a Certificate of Non-Conformity for the subject property on October 7, 2009. Attached to the application were: several pages of a property appraisal dated March 3, 2005 (specifically pages 5, 9, 11, 12), a copy of the appraiser’s license, a photocopy of the property’s record card from the Adams County Board of Assessment, one page of the Amended Answer in case No. 1997-S-387 involving the dispute between the McKennas and the Yinglings, and a copy of an alleged Affidavit of Edward J. McKenna

⁴⁸ Board Decision of 8/5/08 at 2 and 3.

⁴⁹ Land Use Appeal Notice, Docket #08-S-1274 at 2.

⁵⁰ Transcript of 12/8/09 at 13-5.

⁵¹ Bd. Exhibit #1 of 12/8/09, the “Enforcement Notice.”

& Patricia E. McKenna regarding the subject property.⁵² On October 9, 2009, ZO/CEO Coleman sent a letter to Appellant denying his application for Certificate of Non-Conformity. In Mr. Coleman's opinion, the use of the subject property as a motel had been abandoned years prior and therefore could not be resumed.⁵³

On October 27, 2009 the Board received Appellant's *Application to the Zoning Hearing Board for a Zoning Hearing* appealing the Enforcement Notice and the denial of application for the Certificate of Non-Conformity. On November 18, 2009, Appellant sent a letter to Mr. Wilcox, Board Solicitor, asking for a postponement of the Board Hearing of November 23, 2009 for 20 days. Appellant referred to the appeal as a "joint appeal."⁵⁴

On November 23, 2009 and December 8, 2009, hearings on Appellant's appeals of the Enforcement Notice and denial of request for Certificate of Non-Conformity were held before the Straban Township Zoning Hearing Board. The November 23, 2009 hearing consisted of procedural discussion between the parties, and the Board granted Appellant's request for a continuance to December 8, 2009. On December 8, 2009, the hearings on the Enforcement Notice and denial of request for Certificate of Non-Conformity were held. At the outset, the Township and Appellant differed on which hearing should proceed first. The Township argued that the denial of request for Certificate of Non-Conformity should be heard first, because it involved the ultimate issue of whether the motel was a lawful preexisting, nonconforming use and whether this use was abandoned, and that resolution of the ultimate issue would resolve both cases. Appellant argued that because the Enforcement Notice was first in time, the hearing on the Enforcement Notice should proceed first. To resolve this procedural impasse, the Township agreed to proceed first on the Enforcement Notice hearing. After the Township rested in the Enforcement Notice hearing, it was allowed by the Board to continue to present further evidence when the Board decided that it would not accept a transcript of the June 24, 2008 hearing as an exhibit. There was noted confusion in the hearing regarding the burdens and the issues, as resolution of the issue of the enforcement notice appeared dependent on whether the preexisting

⁵² Bd. Exhibit #1 of 12/8/09 "Certificate of Non-conformity Application." The McKenna Affidavit was not signed by the McKennas.

⁵³ Bd. Exhibit #2 of 12/8/09.

⁵⁴ Bd. Exhibit #1 of 11/23/09.

nonconforming use was abandoned. At the outset of the hearing on the denial of request for Certificate of Non-Conformity, the parties argued about which side had the burden and who should proceed first. The Board Solicitor recommended that Appellant proceed with his case first in this hearing, with the Appellant having the burden to prove no intent to abandon a lawful preexisting, nonconforming use. Appellant presented his case, after which the Township presented its case.

The Board's decisions denying Appellant's appeal from the Enforcement Notice and denying Appellant's appeal from denial of its request for Certificate of Non-Conformity issued on February 9, 2010. With respect to the request for the Certificate of Non-Conformity the Board concluded that i.) the motel use was protected as a preexisting nonconforming use when the Township first adopted zoning in 1992, ii.) the Township carried its burden of proof to establish that the prior owners of the property had the intent to abandon the use of the property as a motel and iii.) the use of the property as a motel was actually abandoned. Accordingly the Board denied issuance of a Certificate of Non-Conformity.

On the issue of the Enforcement Notice, the Board adopted the findings of fact and discussion related to the request for the Certificate of Non-Conformity. The Board then observed that without considering the testimony of the SEO, the Township did not meet its burden of proof on whether the use of a motel was abandoned but when considering that testimony the use was clearly abandoned. Although the testimony of the SEO had been elicited during that part of the hearing dealing with the denial of request for Certificate of Non-Conformity, the Board chose to also consider the same testimony in its decision on the Enforcement Notice. The Board found that in evaluating the SEO's testimony it was clear the use of the property as a motel had been abandoned by the prior owners. Because Appellant admitted operating a motel (a use which had been abandoned) the Board denied the appeal of the Enforcement Notice.

On March 9, 2010, the Appellant filed *Land Use Appeal Notices* to this Court on both the Enforcement Notice and the denial of request for Certificate of Non-Conformity. These appeals were assigned case numbers 2010-S-381 and 2010-S-382, respectively. On March 18, 2010, the Board responded to Appellant's Land Use Appeal filed in 2010-S-382, and on March 22, 2010, the Board

responded to Appellant's Land Use Appeal filed in 2010-S-381. On April 15, 2010, this Court scheduled a status conference for April 29, 2010 in both cases. Subsequently, the status conference was continued until May 10, 2010. Straban Township filed a *Notice of Intervention* on April 26, 2010 in both cases.

After the status conference, the Court issued an Order noting that the parties generally agreed that the record was complete, giving the parties 30 days to raise any objections to the record, stating that all issues raised in the appeals are ripe for disposition, and establishing a briefing schedule. On May 19, 2010, letters to this Judge from Appellant and Intervenor were filed and on June 29, 2010, the Board's Solicitor filed a letter which included the October 1, 2009 Enforcement Notice which is the subject of the appeal in 2010-S-381.⁵⁵

In case No. 2010-S-381, Appellant filed *Motion to Strike Off Response to Allegations in Respect to Deemed Decision Claim* on July 6, 2010. On July 7, 2010, Intervenor Straban Township filed an *Answer*. On July 9, 2010, this Court issued an Order denying Appellant's *Motion to Strike Off Response to Allegations in Respect to Deemed Decision Claim*.

Appellant filed *Motions for Reconsideration of the Order of Court Dated May 10, 2010* on July 8, 2010 in both cases. On July 9, 2010, Intervenor filed Answers to Appellant's *Motions for Reconsideration*.

On July 12, 2010, Appellant filed *Brief of Heywood Becker Contra the Decision of the Board Affirming the Enforcement Notice and Denying the Subject Appeal* in 2010-S-381 and *Brief of Heywood Becker Contra the Decision of the Board Affirming the Refusal of the Zoning Officer to Register the Nonconforming Use as a Motel and Denying the Subject Appeal* in 2010-S-382.

On July 13, 2010, Appellant filed *Motion Requesting the Taking of Additional Evidence* to 2010-S-381. By Court Order dated July 15, 2010, Appellant's *Motion for Reconsideration* in both cases was denied. By separate Order of Court dated July 15, 2010, Appellant's *Motion Requesting the Taking of Additional Evidence* was denied.

On August 6, 2010, Intervenor Straban Township filed its *Brief*. On August 9, 2010, Appellee Zoning Hearing Board filed its *Brief*. *Reply Brief of Heywood Becker* was filed by Appellant on September 17, 2010.

Continued to next issue (1/27/2012)

⁵⁵ Board Exhibit #1 of 12/8/09 "Enforcement Notice." The document had not been included in the original record submission but was intended to be part of the record.

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 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

SECOND 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

THIRD PUBLICATION**ESTATE OF LUCILLE G. KNOX, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Sally Raymond, 5819 Hanna Road, Eldersburg, MD 21784

ESTATE OF LORETTA A. LIVELSBERGER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Co-Executors: Loretta Ann Livelsberger, John H. Livelsberger, and Eugene W. Livelsberger, c/o Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

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

ESTATE OF ARTHUR WEANER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Richard Weaner, 1480 Old Harrisburg Road, Gettysburg, PA 17325

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

