

Adams County Legal Journal

Vol. 52

May 28, 2010

No. 2, pp. 11-14

IN THIS ISSUE

HILTON HILLS VS. HAMILTON TWP. ZHB

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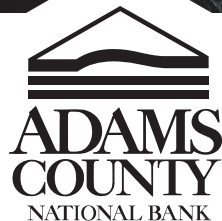
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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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.

Subscribers should send subscriptions directly to the business office. Postmaster: Send address changes to Adams County Legal Journal, 117 BALTIMORE ST RM 305 GETTYSBURG PA 17325-2313.

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

Periodicals postage paid at Gettysburg, PA 17325.

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NOTICE BY THE ADAMS COUNTY
CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statements of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County— Orphan's Court, Gettysburg, Pennsylvania, for confirmation of accounts entering decrees of distribution on Friday, June 4th, 2010 at 8:30 a.m.

WALTER—Orphan's Court Action Number OC-39-2010. The First and Final Account of Michael D. Kane, Executor of the Estate of Vivian J. Walter, late of Cumberland Township, Adams County, Pennsylvania, deceased.

SMITH—Orphan's Court Action Number OC-43-2010. The First and Final Account of Donald J. Smith, Executor of the Estate of Edgar S. Smith, late of the Borough of McSherrystown, Adams County, Pennsylvania, deceased.

Kelly A. Lawver
Clerk of Courts

5/21 & 28

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on or about May 19, 2010, for the incorporation of UNFORGETTABLE BIG BAND, INC. under the Pennsylvania Nonprofit Corporation Law for the purpose of providing musical programs for social, educational, cultural and charitable community events, together with any legal function of a nonprofit corporation under PA law. The initial registered office of the corporation is 184 Lake Meade Drive, East Berlin, PA 17316.

5/28

NOTICE OF SHERIFF'S SALE
IN THE COURT OF COMMON PLEAS
OF ADAMS COUNTY, PENNSYLVANIA
NO. 09-SU-1403

WELLS FARGO BANK, N.A., S/B/M TO
WELLS FARGO HOME MORTGAGE,
INC.

vs.

WILLIAM R. WALB, III

NOTICE TO: WILLIAM R. WALB, III

NOTICE OF SHERIFF'S SALE OF
REAL PROPERTY

Being Premises: 512 MAIN STREET,
MCSHERRYSTOWN, PA 17344-1809

Being in BOROUGH OF
MCSHERRYSTOWN,
County of ADAMS, Commonwealth of
Pennsylvania

Parcel Number 1: 28-005-0251---000
Improvements consist of residential
property.

Sold as the property of WILLIAM R.
WALB, III

Your house (real estate) at 512 MAIN STREET, MCSHERRYSTOWN, PA 17344-1809 is scheduled to be sold at the Sheriff's Sale on JULY 23, 2010 at 10:00 A.M. at the ADAMS County Courthouse to enforce the Court Judgment of \$83,742.19 obtained by WELLS FARGO BANK, N.A., S/B/M TO WELLS FARGO HOME MORTGAGE, INC. (the mortgagee) against the above premises.

Phelan Hallinan & Schmieg, LLP
Attorney for Plaintiff

5/28

NOTICE OF FILING AN APPLICATION

NOTICE IS HEREBY GIVEN that on May 20, 2010, Adams County National Bank, with its principal place of business located at 16 Lincoln Square, Gettysburg, Adams County, Pennsylvania 17325, filed with the Pennsylvania Department of Banking, pursuant to the provision of Chapter 17 of the Banking Code of 1965, as amended, an application for approval to convert from a national banking association to a Pennsylvania state-chartered bank and trust company.

The corporate title of the resulting institution will be ACNB BANK.

All interested persons may file comments regarding this application, in writing, with the Pennsylvania Department of Banking, Corporate Applications Division, 17 North Second Street, Suite 1300, Harrisburg, PA 17101-2290.

In order to be considered, comments regarding this application must be received by the Department of Banking no later than thirty (30) days after the date that notice of the filing of this application is published in the *Pennsylvania Bulletin*. Publication in the *Pennsylvania Bulletin* may or may not appear contemporaneously with this notice. Please check the *Pennsylvania Bulletin* Web site at www.pabulletin.com to determine the due date for filing comments.

5/28

HILTON HILLS VS. HAMILTON TWP. ZHB

1. Pennsylvania law is well settled that a special exception in a zoning ordinance is a use which is expressly permitted in a given zone provided certain conditions detailed in the ordinance are found to exist.

2. An applicant for a special exception has the burden of proving that the request complies with the objective requirements of the zoning ordinance. The standard to be observed by the board is whether the plan, as submitted, complies with the specific ordinance requirements at the time the plan comes before it.

3. An applicant for special exception must be able to satisfy ordinance requirements based solely upon the features of property which lies within the jurisdictional boundaries of the respective municipality.

4. The power of a municipality to zone is derived entirely from the Municipalities Planning Code ("M.P.C.") as a municipal entity possesses only those powers expressly delegated by the Commonwealth

5. The zoning provisions of the M.P.C., when read together, clearly envision that the zoning powers granted to a municipality be limited to their municipal boundaries.

6. Transfer of developmental rights beyond the boundaries of a municipality may only occur within municipalities comprised by a joint municipal zoning ordinance or where there is written agreement between two or more municipalities.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 09-S-495, HAMILTON HILLS GROUP, LLC. VS.
HAMILTON TOWNSHIP ZONING HEARING BOARD.

Wendy Weikal-Beauchat, Esq., for Appellant
Chester G. Schultz, Esq., for Zoning Hearing Board
Ronald T. Tomasko, Esq., for Board of Supervisors
George, J., October 16, 2009

OPINION

Appellant, Hamilton Hills Group, LLC ("Hamilton Hills"), is the owner of approximately 89 acres of land located at 470 Brough Road, Abbottstown, Pennsylvania. The property spans three separate municipalities and consists of 2.31 acres in the Borough of Abbottstown, 11.41 acres in Berwick Township, and approximately 72.73 acres in Hamilton Township. The Hamilton Township portion of the property is located in an R-3 zoning district which permits moderate density residential uses. Pursuant to the Hamilton Township Zoning Ordinance, townhouse units are a use by special exception, however, require a minimum open space of 300 square feet per dwelling unit for any townhouse complex in excess of 12 units. Hamilton Hills applied to the Hamilton Township Zoning Hearing Board ("Board") seeking a special exception to construct 325 townhouse units. Although the entire plan includes sufficient

open space to meet ordinance requirements,¹ Hamilton Hills, at the time of hearing, was unable to establish the precise amount of open space in each of the respective municipalities. Hamilton Hills did concede, however, that all townhouse construction would occur within Hamilton Township and that the majority of the open space was in the neighboring municipalities. This Court's review of the subdivision plan clearly reveals that the Hamilton Hills plan does not contain open space within the jurisdictional limits of Hamilton Township which is sufficient to meet ordinance requirements.

Following the hearing, the Board denied Hamilton Hills' request for special exception. The basis of the denial was that Hamilton Hills failed to meet the special exception requirements contained in the ordinance. Specifically, Hamilton Hills failed to satisfy the open space requirements of the ordinance. Hamilton Hills has timely appealed to this Court raising, as the sole issue, a claim that the Board committed an error of law and an abuse of discretion in failing to include the property's open space in the neighboring municipalities when considering whether the plan met special exception requirements. All parties have briefed the issue and it is now ripe for disposition.

Pennsylvania law is well settled that a special exception in a zoning ordinance is a use which is expressly permitted in a given zone provided certain conditions detailed in the ordinance are found to exist. *Broussard v. Zoning Bd. of Adjustment*, 907 A.2d 494, 499 (Pa. 2006). Where the governing body has set forth express standards and criteria for the granting of a special exception, the board shall hear and decide requests for such special exceptions in accordance with such standards and criteria. *Lafayette College v. Zoning Hearing Bd.*, 588 A.2d 1323, 1325 (Pa.Cmwlth. 1991), citing 53 P.S. § 10912.1. The zoning board's function is to determine that such specific facts, circumstances, and conditions exist which comply with the standards of the ordinance and merit granting the exception. *Broussard*, 907 A.2d at 499. An applicant for a special exception has the burden of proving that the request complies with the objective requirements of the zoning ordinance. *Lafayette College*, 588 A.2d at 1326. The standard to be observed by the board is whether the plan, as submitted, complies with the specific ordinance requirements at the time the plan

¹ 325 units at 300 square feet per unit totals 97,500 square feet of open space required by the Hamilton Township Zoning Ordinance.

comes before it. *Edgemont Twp. v. Springton Lake Montessori Sch., Inc.*, 622 A.2d 418, 420 (Pa.Cmwlt. 1993).

The sole issue before this Court is whether specific physical requirements in a zoning ordinance may be satisfied through the use of contiguous real property which is outside the jurisdictional limits of the governing municipality. Surprisingly, a diligent search for controlling appellate precedent on this issue has proven unsuccessful. Nevertheless, I find that the Board acted properly in concluding that they may not. Specifically, I find that an applicant for special exception must be able to satisfy ordinance requirements based solely upon the features of property which lies within the jurisdictional boundaries of the respective municipality.

The power of a municipality to zone is derived entirely from the Municipalities Planning Code (“M.P.C.”) as a municipal entity possesses only those powers expressly delegated by the Commonwealth. In *re Realen Valley Forge Greenes Assocs.*, 838 A.2d 718, 729 (Pa. 2003). The M.P.C. expressly states a municipality may enact a zoning ordinance to implement the purposes of the act. 53 P.S. § 10501. Although the empowering legislation does not specifically limit the authority of a municipality to zone within its jurisdictional boundaries, there is an absence of authorization permitting a municipality to zone beyond its jurisdictional limits. The zoning provisions of the M.P.C., when read together, clearly envision that the zoning powers granted to a municipality be limited to their municipal boundaries. See 10601 et seq. *Baronoff v. Zoning Bd of Adjustment*, 122 A.2d 65, 68-69 (Pa. 1956) (a municipality possesses no extra-territorial power over the use of property in a neighboring township). As such, Hamilton Township possesses no independent authority to restrict use of the Hamilton Hills property in neighboring municipalities.

Therefore, under the current scenario presented by the Hamilton Hills plan, the Township lacks any ability to ensure that the open spaces contained in the plan, but outside the Township’s jurisdictional boundary, will remain open after special exception approval. Once the townhouses are constructed, ownership is transferred and the developer moves on, Hamilton Township has no recourse should the neighboring municipalities permit development of the open space within their jurisdiction.

Importantly, permitting open space in the neighboring jurisdictions while Hamilton Township absorbs concentrated development flies contrary to the goals of the M.P.C. As previously mentioned, the M.P.C. sets forth a statutory scheme wherein each municipality is directed to accommodate reasonable overall community growth and opportunities for a variety of residential and non-residential uses while avoiding overcrowding of land. See 53 P.S. § 10604. Hamilton Hills currently asks the Township to accept the impact of concentrated development while bestowing the benefits of open space to neighboring municipalities.

The M.P.C. recognizes that in certain circumstances, the transfer of development rights from one property to another may prove beneficial and thus permits such transfers. See 53 P.S. § 10619.1. Even that legislation, however, limits the transfers to transfers occurring in a single municipal jurisdiction. 53 P.S. § 10619.1(d). Transfer of developmental rights beyond the boundaries of a municipality may only occur within municipalities comprised by a joint municipal zoning ordinance or where there is written agreement between two or more municipalities. Hamilton Hills' application, in essence, seeks to transfer the right to develop property in neighboring municipalities in exchange for concentrated construction within Hamilton Township. The request is made, however, without the existence of any agreement between affected municipalities. It also improperly asks the Township to accept responsibility without control. As such, the Board was correct in denying the special exception request.

For the foregoing reasons, the attached Order is entered.

ORDER

AND NOW, this 16th day of October, 2009, the decision of the Hamilton Township Zoning Hearing Board is affirmed. Costs to be paid by the Appellant.

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 PHILIP P. ASPER, DEC'D**

Late of Butler Township, Adams County, Pennsylvania

Executrix: Connie L. Asper, 239 Carlisle Road, Biglerville, PA 17307

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

ESTATE OF TERENCE E. BALTZLEY, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Michael E. Baltzley, 544 Schoolhouse Road, Aspers, PA 17304

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

ESTATE OF EVA MAE COLVIN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Forest E. Colvin, Diane Shugars Colvin, c/o Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

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

ESTATE OF JOHN C. HORNER, DEC'D

Late of the Borough of Carroll Valley, Adams County, Pennsylvania

Administratrix: Gail Ulrich, 7005 Polins Court, Alexandria, VA 22306

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

ESTATE OF KATHLEEN B. HUDSON a/k/a MARTHA KATHLEEN HUDSON, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania

Co-Executors: Susan (Fischer) Wade, #7 Millikin Place, Decatur, IL; Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325

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

ESTATE OF ADOLPHUS U. WALKER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Richard U. Walker, 130 Pine Tree Road, Orrtanna, PA 17353; Susan C. Mosser, 4205 York Road, New Oxford, PA 17350

Attorney: Robert E. Campbell, Campbell & White, P.C., 112 Baltimore Street, Suite 1, Gettysburg, PA 17325-2311

SECOND PUBLICATION**ESTATE OF VERNON S. ARENTZ, DEC'D**

Late of Union Township, Adams County, Pennsylvania

Executrix: Jean M. Arentz, 474 Christ Church Road, Littlestown, PA 17340

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

ESTATE OF CLYDE A. BERWAGER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrices: Nadine Louise Berwager Shaner, 65 North Street, Apt. 33, McSherrystown, PA 17344; Shirley Ann Railing, 14951 Power Dam Road, Defiance, OH 43512

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

ESTATE OF LOICE E. GOUKER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executors: Annabelle Swisher, 28 Forest Trail, Fairfield, PA 17320; Eloise Smith, 812 Forbes Road, Carlisle, PA 17013

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

ESTATE OF WALTER G. KELLY a/k/a WALTER GLENN KELLY, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Maria Albani, c/o Gary J. McCarthy, Esq., Two Commerce Sq., Ste. 3410, Philadelphia, PA 19103

Attorney: Gary J. McCarthy, Esq., Eizen, Fineburg & McCarthy, P.C., Two Commerce Sq., Ste. 3410, Philadelphia, PA 19103

ESTATE OF EDWARD S. MARTIN a/k/a EDWARD S. MARTIN, SR. a/k/a EDWARD SAMUEL MARTIN, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: May M. Martin, 37 Sunday Drive, Hanover, PA 17331

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

ESTATE OF LAURA T. MCKINNEY, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Owen D. McKinney, P.O. Box 363, Bendersville, PA 17306

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

ESTATE OF MERLE L. RHINE, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executor: Sheri A. Hockensmith, 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 BOYD E. RINEHART, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: James Boyd Rinehart, 1619 Herrs Ridge Road, Gettysburg, PA 17325

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

ESTATE OF DORIS A. RUNK, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Co-Executrices: Vickie L. Barrick, 2040 Hammock Road, Titusville, FL 32796; Sharon L. Heller, 2166 Lake Meade Road, East Berlin, PA 17316; Karol J. Turner, 139 Rake Factory Road, Biglerville, PA 17307

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

ESTATE OF ROY M. SUMMERS a/k/a ROY MILFORD SUMMERS, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Executrix: Darcy J. Cook, 1631 Virginia Avenue, Dover, PA 17315

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

THIRD PUBLICATION

ESTATE OF THOMAS BODERCK,
DEC'D

Late of Reading Township, Adams
County, Pennsylvania

Administratrix: Elizabeth A. Boderck,
c/o 129 East Market Street, York, PA
17401

Attorney: Suzanne H. Griest, Esq.,
129 East Market Street, York, PA
17401

ESTATE OF VAULEE DELAP, DEC'D

Late of Straban Township, Adams
County, Pennsylvania

Executrix: Barbara J. Sanner, 703 Bulk
Plant Road, Littlestown, PA 17340

Attorney: Clayton R. Wilcox, Esq., P.O.
Box 176, Littlestown, PA 17340

ESTATE OF PHOEBE EVANS DERSE,
DEC'D

Late of Cumberland Township, Adams
County, Pennsylvania

Executor: Kathleen S. Garcia, 603-1/2
Third Street, Hanover, PA 17331

ESTATE OF FLORENCE MILDRED
WEAVER, DEC'D

Late of Cumberland Township, Adams
County, Pennsylvania

Edwin Eugene Weaver, 441 Beaver
Street, East Berlin, PA 17316

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

CORPORATION NOTICE

NOTICE IS HEREBY GIVEN that
Articles of Incorporation were filed in the
Department of State of the
Commonwealth of Pennsylvania at
Harrisburg, Pennsylvania on May 19,
2010, for the purpose of incorporating a
nonprofit corporation under the
Pennsylvania Nonprofit Corporation Law
of 1988. The name of the corporation is
TRUTH AND GRACE BIBLE CHURCH.
The principle place of business of the
corporation is 490 Funks Road, Aspers,
PA 17304. The purpose for which it has
been organized is: to worship and serve
Jesus Christ and to spread the Gospel
according to the Great Commission.

W. Scott Arnoult, Attorney
Arnoult, Taccino & Hamilton, LLC
14 North Main Street, Suite 410
Chambersburg, PA 17201
(717) 264-0060

Truth and Grace Bible Church
490 Funks Road
Aspers, PA 17304

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