

CD
REDEVELOPMENT AUTHORITY OF THE -vs- JAMES H. SMARTZ
CITY OF DUBOIS

2008 11 14 A 3: 55

CORRECTED NOTICE

Commonwealth Court of Pennsylvania

March 5, 2001

RE: Redevelopment Auth of Dubois v Swartz
 No.: 300 CD 2001
 Agency Docket Number: No. 00-591-CD
 Filed Date: November 13, 2000

Notice of Docketing Appeal

A Notice of Appeal, a copy of which is enclosed, from an order of your court has been docketed in the Commonwealth Court of Pennsylvania. The docket number in the Commonwealth Court is endorsed on this notice. The Commonwealth Court docket number must be on all correspondence and documents filed with the court.

Under Chapter 19 of the Pennsylvania Rules of Appellate Procedure, the Notice of Appeal has the effect of directing the Court to transmit the certified record in the matter to the Prothonotary of the Commonwealth Court.

The complete record, including the opinion of the trial judge, should be forwarded to the Commonwealth Court within forty (40) days of the date of filing of the Notice of Appeal. Do not transmit a partial record.

Pa.R.A.P. 1921 to 1933 provides the standards for preparation, certification and transmission of the record.

The address to which the Court is to transmit the record is set forth on Page 2 of this notice.

Notice to Counsel

A copy of this notice is being sent to all parties or their counsel indicated on the proof of service accompanying the Notice of Appeal. The appearance of all counsel has been entered on the record in the Commonwealth Court. Counsel has thirty (30) days from the date of filing of the Notice of Appeal to file a praecipe to withdraw their appearance pursuant to Pa. R.A.P. 907 (b).

Appellant or Appellant's attorney should review the record of the trial court, in order to insure that it is complete, prior to certification to this Court. (Note: A copy of the Zoning Ordinance must accompany records in Zoning Appeal cases).

The addresses to which you are to transmit documents to this Court are set forth on Page 2 of this Notice.

If you have special needs, please contact this court in writing as soon as possible.

Attorney Name	Party Name	Party Type
James H Swartz	James H. Swartz	Appellant
Michael P. Yeager, Esq.	Redevelopment Authority Of The City Of	Appellee

FILED

MAR 07 2001
m/1:25/vas
William A. Shaw
Prothonotary

29

**RULE 904. CONTENT OF THE
NOTICE OF APPEAL**

(a) Form. The notice of appeal shall be in substantially the following form:

COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

300 CD 2001

A.B., Plaintiff:

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

v.

C.D., Defendant:

JAMES H. SWARTZ,
Condemnee

: NO. 00-591-CD
: Counsel of Record for this Party:
:
: Michael P. Yeager, Esq.
: Supreme Court No.: 15587
:
: P.O. Box 752
: 110 North Second Street
: Clearfield, PA 16830
: (814) 765-9611
:
: Type of Case: Condemnation
:
: Type of Pleading: COMMONWEALTH COURT.
: 42 PA.C.S. 762 (A) (6)
: (EMINENT DOMAIN)
:
: Filed on Behalf of: Condemnee.
:
: Counsel of Record for this Party:
: James H. Swartz
: 2 West Long Avenue
: DuBois Pa 15801
: (814) 375-4453

Docket or File No. 300 C.D. 2001
Offense Tracking No.

NOTICE OF APPEAL

Notice is hereby given that C.D., defendant above named, hereby appeals to the ~~(Supreme)~~ ~~(Superior)~~ (Commonwealth) Court of Pennsylvania from the order entered in this matter on the 22 day of FEBRUARY 2001. This order has been entered in the docket as evidenced by the attached copy of the docket entry.

(S) James H. Swartz James Swartz

2 WEST LONG AVENUE, DU BOIS, PA. 15801

(Address and telephone number)

Address all written communications to:

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
P.O. Box 11730
Harrisburg, PA 17108
(717) 255-1650

Filings may be made in person at the following address (except on Saturdays, Sundays and holidays observed by Pennsylvania Courts) between 9:00 a.m. and 4:00 p.m.

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Room 624
Sixth Floor
South Office Building
Harrisburg, PA 17120
(717) 255-1650

Pleadings and similar papers (but not paperbooks or certified records) may also be filed in person only at:

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Filing Office
Suite 990
The Widener Building
One South Penn Square
Philadelphia, PA 19107
(215) 560-5742

The hours of the Philadelphia Filing Office are 9:00 a.m. to 4:00 p.m.

Under Pa.R.A.P. 3702, writs or other process issuing out of the Commonwealth Court shall exit only from the Harrisburg Office.

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA
RULE OF APPELLATE PROCEDURE 1931(C)

To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

00-591-CD

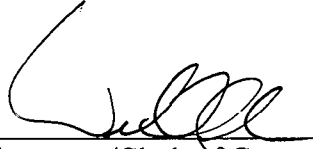
**REDEVELOPMENT AUTHORITY OF THE CITY OF DUBOIS
VS.
JAMES H. SWARTZ**

In compliance with Pa. R.A.P. 1931 (c).

The documents comprising the record have been numbered from **No. 1 to No. 30**, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is

MARCH 12, 2001.


Prothonotary/Clerk of Courts

(seal)

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA
CASE #00-591-CD**

REDEVELOPMENT AUTHORITY OF THE CITY OF DUBOIS

VS

JAMES A. SWARTZ

ITEM NO.	DATE of FILING	NAME of DOCUMENT	NO of PAGES
01	05-18-00	DECLARATION OF TAKING	11
02	05-18-00	BOND WITHOUT SURETY	03
03	06-19-00	OBJECTIONS AND DEFENSE	02
04	06-26-00	MEMORANDUM OF RECORDED NOTICE OF DECLARATION OF TAKING	08
05	06-26-00	AFFIDAVIT OF SERVICE	05
06	07-06-00	ANSWER TO PRELIMINARY OBJECTIONS AND DEFENSE	06
07	07-06-00	MOTION FOR RIGHT OF ENTRY FOR PURPOSES OF FORMING STUDIES, SURVEYS TESTS, SOUNDINGS AND APPRAISALS	03
08	07-06-00	MOTION TO STRIKE	03
09	07-26-00	AFFIDAVIT OF SERVICE	02
10	08-01-00	REQUEST FOR THIRTY DAY EXTENSION	02
11	09-03-00	OBJECTION AND DEFENSE TO MOTION TO STRIKE	02
12	08-21-00	REQUEST FOR THIRTY DAY EXTENSION	02
13	08-23-00	OBJECTION TO CONDEMNEE'S REQUEST FOR THIRTY DAY EXTENSION	02
14	09-01-00	AFFIDAVIT OF SERVICE	02
15	10-11-00	ORDER	01
16	10-11-00	ORDER	01
17	11-09-00	MOTION FOR JUDGMENT NOTWITH- STANDING THE VERDICT	15
18	11-13-00	APPEAL TO TRIAL COURT	32
19	11-14-00	ORDER	01
20	11-20-00	NOTICE OF APPEAL RETURNED	01
21	11-27-00	APPEAL TO TRIAL COURT	35
22	12-01-00	NOTICE OF APPEAL BEING RETURNED ATTACHMENT - APPEAL TO TRIAL COURT CERTIFIED 11/27/00	01
23	02-05-01	ORDER	01
24	02-20-01	OBJECTIONS AND DEFENSE	36

25	02-20-01	NOTICE OF APPEAL	01
26	02-22-01	RULE / NOTICE OF APPEAL	03
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28	03-05-01	NOTICE OF DOCKETING APPEAL	03
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30	03-09-01	OPINION & ORDER	04

CIVIL ACTION

DOCKET 281

MAY 2000

Michael P.
Yeager, Esq.REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS

00-591-CD

JAMES H. SWARTZ

Pro BY ATTY
Pro by Cond.80.00
45.00MAY 18, 2000, DECLARATION OF TAKING, filed by Michael P. Yeager,
Esq., Attorney for the Plaintiff
No Certified CopiesMAY 18, 2000, BOND WITHOUT SURETY, filed.
No Certified CopiesMEMORANDUM OF RECORDED NOTICE OF DECLARATION OF TAKING, filed
by Michael P. Yeager, Esq., Attorney for the PlaintiffJUN 19, 2000, OBJECTIONS AND DEFENSE, filed by s/JAMES H.
SWARTZ ONE (1) CC DEF.JUN 26, 2000, MEMORANDUM OF RECORDED NOTICE OF DECLARATION OF TAKING
filed by s/MICHAEL P. YEAGER, ESQ. NO CCJUN 26, 2000, AFFIDAVIT OF SERVICE, NOTICE OF FILING DECLARATION
OF TAKING: filed by, s/MICHAEL NO CCJUL 06, 2000, ANSWER TO PRELIMINARY OBJECTIONS AND DEFENSE,
filed by s/MICHAEL P. YEAGER, ESQ.JUL 06, 2000, MOTION FOR RIGHT OF ENTRY FOR PURPOSES OF FORMING
STUDIES, SURVEYS, TESTS, SOUNDINGS AND APPRAISALS, filed by
s/MICHAEL P. YEAGER, ESQ.

JUL 06, 2000, MOTION TO STRIKE, filed by s/MICHAEL P. YEAGER, ESQ.

JUL 26, 2000, AFFIDAVIT OF SERVICE, ANSWER TO P.O.'s, ETC., UPON
JAMES SWARTZ: s/MICHAEL P. YEAGER, ESQ.AUG. 01, 2000, REQUEST FOR THIRTY DAY EXTENSION TO DO LEGAL BRIEF,
filed by s/JAMES H. SWARTZAUG. 03, 2000, OBJECTION AND DEFENSE TO MOTION TO STRIKE, filed by
s/JAMES H. SWARTZAUG. 21, 2000, REQUEST FOR THIRTY DAY EXTENSION TO DO ADDITIONS TO
LEGAL BRIEF, filed by s/JAMES H. SWARTZAUG. 23, 2000, OBJECTION TO CONDEMNOR'S REQUEST FOR ANOTHER THIRTY
DAY EXTENSION, filed by s/MICHAEL P. YEAGER, ESQ.SEP. 01, 2000, AFFIDAVIT OF SERVICE, REPLY BRIEF/OBJECTION UPON
JAMES H. SWARTZ: s/Michael P. Yeager, Esq.OCTOBER 11, 2000, ORDER, filed. Cert. to Yeager & Swartz
AND NOW, this 11th day of Oct., 2000, RE: Motion filed 7/6/00
s/JKR, JR., P.J.OCTOBER 11, 2000, ORDER, filed. Cert. to Yeager & Swartz
NOW, this 11th day of October, 2000, RE: Objections, it is
ORDER that said preliminary objections are denied. s/JKR, JR., P.J.NOV. 9, 2000, MOTION FOR A JUDGMENT NOTWITHSTANDING THE VERDICT, filed
by James H. Swartz, Two Cert. to CondemneeNOV. 13, 2000, APPEAL TO TRIAL COURT, filed by James H. Swartz
One Cert. to Swartz and One Cert. to Superior CourtNOTICE OF APPEAL RETURNED BY THE SUPERIOR COURT OF
PENNSYLVANIA. Filed

PLEASE REFER TO COMPUTER
FOR FURTHER ENTRIES

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

MAR 12 2001

Attest.

William L. Brown
Prothonotary

Date	Judge
Redevelopment Authority of the City of DuBois vs. James H. Swartz	
05/18/2000	New Case Filed. Please refer to docket book for entries prior to November, No Judge 2000.
11/14/2000	Order, filed. No Judge NOW, this 14th day of November, 2000, upon consideration of Motion for Judgment Not Withstanding The Verdict filed by Defendant pro se above named, it is the Order of this Court that said Motion be and is hereby dismissed. BY THE COURT: /s/John K. Reilly, Jr., P.J. One Certified Copy to Defendant One Certified Copy to Attorney Yeager
11/20/2000	Notice of Appeal returned for defects from Superior Court No Judge
11/27/2000	APPEAL TO TRIAL COURT SUPERIOR COURT, PITTSBURGH, filed by No Judge s/James H. Swartz 2 CC to Condemnee 1 CC to Superior Court
12/01/2000	Notice of Appeal returned for defects from Superior Court No Judge
02/05/2001	Order from Superior Court, re: Transferred to Commonwealth Court. filed. No Judge
02/20/2001	Objections and Defense, filed by James Swartz 3 Cert. to Swartz No Judge Notice of Appeal, filed. No Judge Cert. copy of Appeal to Commonwealth Court w/\$55.00 Check 5 Cert. Copies to J. Swartz
02/22/2001	RULE 904 Notice of Appeal. Filed by James H. Swartz to Commonwealth No Judge Court. 6 cc to Mr. Swartz Certificate of Service, Notice of Appeal upon President Judge John K. No Judge Reilly, Jr. and Michael P. Yeager, Esq. s/James H. Swartz 2 cc to Mr. Swartz, 1 cert to Commonwealth Court
03/05/2001	Noticing of Docketing Appeal. Filed. Commonwealth Court of Penna. No Judge Docket No. 300 CD 2001 Filed.
03/07/2001	CORRECTED NOTICE, Notice of Docketing Appeal and Notice to No Judge Counsel. Filed.
03/09/2001	OPINION AND ORDER, By the Court, s/JKR,JR.,P.J. 8 Mar. 01 cc to No Judge Yeager & Swartz

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

MAR 12 2001

Attest.

William L. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Condemnor

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00-541 -CD
:
: Type of Case: Condemnation
:
: Type of Pleading: Declaration of
: Taking, Proceeding in Rem
:
: Filed on Behalf of: Condemnor
:
: Counsel of Record for this Party:
:
: Michael P. Yeager, Esq.
: Supreme Court No.: 15587
:
: P.O. Box 752
: 110 North Second Street
: Clearfield, PA 16830
:
: (814) 765-9611

FILED

MAY 1 1980

William A. Shaw
Prothonotary

#1

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF	:	
THE CITY OF DUBOIS,	:	No. 00- -CD
Condemnor	:	
vs	:	IN CONDEMNATION
	:	
JAMES H. SWARTZ,	:	
Condemnee	:	

DECLARATION OF TAKING

COMES NOW, the Redevelopment Authority of the City of DuBois, by and through its Attorney, Michael P. Yeager, Esquire and does hereby respectfully declare as follows:

1. The Condemnor is the Redevelopment Authority of the City of DuBois with its principal place of business located at 16 West Scribner Avenue, DuBois, PA 15801.

2. The interests in and to a building and lot or lots described in Exhibit A, attached hereto, made part hereof and incorporated herein by reference (the "Property") are hereby condemned in fee simple or absolute title by the Condemnor to secure property for ultimate redevelopment within the Redevelopment Area in the City of DuBois, Clearfield County, Pennsylvania, in accordance with the approved Redevelopment Plan dated June 10, 1996, and all pursuant to the Urban Redevelopment Law, May 24, 1945, P.L. 991, §1 et seq. (35 P.S. §1701, et seq.); and as further authorized by a Resolution of the Condemnor adopted June 15, 1999 by a majority of its duly appointed Board

Members. Said Redevelopment Plan, Map and Resolution may be examined at the offices of the Condemnor located at 16 West Scribner Avenue, DuBois, PA 15801.

3. Purposes for the redevelopment are to remove blight and to increase business activity in the redevelopment area. The Property constitutes a centerpiece parcel in the redevelopment of the downtown area of the City of DuBois for which redevelopment can be accomplished in this instance only by acquisition and disposition through resale to a developer or developers willing and otherwise able to redevelop the Property.

4. The description of the Property condemned herein sufficient for its identification is set forth in Exhibit A, a copy of a Deed dated December 30, 1992 and recorded in Clearfield Deeds & Records Vol. 1508 at page 102. The property is otherwise identified by Clearfield County Map Number 7.2-001-65; and a map thereof is available for inspection at the Clearfield County Assessment offices.

5. A plan showing the Property condemned is available for inspection at the offices of the Condemnor at 16 West Scribner Avenue, DuBois, PA 15801.

6. The nature of the title acquired in and to the Property condemned is a fee simple or absolute title.

7. The Condemnor files with this Declaration of Taking its open-end Bond without surety pursuant to Section 403(a) of the Eminent Domain Code of 1964. Just compensation is made or

secured by the filing of said Bond, attached hereto, made part
hereof and incorporated herein as Exhibit B.

ATTEST:

REDEVELOPMENT AUTHORITY OF THE
CITY OF DUBOIS

Mary Sue
Secretary

By: Anthony B. Shenkle
Chairman

WARRANTY DEED - 1988

PLANNED-HORN CO. WILLIAMSPORT, PA.

County Parcel No. _____

, This Deed,

MADE the 30th day of December
in the year nineteen hundred and ninety-two (1992)

BETWEEN GARY J. SIERZEGA And G. MICHAEL ROSIO, both of the City of DuBois,
Clearfield County, Pennsylvania, hereinafter called the grantors,

A
N
D

JAMES H. SWARTZ, single, of R. D. #1, Reynoldsville, Jefferson County, Pennsylv-
ania, hereinafter called the Grantee.

WITNESSETH, That in consideration of Sixteen Thousand
(\$16,000.00)

Dollars,

in hand paid, the receipt whereof is hereby acknowledged, the said grantors do hereby grant
and convey to the said grantee, his heirs and assigns

ALL that certain piece or parcel of land situate, lying and being in the City of
DuBois, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at a post at the corner of North Brady Street and West
Long Avenue; thence by line of West Long Avenue, 95 feet to a
post at the corner of lands of the S & T Bank, formerly The Union
Banking and Trust Company (formerly J. A. Vasbinder); thence by
lands of said S & T Bank, formerly The Union Banking and Trust
Company, 45 feet to post at lands now or formerly of Philip
Weaver; thence by line of lands now or formerly of Philip Weaver,
25 feet to a post; thence by lands now or formerly of Philip
Weaver and lands now or formerly of Annie Hoot (formerly W. I.
Shaw) 20 feet to a post at lands conveyed by W. I. Shaw and wife
to George R. Vosburg; thence by line of lands now or formerly
of said George R. Vosburg, 70 feet to a post at North Brady
Street; thence by line of North Brady Street 20 feet to a post
at corner of North Brady Street and West Long Avenue, the place
of beginning.

Being the same premises which vested in the Grantors herein by
deed of Horacio L. Sardou and Gary C. Crawford, dated January
19, 1987, recorded January 26, 1987 in Clearfield County Deeds
& Records Book 1135, page 590.

EXHIBIT

tabbles

A

DUBOIS AREA SCHOOL DISTRICT
1% REALTY TRANSFER TAX

VOL 1508 PAGE 103

AMOUNT \$ 160.00

PAID 1-7-93 KAREN L. STARCK
Date Agent

MAIL TAX STATEMENTS TO:

James H. Swartz
R. D. #1, Reynoldsville, PA 15851

I hereby CERTIFY that this document
is recorded in the Recorder's Office of
Clearfield County, Pennsylvania.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE

REALTY
TRANSFER
TAX

JAN-7'93



160.00



Karen L. Starck

Karen L. Starck
Recorder of Deeds

NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1968", I/we, the undersigned grantee/grantees, hereby certify that I/we know and understand that I/we may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal. I/we further certify that this certification is in a color contrasting with that in the deed proper and is printed in twelve point type preceded by the word "notice" printed in twenty-four point type.

Witness:

Lucrecia R. Torretti, Esq.

James H. Swartz
(James H. Swartz)

This 6th day of January, 1993

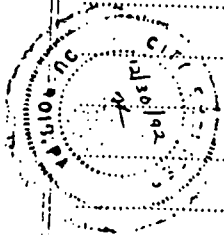
THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. (This Notice is set forth pursuant to Act No. 255, approved September 16, 1965, as amended.)

AND the said grantor s will generally hereby conveyed.

WAR NT AND FOREVER DEFEND the property

IN WITNESS WHEREOF, said grantor s ha vhereunto set their hand s and seal s , the day and year first above-written.

Scaled and delivered in the presence of



Gary J. Sierzega [Seal]
 (Gary J. Sierzega)
G. Michael Rosio [Seal]
 (G. Michael Rosio)
 [Seal]
 [Seal]
 [Seal]
 [Seal]

CERTIFICATE OF RESIDENCE

I hereby certify, that the precise residence of the grantee is herein is as follows:
 R. D. #1, Reynoldsville, PA 15851

Quinn R. Tawell, Esq.
 Attorney or Agent for Grantee

Commonwealth of Pennsylvania

County of CLEARFIELD ss.

On this, the 30th day of December 1992, before me a notary public, the undersigned officer, personally appeared GARY J. SIERZEGA and G. MICHAEL ROSIO, known to me (or satisfactorily proven) to be the person s whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official

seal.

My Commission Expires



Kathryn E. Swartz

Notary Seal
 Kathryn E. Swartz, Notary Public
 DuBois, Clearfield County
 My Commission Expires Aug. 29, 1996
 Member, Pennsylvania Association of Notaries

State } ss.
 County of }

On this, the day of , 19 , before me
 the undersigned officer, personally appeared
 known to me (or satisfactorily proven) to be the person whose name subscribed to the within
 instrument, and acknowledged that executed the same for the purpose therein
 contained.

IN WITNESS WHEREOF, I have hereunto set my hand and

seal.

My Commission Expires

CLEARFIELD COUNTY
 ENTERED OF RECORD
 TIME 12:14 PM 1-7-83
 BY Karen L. Starck
 FEES 3.50
 Karen L. Starck, Recorder

Commonwealth of Pennsylvania

County of } ss.

RECORDED in the Office for Recording of Deeds, etc., in and for the said
 County, in Deed Book No. , Page

WITNESS my hand and official seal this day of , 19

Recorder of Deeds

DO NOT PUBLISH

*Out to 160.00
 On 12-1-82
 By 12-1-82
 Deed*

WARRANTY DEED

The Philadelphia Co., Williamsport, Pa.

GARY J. STERZEGA AND
 MICHAEL ROSIO

TO

JAMES H. SWARTZ

Dated

For

Consideration

Recorded

Entered for Record in the Recorder's

Office of

County, the

day of , 19

Tax \$

Fees \$

Recorder

LAW OFFICES
 ERVIN S. FENNELL, JR.
 P. O. BOX 666
 DUBOIS, PA 15801

Entered of Record Jan 7 19 83, 12:14 PM Karen L. Starck, Recorder

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF	:	
THE CITY OF DUBOIS,	:	No. 00- -CD
Condemnor	:	
vs	:	IN CONDEMNATION
	:	
JAMES H. SWARTZ,	:	
Condemnee	:	

BOND WITHOUT SURETY

KNOW ALL MEN BY THESE PRESENTS, that the Redevelopment Authority of the City of DuBois, organized and existing under the laws of the Commonwealth of Pennsylvania and more particularly the Urban Redevelopment Law, Act of May 24, 1945, 991, §1, et seq. hereinafter called Obligor is held and firmly bound unto the Commonwealth of Pennsylvania, hereinafter called Obligee for the use and benefit of the owner or owners of the property condemned as hereinafter noted, and other proper parties in interest, for such amount of damage as the said owner or owners of the said property and other parties in interest shall be entitled to receive after the same shall have been agreed upon or assessed in the manner prescribed by law, by reason of the condemnation by the Redevelopment Authority of the City of DuBois, of certain land located in the City of DuBois, Clearfield County, Pennsylvania, being known by Clearfield County Assessment Map Number 7.2-001-65 and to consist of a building and lot or lots more particularly bounded and described as set forth in Exhibit A of said Declaration of Taking.

The Obligor does hereby bind itself together with its successors and assigns firmly by these presents to payment for the aforesaid condemnation to be well and truly made.

Sealed with the corporate seal and duly executed this _____ day of _____, 2000.

Whereas, the Redevelopment Authority of the City of DuBois has condemned the said property and cannot agree with the owner or owners of said land upon the just compensation to be paid for the damages sustained by said owner or owners as a result of the condemnation;



NOW THE CONDITION of this Bond is such that if the Redevelopment Authority of the City of DuBois, the Obligor herein, shall pay or cause to be paid such amount of damages as the said owner or owners of the property and other parties in interest shall be entitled to receive by reason of such condemnation, after the same shall have been agreed upon or assessed in the manner provided by law, then this obligation shall be void; otherwise, to be and remain in full force and effect.

ATTEST:

REDEVELOPMENT AUTHORITY OF THE
CITY OF DUBOIS

Secretary

By: _____

Chairman

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF CLEARFIELD :

FENTLEY SHENKLE, Chairman of REDEVELOPMENT AUTHORITY OF THE CITY OF DUBOIS, being duly sworn according to law, deposes and says that he, as such officer, being authorized to do so, has executed this Affidavit, and that the facts set forth in the foregoing Declaration of Taking are true and correct to the best of his knowledge, information and belief.

Fentley Shenkle

Fentley Shenkle, Chairman
Redevelopment Authority of
the City of DuBois

Sworn to and subscribed
before me this 18th day
of May, 2000.

Joseph A. Grecco

Notarial Seal
Joseph A. Grecco, Notary Public
DuBois, Clearfield County
My Commission Expires July 18, 2002

Member, Pennsylvania Association of Notaries

FILED

~~EX-100~~

MAY 10 2000

William A. Shaw
Prothonotary

01232/ATH

Yeager

pd

\$80.00

noc

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Condemnor
vs

JAMES H. SWARTZ,
Condemnee

No. 00-54 -CD

IN CONDEMNATION

FILED

MAY 18 2000

William A. Shaw
Prothonotary

BOND WITHOUT SURETY

KNOW ALL MEN BY THESE PRESENTS, that the Redevelopment Authority of the City of DuBois, organized and existing under the laws of the Commonwealth of Pennsylvania and more particularly the Urban Redevelopment Law, Act of May 24, 1945, 991, §1, et seq. hereinafter called Obligor is held and firmly bound unto the Commonwealth of Pennsylvania, hereinafter called Obligee for the use and benefit of the owner or owners of the property condemned as hereinafter noted, and other proper parties in interest, for such amount of damage as the said owner or owners of the said property and other parties in interest shall be entitled to receive after the same shall have been agreed upon or assessed in the manner prescribed by law, by reason of the condemnation by the Redevelopment Authority of the City of DuBois, of certain land located in the City of DuBois, Clearfield County, Pennsylvania, being known by Clearfield County Assessment Map Number 7.2-001-65 and to consist of a building and lot or lots more particularly bounded and described as set forth in Exhibit A of said Declaration of Taking.

The Obligor does hereby bind itself together with its successors and assigns firmly by these presents to payment for the aforesaid condemnation to be well and truly made.

Sealed with the corporate seal and duly executed this 18th day of MAY, 2000.

Whereas, the Redevelopment Authority of the City of DuBois has condemned the said property and cannot agree with the owner or owners of said land upon the just compensation to be paid for the damages sustained by said owner or owners as a result of the condemnation;

NOW THE CONDITION of this Bond is such that if the Redevelopment Authority of the City of DuBois, the Obligor herein, shall pay or cause to be paid such amount of damages as the said owner or owners of the property and other parties in interest shall be entitled to receive by reason of such condemnation, after the same shall have been agreed upon or assessed in the manner provided by law, then this obligation shall be void; otherwise, to be and remain in full force and effect.

ATTEST:

REDEVELOPMENT AUTHORITY OF THE
CITY OF DUBOIS

Mary Alice
Secretary

By: Fentley B. Shenkle
Chairman

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF	:	
THE CITY OF DUBOIS,	:	No. 00-54 -CD
Condemnor	:	
vs	:	IN CONDEMNATION
	:	
JAMES H. SWARTZ,	:	
Condemnee	:	

MEMORANDUM OF RECORDED NOTICE OF
DECLARATION OF TAKING

The Notice of Filing of Declaration of Taking in the above
action was recorded in the office of the Recorder of Deeds in and
for Clearfield County on May 18, 2000 as Instrument No.

~~2000~~ 200006905.


Michael P. Yeager Esquire
Attorney for the Redevelopment
Authority of the City of
DuBois, Condemnor

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION -LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DU BOIS,
Condemnor

VS
JAMES H. SWARTZ
Condemnee

?
:
:
:
:
:
:
:

No. 00- 591- CD
IN CONDEMNATION

FILED

JUN 19 2000

William A. Shaw
Prothonotary

OBJECTIONS AND DEFENSE

Comes now, James Swartz and does hereby respectfully declare
as follows.

1. The first floor of the building at 2 west long ave,
Du Bois, Pa. is up to code and has utilities on in both
Store fronts open to the public.

2. Repairs have been made to the building every year
it is open PREJUDICE : try to take this building when
I am on public record at city council meeting as
having a checking account to start up a Building and
Construction Co. to fix up the building and make
several office spaces AS the result of an ad right in
the bookstore window one kid has agreed to help put
baseball cards on the internet..

A Under third class city code section 913 City not to
Engage in private Construction. clearly states ALL KINDS
-TYPES OF CONSTRUCTION WORK BY LEGITIMATE PRIVATE ENTERPRISE!

B. When public records show that campain funds according to
MR. logan went to the same city official who voted to
give this property to DR. RICE I am denied FAIR MARKET
VALUE. THEY are on public record in the Courier Express
newspaper as trying to get the property at an unfair price,
both bulidings next to mine are smaller in size the true
value is the building Lot not the building.

3. I belive State law says you cannot condem a part of a
building closed for repairs.

4. I belive STATE LAW says you can not condem a building
that is up for sale, I am gathering up the money to pay
off the taxes to transfer the building ownership to the
construction co

5. The building two down from mine had been listed on
Coldwell for about 60,000 . IT is much smaller than mine
Also these people know it is illegal to discriminate but
according to Dave Logan the owner of Carpet cornor Du Bois
gave money to city offical campain funds and that building
empty and several others that were for sale in the area
did not get taken to redevelop.

#3

. 6. No bussiness or building always 100 percent rented out, I use part of the upstairs as storage for building repairs materials doors windows ect. Also I have been working to gather up goods for an additional internet site for toys to use up a second office space on the second foor for my own bussines.

7. My mail box for home address is on this building and my drivers lic. is to this address.

8. I request trial by jury and appeal.

9. I am unable to find any other building in the downtown near a parking lott that does not have a high price tag

10. The city with open Prejudice has twice passed well over twenty pages of city ordience to try to hurt my bussiness, most ADULT stores do 50,000 to 100,000 in bussiness a year,

11. MR. DAVE LOGAN has consulted with an attorney in Johnstown on mt behalf if you try to proceed to take the building we will REQUEST THAT THE STATE DIS. ATTORNEYS OFFICE file criminal charges for violations of state laws.

12. A lien has BEEN PLACED AGAINST THE COLORED GLASS WINDOWS AND WOODWORK ON THE SECOND AND THIRD FLOOR THESE and several other items will be removed from the building! in the event I cannot complete an agreement!

13. In my opinion state law makes it clear a building must be vacant for one year before it can fall under any Redevelopment Authority . It is a state law ,state laws cannot be over rode by a lesser authority.

James Swartz

FILED

012:37881
JUN 19 2000

William A. Shaw
Prothonotary

1cc
def

6/21/00

(4)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

IN RE: CONDEMNATION BY
REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS, OF
PROPERTY LOCATED IN THE
CITY OF DUBOIS, CLEARFIELD
COUNTY, PENNSYLVANIA

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS
Condemnor

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD
:
: Type of Case: Condemnation
:
: Type of Pleading: Memorandum
: of Recorded Notice of
: Declaration of Taking
:
: Filed on Behalf of: Condemnor
:
: Counsel of Record For This
: Party:
:
: Michael P. Yeager, Esq.
: Supreme Court No.: 15587
:
: P.O. Box 752
: 110 North Second Street
: Clearfield, PA 16830
:
: (814) 765-9611

FINED

JUN 26 2000

William A. Shaw
Prothonotary

#4

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

IN RE: CONDEMNATION BY	:	
REDEVELOPMENT AUTHORITY	:	No. 00 - 591 - CD
OF THE CITY OF DUBOIS, OF	:	
PROPERTY LOCATED IN THE	:	
CITY OF DUBOIS, CLEARFIELD	:	IN CONDEMNATION
COUNTY, PENNSYLVANIA	:	
	:	
DUBOIS REDEVELOPMENT AUTHORITY:	:	
OF THE CITY OF DUBOIS,	:	
Condemnor	:	
	:	
vs	:	
	:	
JAMES H. SWARTZ,	:	
Condemnee	:	

MEMORANDUM OF RECORDED NOTICE OF
DECLARATION OF TAKING

The Notice of Filing of Declaration of Taking in the above action was recorded in the office of the Recorder of Deeds in and for Clearfield County on May 18, 2000 as Instrument No. 200006905 as set forth on "Exhibit 1", attached hereto, made part hereof and incorporated herein.



Michael P. Yeager, Solicitor
for Redevelopment Authority of
the City of DuBois

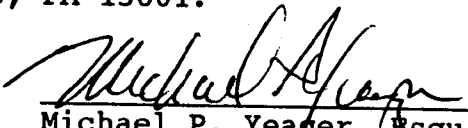
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF :
THE CITY OF DUBOIS, : No. 00-591-CD
Condemnor :
vs : IN CONDEMNATION
: :
JAMES H. SWARTZ, :
Condemnee :

NOTICE OF FILING OF DECLARATION OF TAKING

A Declaration of Taking was filed this date, the 18th day of May, 2000 as of the above court and number, wherein the following property was condemned in whole in fee simple or absolute title:

1. **Condemnee/Owner/Grantor:**
James H. Swartz
R.R. 1
Reynoldsville, PA 15851
(To be indexed as Grantor)
2. **Condemnor/Grantee:**
Redevelopment Authority of the City of DuBois
16 West Scribner Avenue
DuBois, PA 15801
3. **Property Location:**
2-4 West Long Avenue, DuBois, PA 15801
Clearfield County Assessment Map No. 7.2-001-65
4. **Property Description:**
For a description of the Property condemned, please see Exhibit A attached hereto, made part hereof and incorporated herein by reference.
5. **Property map:**
A map showing the premises so condemned is available for inspection at the Clearfield County Assessment Offices (Map No. 7.2-001-65) and at the offices of the Condemnor at 16 West Scribner Avenue, DuBois, PA 15801.


Michael P. Yeager, Esquire
Attorney for Condemnor



COUNTY DEED - 1988

PLANNED GROW CO. WILLIAMSPORT, PA.

County Parcel No. _____

This Deed,

MADE the 30th day of December
in the year nineteen hundred and ninety-two (1992)

BETWEEN GARY J. SIERZEGA And G. MICHAEL ROSIO, both of the City of DuBois,
Clearfield County, Pennsylvania, hereinafter called the grantors,

A
N
D

JAMES H. SWARTZ, single, of R. D. #1, Reynoldsville, Jefferson County, Pennsylvania, hereinafter called the Grantee.

WITNESSETH, That in consideration of Sixteen Thousand
(\$16,000.00)

in hand paid, the receipt whereof is hereby acknowledged, the said grantor a do Dollars,
and convey to the said grantee, his heirs and assigns hereby grant

ALL that certain piece or parcel of land situate, lying and being in the City of
DuBois, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at a post at the corner of North Brady Street and West Long Avenue; thence by line of West Long Avenue, 95 feet to a post at the corner of lands of the S & T Bank, formerly The Union Banking and Trust Company (formerly J. A. Vashbinder); thence by lands of said S & T Bank, formerly The Union Banking and Trust Company, 45 feet to post at lands now or formerly of Philip Weaver; thence by line of lands now or formerly of Philip Weaver, 25 feet to a post; thence by lands now or formerly of Philip Weaver and lands now or formerly of Annie Hoot (formerly W. I. Shaw) 20 feet to a post at lands conveyed by W. I. Shaw and wife to George R. Vosburg; thence by line of lands now or formerly of said George R. Vosburg, 70 feet to a post at North Brady Street; thence by line of North Brady Street 20 feet to a post at corner of North Brady Street and West Long Avenue, the place of beginning.

Being the same premises which vested in the Grantors herein by deed of Horacio L. Sardou and Gary C. Crawford, dated January 19, 1987, recorded January 26, 1987 in Clearfield County Deeds & Records Book 1135, page 590.

EXHIBIT

A

tabbier

CHICAGO AREA SCHOOL DISTRICT
1% REALTY TRANSFER TAX

VOL 1508 PAGE 103

AMOUNT \$ 160.00
PAID 1-7-93 KAREN L. STARCK
Date Agent

MAIL TAX STATEMENTS TO:

James H. Swartz
R. D. #1, Reynoldsville, PA 15851

I hereby CERTIFY that this document
is recorded in the Recorder's Office of
Clearfield County, Pennsylvania.

0 4 4 3 7 2
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE

REALTY
TRANSFER
TAX
JAN-7-93



160.00



Karen L. Starck

Karen L. Starck
Recorder of Deeds

NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1968", I/we, the undersigned grantee/grantees, hereby certify that I/we know and understand that I/we may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal. I/we further certify that this certification is in a color contrasting with that in the deed proper and is printed in twelve point type preceded by the word "notice" printed in twenty-four point type.

Witness:

Lucrecia R. Janczke, Esq.

James H. Swartz
(James H. Swartz)

This 6th day of January, 1993

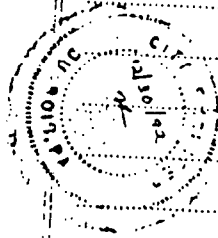
THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. (This Notice is set forth pursuant to Act No. 255, approved September 10, 1965, as amended.)

AND the said grantor s will generally hereby conveyed.

WARRANT AND FOREVER DEFEND the property

IN WITNESS WHEREOF, said grantor s ha vhereunto set their hands and seal s , the day and year first above-written.

Sealed and delivered in the presence of



Gary J. Sierzega (Seal)
(Gary J. Sierzega)
G. Michael Rosio (Seal)
(G. Michael Rosio)

CERTIFICATE OF RESIDENCE

I hereby certify, that the precise residence of the grantee is herein is as follows:
R. D. #1, Reynoldsville, PA 15851

Quinn R. Turetti Esq.
Attorney or Agent for Grantee

Commonwealth of Pennsylvania

County of CLEARFIELD

ss.

On this, the 30th day of December 1992, before me a notary public, the undersigned officer, personally appeared GARY J. SIERZEGA and G. MICHAEL ROSIO, known to me (or satisfactorily proven) to be the person s whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My Commission Expires



Kathryn E. Swanson
Notary Seal
Kathryn E. Swanson, Notary Public
DuBois, Clearfield County
My Commission Expires Aug. 29, 1998
Member, Pennsylvania Association of Notaries

State of } ss.
 County of }

On this, the day of 19 .., before me
 the undersigned officer, personally appeared
 known to me (or satisfactorily proven) to be the person whose name subscribed to the within
 instrument, and acknowledged that executed the same for the purpose therein
 contained.

IN WITNESS WHEREOF, I have hereunto set my hand and

seal.

My Commission Expires

CLEARFIELD COUNTY
 ENTERED OF RECORD
 TIME 12:14 PM 1-7-93
 BY Karen L. Starck
 FEES 13.00
 Karen L. Starck, Recorder

Commonwealth of Pennsylvania

County of } ss.

RECORDED in the Office for Recording of Deeds, etc., in and for the said
 County, in Deed Book No., Page ..

WITNESS my hand and official seal this day of 19 ..

Recorder of Deeds

DO NOT PUBLISH

Auto Pay 160.00
 Dues 50.00
 By Deed 80.00

WARRANTY DEED

The Plankinton Co., Williamsport, Pa.

GARY J. SIERZEGA AND
 MICHAEL ROSIO

TO

JAMES H. SWARTZ

Dated

For

Consideration

Recorded

Entered for Record in the Recorder's

Office of

County, the

day of Jan. 3

19 ..

Fees \$

Recorder

LAW OFFICES
 ERVIN S. FENNELL, JR.
 P. O. BOX 606
 DuBois, PA 15801

Entered of record Jan 7 1993 12:14 PM Karen L. Starck, Recorder

COMMONWEALTH OF PENNSYLVANIA

:

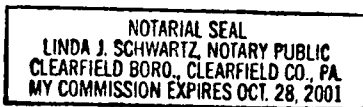
SS:

COUNTY OF CLEARFIELD

:

On this, the 18th day of May, 2000 before me, the undersigned officer, personally appeared MICHAEL P. YEAGER, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Linda J. Schwartz

KAREN L. STARCK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania

INSTRUMENT NUMBER

200006899

RECORDED ON

May 18, 2000

3:00:53 PM

RECORDING FEES - \$17.00
RECORDER

COUNTY IMPROVEMENT FUND \$1.00

RECORDER IMPROVEMENT FUND \$1.00

STATE WRIT TAX \$0.50

TOTAL \$19.50

Mike Yeager

KAREN L. STARCK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania

INSTRUMENT NUMBER

200006905

RECORDED ON

May 18, 2000

3:32:05 PM

RECORDING FEES - \$17.00
RECORDER

COUNTY IMPROVEMENT FUND \$1.00

RECORDER IMPROVEMENT FUND \$1.00

STATE WRIT TAX \$0.50

TOTAL \$19.50

Mike Yeager

FILED

02:40pm
JUN 26 2000

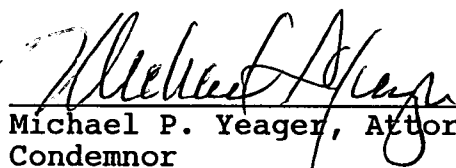
William A. Shaw
Prothonotary
WCS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

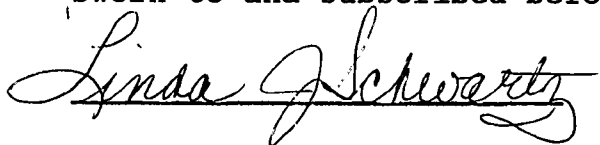
IN RE: CONDEMNATION BY	:	
REDEVELOPMENT AUTHORITY	:	
OF THE CITY OF DUBOIS, OF	:	No. 00 - 591 - CD
PROPERTY LOCATED IN THE	:	
CITY OF DUBOIS, CLEARFIELD	:	IN CONDEMNATION
COUNTY, PENNSYLVANIA	:	
	:	
DUBOIS REDEVELOPMENT AUTHORITY:	:	
OF THE CITY OF DUBOIS,	:	
Condemnor	:	
	:	
vs	:	
	:	
JAMES H. SWARTZ,	:	
Condemnee	:	

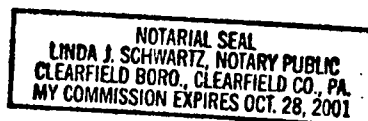
AFFIDAVIT OF SERVICE

I, MICHAEL P. YEAGER, attorney for Redevelopment Authority of the City of DuBois, depose and say that I forwarded a Notice of filing Declaration of Taking (a copy of the same being attached hereto as "Exhibit A") to James H. Swartz, the landowner listed thereon, at the address of 127 S. Brady Street, DuBois, PA 15801. Said forwarding was by certified mail dated May 19, 2000. The original receipt and return receipt card are also attached hereto, made part hereof and incorporated herein as "Exhibit B".


Michael P. Yeager, Attorney for
Condemnor

Sworn to and subscribed before me this 26th day of June, 2000.

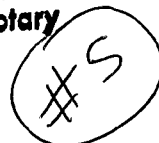




FILED

JUN 26 2000

William A. Shaw
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

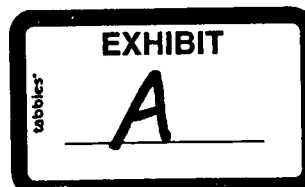
REDEVELOPMENT AUTHORITY OF	:	
THE CITY OF DUBOIS,	:	No. 00 - 591 - CD
Condemnor	:	
vs	:	IN CONDEMNATION
	:	
JAMES H. SWARTZ,	:	
Condemnee	:	

NOTICE

TO: JAMES H. SWARTZ/Condemnee
127 S. Brady Street
DuBois, PA 15801

You are hereby notified that a Declaration of Taking, a copy of which is attached hereto, made part hereof and incorporated herein as "Exhibit 1", has hereto been filed in the Office of the Prothonotary of the Court of Common Pleas of Clearfield County, in Clearfield, Pennsylvania as of the Court of Common Pleas Number 00-591-CD on May 18, 2000, whereupon a building and lot or lots you presently own situate in the City of DuBois, Clearfield County, Pennsylvania ("Property") were condemned by the Redevelopment Authority of the City of DuBois, 16 West Scribner Avenue, DuBois, PA 15801.

A brief description of the Property so condemned is attached to the Declaration of Taking ("Exhibit A" thereto) and a map showing the location of the Property so condemned is available for inspection at the Clearfield County Assessment offices (Map No. 7.2-001-65) and at the offices of the Condemnor at 6 West Scribner Avenue, DuBois, PA 15801. The nature of the title to be acquired in and to the Property condemned is a fee simple or



acquired in and to the Property condemned is a fee simple or absolute title.

The condemnation of said Property in which you have claim or interest was pursuant to the Act of May 24, 1945, P.L. 991, Section 9 (35 P.S. §1709(i)) known as the "Urban Redevelopment Law" and authorizing the Redevelopment Authority of the City of DuBois among others to condemn for various redevelopment purposes.

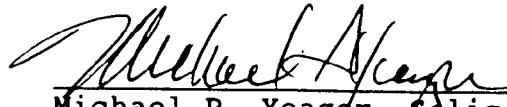
On June 15, 1999 the Redevelopment Authority adopted a Resolution, selecting and appropriating the Property described in the Declaration of Taking for the general purposes of redeveloping an area within the downtown area of the City of DuBois. A record of such action is on file at the offices of the Redevelopment Authority of the City of DuBois, 16 West Scribner Avenue, DuBois, PA 15801.

Just compensation for the condemnation of said Property is secured by the Bond of the Redevelopment Authority of the City of DuBois filed with the said Declaration of Taking (Exhibit B thereto), as security for payment of the damages as shall be determined by law.

You are hereby further notified that if you desire to present any objection or defense to the power or the right of the Redevelopment Authority of the City of DuBois to condemn your Property, the sufficiency of the security, the procedure followed by the Redevelopment Authority of the City of DuBois, or the Declaration of Taking, you are required to file Preliminary

Objections within thirty (30) days after service of this notice.

All defenses and objections not so presented are waived.



Michael P. Yeager, Solicitor
Redevelopment Authority of the
City of DuBois

Z 052 293 379

US Postal Service
Receipt for Certified Mail
 No Insurance Coverage Provided.
 Do not use for International Mail (See reverse)

Sent to	
James H. Swartz	
Street & Number	
127 S. Brady Street	
Post Office, State, & ZIP Code	
DuBois, PA 15801	
Postage	\$ 77
Certified Fee	1.40
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1.25
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$ 3.43
Postmark or Date	

PS Form 3800, April 1995

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- ☐ Addressee's Address
- ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

James H. Swartz
 127 S. Brady Street
 DuBois, PA 15801

4a. Article Number

Z 052 293 379

4b. Service Type

- | | |
|---|---|
| ☐ Registered | ☒ Certified |
| ☐ Express Mail | ☐ Insured |
| ☐ Return Receipt for Merchandise | ☐ COD |

7. Date of Delivery

5-23-00

5. Received By: (Print Name)

James Swartz

6. Signature: (Addressee or Agent)

X

8. Addressee's Address (Only if requested and fee is paid)

Thank you for using Return Receipt Service.

PS Form 3811, December 1994

102595-97-B-0179

Domestic Return Receipt



FILED

012:4020
JUN 26 2000

William A. Shaw
Prothonotary

110 cc 40

E. Shaw

(6)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Condemnor

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD
:
: Type of Case: Condemnation
:
: Type of Pleading: Answer to
: Preliminary Objections and
: Defense
:
: Filed on Behalf of: Condemnor
:
: Counsel of Record for this Party:
:
: Michael P. Yeager, Esq.
: Supreme Court No.: 15587
:
: P.O. Box 752
: 110 North Second Street
: Clearfield, PA 16830
:
: (814) 765-9611

FILED

JUL 06 2000

William A. Shaw
Prothonotary

#6

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF	:	
THE CITY OF DUBOIS,	:	No. 00 - 591- CD
Condemnor	:	
vs	:	IN CONDEMNATION
	:	
JAMES H. SWARTZ,	:	
Condemnee	:	

ANSWER TO PRELIMINARY OBJECTIONS AND DEFENSE

COMES NOW, Michael P. Yeager, Esquire, attorney for
Condemnor and files the within Answer to the Objections and
Defense of the Condemnee whereof the following is a statement:

1. The averments contained in Paragraph 1 of Condemnee's
Objections and Defense are irrelevant and do not conform with the
provisions of 26 P.S. §1-406(a). Otherwise, after reasonable
investigation, the Condemnor is without sufficient knowledge or
information to form a belief as to the truth or falsity of the
averments contained in Paragraph 1 of the Condemnee's Objections
and Defense with the same being specifically denied and strict
proof thereof is demanded.

2. The averments contained in Paragraph 2 of Condemnee's
Objections and Defense are irrelevant and do not conform with the
provisions of 26 P.S. §1-406(a). Otherwise, after reasonable
investigation, the Condemnor is without sufficient knowledge or
information to form a belief as to the truth or falsity of the
averments contained in Paragraph 2 of the Condemnee's Objections

and Defense with the same being specifically denied and strict proof thereof is demanded.

A. The averments contained in Paragraph 2.A. plead a conclusion of law and as such require no response. To the extent a response may be required, Condemnor alleges and avers that this condemnation action has been brought by Condemnor which is a separate and distinct municipality authority from the City of DuBois.

B. The averments contained in Paragraph 2.B. of Condemnee's Objections and Defense are irrelevant and do not conform with the provisions of 26 P.S. §1-406(a). Otherwise, after reasonable investigation, the Condemnor is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in Paragraph 2.B. of the Condemnee's Objections and Defense with the same being specifically denied and strict proof thereof is demanded. The averments contained in Paragraph 2.B. also plead a conclusion of law and as such require no response.

3. The averments contained in Paragraph 3 plead a conclusion of law and as such require no response.

4. The averments contained in Paragraph 4 plead a conclusion of law and as such require no response. Additionally, the averments are irrelevant and otherwise do not conform with the provisions of 26 P.S. §1-406(a). Finally, after reasonable

investigation, the Condemnor is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in Paragraph 4 of the Condemnee's Objections and Defense with the same being specifically denied and strict proof thereof is demanded.

5. The averments contained in Paragraph 5 of Condemnee's Objections and Defense are irrelevant and do not conform with the provisions of 26 P.S. §1-406(a). Otherwise, after reasonable investigation, the Condemnor is without sufficient knowledge or information to form a belief as to the truth or falsity of these averments and strict proof thereof is demanded. Furthermore, to the extent Condemnee otherwise alleges and avers that Condemnor has acted in a discriminatory fashion in condemning the property in question, such allegations are specifically denied. To the contrary, Condemnor has chosen Condemnee's property primarily as a result of its location and the inability to reach an amicable arrangement with Condemnee.

6. The averments contained in Paragraph 6 of Condemnee's Objections and Defense are irrelevant and do not conform with the provisions of 26 P.S. §1-406(a). Otherwise, after reasonable investigation, the Condemnor is without sufficient knowledge or information to form a belief as to the truth or falsity of these averments and strict proof thereof is demanded. Furthermore, remaining averments in Paragraph 6 of Condemnee's Objections and Defense plead conclusions of law and to that extent do not

require a response.

7. The averments contained in Paragraph 7 of Condemnee's Objections and Defense are irrelevant and do not conform with the provisions of 26 P.S. §1-406(a). Otherwise, after reasonable investigation, the Condemnor is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained therein and strict proof thereof is demanded.

8. No response required.

9. The averments contained in Paragraph 9 of Condemnee's Objections and Defense are irrelevant and do not conform with the provisions of 26 P.S. §1-406(a). Otherwise, after reasonable investigation, the Condemnor is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained therein and strict proof thereof is demanded.

10. The averments contained in Paragraph 10 of Condemnee's Objections and Defense are irrelevant and do not conform with the provisions of 26 P.S. §1-406(a). Otherwise, after reasonable investigation, the Condemnor is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained therein and strict proof thereof is demanded.

11. The averments contained in Paragraph 11 of Condemnee's Objections and Defense are irrelevant and do not conform with the provisions of 26 P.S. §1-406(a). Otherwise, after reasonable investigation, the Condemnor is without sufficient knowledge or information to form a belief as to the truth or falsity of the

averments contained therein and strict proof thereof is demanded.

12. The averments contained in Paragraph 12 of Condemnee's Objections and Defense are irrelevant and do not conform with the provisions of 26 P.S. §1-406(a). Otherwise, after reasonable investigation, the Condemnor is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained therein and strict proof thereof is demanded.

13. The averments contained in Paragraph 13 plead a conclusion of law and as such require no response.

Respectfully submitted:



Michael P. Yeager, Esquire
Attorney for Condemnor

FILED

No
cc
9/3:39 AM
JUL 06 2000

William A. Shaw
Prothonotary

WAS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Condemnor

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD
:
: Type of Case: Condemnation
:
: Type of Pleading: Motion for
: Right of Entry for Purposes
: of Forming Studies, Surveys,
: Tests, Soundings and Appraisals
:
: Filed on Behalf of: Condemnor
:
: Counsel of Record for this Party:
:
: Michael P. Yeager, Esq.
: Supreme Court No.: 15587
:
: P.O. Box 752
: 110 North Second Street
: Clearfield, PA 16830
:
: (814) 765-9611

FILED

JUL 06 2000

William A. Shaw
Prothonotary

#7

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF	:	
THE CITY OF DUBOIS,	:	No. 00 - 591 - CD
Condemnor	:	
vs	:	IN CONDEMNATION
	:	
JAMES H. SWARTZ,	:	
Condemnee	:	

**MOTION FOR RIGHT OF ENTRY FOR PURPOSES OF PERFORMING
STUDIES, SURVEYS, TESTS, SOUNDINGS & APPRAISALS**

COMES NOW, Michael P. Yeager, Esquire, attorney for
Condemnor and files the within Motion for Right of Entry For
Purposes of Performing Studies, Surveys, Tests, Soundings and
Appraisals whereof the following is a statement:

1. Condemnor, and particularly its agents, require access
to the property described in this Eminent Domain action for
purposes of performing studies, surveys, tests, soundings and
appraisals.

2. The purposes for which these activities are required
include plans relative to redevelopment of the property itself as
well as for determining just compensation due the Condemnee.

3. To date, Condemnee has indicated a settled intent to
thwart the actions of the Condemnor and to date has denied
Condemnor access to the property for these purposes.

WHEREFORE, Condemnor requests that your Honorable Court grant
to Condemnor the following:

(a) That Condemnor, together with its agents and

employees, shall have reasonable access to the property that is the subject matter of this Eminent Domain action for purposes of performing various studies, surveys, tests, soundings and appraisals.

(b) That this right of entry shall be exercised and enforced by appropriate police personnel including, but not limited to, police officials from the City of DuBois or the Pennsylvania State Police.

Respectfully submitted:


Michael P. Yeager, Esquire
Attorney for Condemnor

FILED
JUL 06 2000
13:39
cc
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Condemnor

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD
:
: Type of Case: Condemnation
:
: Type of Pleading: Motion to
: Strike
:
: Filed on Behalf of: Condemnor
:
: Counsel of Record for this Party:
:
: Michael P. Yeager, Esq.
: Supreme Court No.: 15587
:
: P.O. Box 752
: 110 North Second Street
: Clearfield, PA 16830
:
: (814) 765-9611

FILED

JUL 06 2000

William A. Shaw
Prothonotary

#8

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF	:	
THE CITY OF DUBOIS,	:	No. 00 - 591 - CD
Condemnor	:	
vs	:	IN CONDEMNATION
	:	
JAMES H. SWARTZ,	:	
Condemnee	:	

MOTION TO STRIKE

COMES NOW, Michael P. Yeager, Esquire, attorney for
Condemnor and files the within Motion to Strike the Objections
and Defense of the Condemnee whereof the following is a
statement:

1. The averments contained in Condemnee's Objections and
Defense are irrelevant and otherwise do not conform with the
provisions of 26 P.S. §1-406(a).

2. The Eminent Domain Code and particularly Section 406
thereof (26 P.S. §1-406(d)) specifically requires that Condemnee
shall serve a copy of the Preliminary Objections on the Condemnor
within seventy-two (72) hours after filing the same. Condemnee's
Objections and Defense were filed June 19, 2000; and to date,
Condemnor has not been served with a copy thereof.

WHEREFORE, for the reasons stated above, Condemnor moves
your Honorable Court to strike Condemnee's Objections and
Defense.

Respectfully submitted:



Michael P. Yeager, Esquire
Attorney for Condemnor

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF	:	
THE CITY OF DUBOIS,	:	No. 00 - 591 - CD
Condemnor	:	
vs	:	IN CONDEMNATION
	:	
JAMES H. SWARTZ,	:	
Condemnee	:	

O R D E R

AND NOW, this ____ day of _____, 2000, upon
consideration of the Motion to Strike filed on behalf of
Condemnor relative to the Condemnee's Objections and Defense

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
Condemnee's Objections and Defense are hereby stricken and that
the within Eminent Domain action is to proceed as provided by law
to a determination of just compensation.

BY THE COURT:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DUBOIS REDEVELOPMENT AUTHORITY:
OF THE CITY OF DUBOIS,
Condemnor

vs

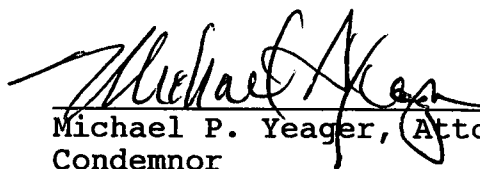
JAMES H. SWARTZ,
Condemnee

No. 00 - 591 - CD

IN CONDEMNATION

AFFIDAVIT OF SERVICE

I, MICHAEL P. YEAGER, attorney for Redevelopment Authority of the City of DuBois, depose and say that I forwarded copies of the Answer to Preliminary Objections and Defendant, Motion to Strike and Motion for Right of Entry for Purposes of Forming Studies, Surveys, Tests, Soundings and Appraisals to James H. Swartz, the landowner listed thereon, at the address of 127 S. Brady Street, DuBois, PA 15801. Said forwarding was by certified mail dated July 6, 2000. The original receipt and return receipt card are also attached hereto, made part hereof and incorporated herein by reference.


Michael P. Yeager, Attorney for
Condemnor

Sworn to and subscribed before me this 25th day of July, 2000.





FILED

JUL 26 2000

William A. Shaw
Prothonotary

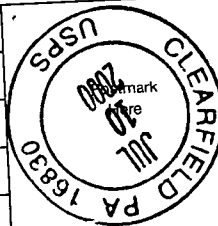
#9

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

Article Sent To:

James H. Swartz

Postage	\$.77
Certified Fee	1.40
Return Receipt Fee (Endorsement Required)	1.25
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 3.42



Name (Please Print Clearly) (to be completed by mailer)

James H. Swartz

Street, Apt. No., or PO Box No.

2-4 West Long Avenue

City, State, ZIP+4

DuBois, PA 15801

PS Form 3800, July 1999

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

James H. Swartz
 2-4 West Long Avenue
 DuBois, PA 15801

2. Article Number (Copy from service label)

7000 0600 0023 6401 1121

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

JUL 17 2000

C. Signature

X

James H. Swartz

☐ Agent

☐ Addressee

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

FILED

26 2000
JAN 26 2000
JAN 26 2000
Prothonotary
JAN 26 2000

CA 10

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD
:
: Type of Case: Condemnation
:
: Type of Pleading: Request for Thirty Day
: Extension to do Legal Brief.
:
: Filed on Behalf of: Condemnee.
:
: Counsel of Record for this Party:
: James H. Swartz
:
: 2 West Long Avenue
: DuBois Pa 15801
:
: (814) 375-4453

FILED

AUG 01 2000

William A. Shaw
Prothonotary

10

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD
:
: Type of Case: Condemnation
:
:
:
:
:

REQUEST FOR THIRTY DAY EXTENSION TO DO LEGAL WORK TO PREPARE
LEGAL BRIEF WHICH WAS DUE JULY 31, 2000. DUE TO THE FACT I THAT I AM
WITHOUT AN ATTORNEY I NEED THIS ADDITIONAL TIME.

James H. Swartz

FILED

AUG 01 2000
M1147120 CC
William A. Shaw
Prothonotary

8/25

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DU BOIS
Condemnor

vs

JAMES H. SWARTZ,
Condemnee

:
: NO. 00 591 CD
: IN CONDEMNATION

:
: Type of Pleading? Objection
: and Defense to Motion to Strike
:
: Filed on Behalf of :Condemnee.

:
: Counsel of Record for this Party:
: James H. Swartz
:
: 2 West Long Avenue
: Du Bois ,Pa. 15801
:
: (814) 375-4453

FILED

AUG 03 2000

William A. Shaw
Prothonotary

#11

FILED

AUG 03 2000

6/2:02 PM

William A. Shaw
Prothonotary

Shae (D) Bell to Mr. Swartz

[Signature]

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD
:
: Type of Case: Condemnation
:
: Type of Pleading: Request for Thirty Day
: Extension to DO ADDITIONS TO LEGAL BRIEF
:
: Filed on Behalf of: Condemnee.
:
: Counsel of Record for this Party:
: James H. Swartz
:
: 2 West Long Avenue
: DuBois Pa 15801
:
: (814) 375-4453

FILED

AUG 21 2000

William A. Shaw
Prothonotary

#12

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

vs

JAMES H. SWARTZ,
Condemnee

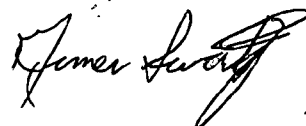
: NO. 00 - 591 - CD

:
: Type of Case: Condemnation

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:

REQUEST FOR THIRTY DAY EXTENSION TO DO LEGAL WORK TO PREPARE

Additions to Legal Brief on file ,this includes statements of
work on building ,copies of newspaper articles and law research.


James Swartz

FILED

AUG 21 2000

William A. Shaw
Prothonotary

WAS

205

CA (13)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Condemnor

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD
:
: Type of Case: Condemnation
:
: Type of Pleading: Objection to
: Condemnee's Request for Another
: Thirty Day Extension
:
: Filed on Behalf of: Condemnor
:
: Counsel of Record for this Party:
:
: Michael P. Yeager, Esq.
: Supreme Court No.: 15587
:
: P.O. Box 752
: 110 North Second Street
: Clearfield, PA 16830
:
: (814) 765-9611

FILED

AUG 23 2000

William J. Shaw
Prothonotary

13

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

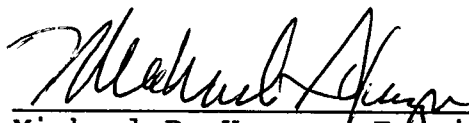
REDEVELOPMENT AUTHORITY OF	:	
THE CITY OF DUBOIS,	:	No. 00 - 591 - CD
Condemnor	:	
vs	:	IN CONDEMNATION
	:	
JAMES H. SWARTZ,	:	
Condemnee	:	

OBJECTION TO CONDEMNEE'S REQUEST FOR ANOTHER THIRTY DAY EXTENSION

COMES NOW, MICHAEL P. YEAGER, ESQUIRE, Attorney for the
Condemnor, and files the within Objection to the Request for a
Another Thirty Day Extension filed on behalf of Condemnee based
upon the following:

1. Condemnee has already sought and secured a thirty-day
extension within which to file a legal Brief.
2. The oral argument on this matter is still not scheduled
until September 28, 2000.
3. Accordingly, Condemnee has had sufficient time from the
filing of his Objection and Defense on June 19, 2000 to prepare.

WHEREFORE, Condemnor respectfully objects to the Request for
Thirty Day Extension as filed by Condemnee.



Michael P. Yeager Esquire
Attorney for Condemnor

FILED^{1cc}
02:35 PM
AUG 23 2000
Atty

William A. Shaw
Prothonotary

14

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DUBOIS REDEVELOPMENT AUTHORITY:
OF THE CITY OF DUBOIS,
Condemnor

vs

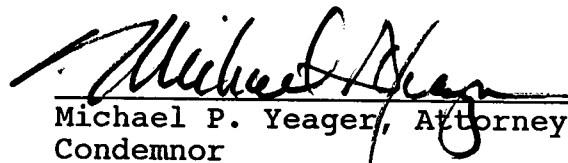
JAMES H. SWARTZ,
Condemnee

No. 00 - 591 - CD

IN CONDEMNATION

AFFIDAVIT OF SERVICE

I, MICHAEL P. YEAGER, attorney for Redevelopment Authority of the City of DuBois, depose and say that I forwarded copies of the Reply Brief of Condemnor/Authority and the Objection to Condemnee's Request for Another Thirty Day Extension to James H. Swartz, the landowner listed thereon, at the address of 2 West Long Avenue, DuBois, PA 15801. Said forwarding was by certified mail dated August 23, 2000. The original receipt and return receipt card are also attached hereto, made part hereof and incorporated herein by reference.


Michael P. Yeager, Attorney for
Condemnor

Sworn to and subscribed before me this 5th day of September, 2000.





FILED

SEP - 1 2000

William A. Shaw
Prothonotary

#14

U.S. Postal Service CERTIFIED MAIL RECEIPT

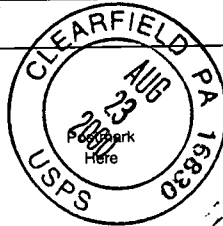
(Domestic Mail Only; No Insurance Coverage Provided)

7000 0600 0023 6401 1138

Article Sent To:

James H. Swartz

Postage	\$.77
Certified Fee	1.40
Return Receipt Fee (Endorsement Required)	1.25
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 3.42



Name (Please Print Clearly) (to be completed by mailer)

James H. Swartz

Street, Apt. No., or PO Box No.

2 West Long Avenue

City, State, ZIP+4

DuBois, PA 15801

PS Form 3800, July 1999

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

James H. Swartz
2 West Long Avenue
DuBois, PA 15801

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

8-30-00

C. Signature

X *James H. Swartz*

☐ Agent

☐ Addressee

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number (Copy from service label)

7000 0600 0023 6401 1138

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1789

FILED

0/2:35pm
SEP - 1 2000

William A. Shaw
Prothonotary

WACC *get*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,

Condemnor

vs

JAMES H. SWARTZ,

Condemnee

:
:
:
:
:
:
:

No. 00 - 591 - CD

IN CONDEMNATION

FILED

OCT 11 2000

W. A. Shaw
Clerk

ORDER

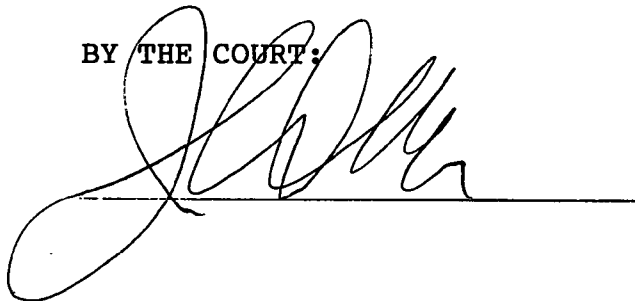
AND NOW, this 11 day of Oct, 2000, upon
consideration of the Motion for Right of Entry For Purposes of
Performing Studies, Surveys, Tests, Soundings and Appraisals
filed on behalf of Condemnor relative to the above-mentioned
Eminent Domain action

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Condemnor, together with its agents and employees, be
specifically given the right of entry upon the property that is
the subject matter of this Eminent Domain action for purposes of
performing various studies, surveys, tests, soundings and
appraisals.

2. This right of entry shall be exercised by the Condemnor
in concert with appropriate police officials including, but not
limited to, police officials for the City of DuBois or the
Pennsylvania State Police.

BY THE COURT:



#15

FILED

OCT 11 2000

073.15/ cc atty Genl E-
William A. Shaw
Prothonotary

cc J. Swartz

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

REDEVELOPMENT AUTHORITY OF :
THE CITY OF DUBOIS :
-vs- : No. 00 - 591 - CD
JAMES H. SWARTZ: :

ORDER

NOW, this 11th day of October, 2000, the Court having considered
Condemnee's pro se captioned Objections and Defense and treating it as preliminary
objections, it is the ORDER of this Court that said preliminary objections shall be and are
hereby denied.

By the Court,

President Judge

FILED

OCT 11 2000

William A. Shaw
Prothonotary

#16

FILED

OCT 11 2000

03:16/15
William A. Shaw
Prothonotary

(Lynch)
cc Cath Vaggs
cc J Stentz

CP

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD
:
: Type of Case: Condemnation
:
: Type of Pleading: MOTION FOR A JUDGEMENT
: NOTWITHSTANDING THE VERDICT
:
: Filed on Behalf of: Condemnee.
:
: Counsel of Record for this Party:
: James H. Swartz
:
: 2 West Long Avenue
: DuBois Pa 15801
:
: (814) 375-4453

FILED

NOV 09 2000

0/2:35/was
William A. Shaw
Prothonotary

2 CHRS TO COUNSELOR

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD
:
: Type of Case: Condemnation
:
:
:
:
:

CONTENTS:

- 1 STATE LAW
2. NEWSPAPER PRIOR QUESTIONABLE RULING
3. STATEMENT
4. MALICIOUS ABUSE OF PROCESS
5. MALICIOUS INJURY: TO BUSINESS
6. MALICIOUS ABUSE
7. MALICIOUS ACT
8. MALICIOUS PROSECUTION
9. FRAUD
10. EMINENT DOMAIN PAPERS

Filed By *James Swartz*
James Swartz

Library References

Injunction § 89(3).
WESTLAW Topic No. 212.

C.J.S. Injunctions § 133.
P.L.E. Injunction § 25.

Notes of Decisions

In general 1

caster v. Shaub, 7 Lanc. 340, 1890;
Honesdale Borough v. Weaver, 2 Dist.
344, 1893; Ellwood City v. Mani, 16 C.C.
474, 1895.

1. In general

An ordinance prohibiting the erection of frame buildings will not be enforced by injunction, unless the building constitutes a nuisance per se. Williamsport v. McFadden, 15 W.N.C. 269, 1884; Lan-

This section does not authorize recourse to any proceedings other than the usual and regular action at law or bill in equity. City of Philadelphia v. Bartell, 11 A.2d 563, 139 Pa.Super. 319, Super.1940.

§ 4103. Regulations to supplement state laws

The ordinances enacted pursuant to this act shall not be inconsistent with the provisions of any statute governing the same matter, but all regulations prescribed by such ordinances which are additional or supplementary to the statute law, and not inconsistent therewith, or enacted for the purpose of carrying into effect the provisions of the statute law, shall be valid and binding.
1937, April 14, P.L. 313, No. 87, § 3.

Library References

Municipal Corporations § 592(1) to 592(4).
WESTLAW Topic No. 268.

C.J.S. Municipal Corporations §§ 143 to 145.
P.L.E. Municipal Corporations § 412.

Notes of Decisions

In general 1

with provisions of any statute governing the same matter relates to existing statutes and is wholly prospective. City of Philadelphia v. Bartell, 11 A.2d 563, 139 Pa.Super. 319, Super.1940.

1. In general

This section providing that zoning ordinances to be enacted be not inconsistent

§ 4104. Building permits; time for approval; explanation for disapproval; highway occupancy permits; "buildings, structures or devices" defined

(a) A municipality which regulates the construction, erection, maintenance, operation or repair of buildings, structures or devices by means of an ordinance requiring the filing of an application, the payment of a fee and the issuance of a permit shall render a decision either approving or disapproving the application for a permit within 90 days after the application is filed unless the ordinance requires a decision within a lesser period of time, provided that any disapproval

THE PROGRESS

Vol. 94—No. 22

Our 87th Year

Clearfield, Curwensville, Philipsburg, Moshannon Valley, Pa.,

Thursday, January 27, 20

Judge dismisses lawsuit agains

By Rebecca Koleno
Staff Writer

Clearfield County President Judge John K. Reilly Jr. has ruled in favor of the Clearfield County Commissioners in regards to the lawsuit filed against them by the Concerned Taxpayers of Clearfield County.

"We are very pleased with the decision," said Gene Lunsford, current commissioner chairman. "In my opinion, the accusations were frivolous and misleading from the beginning."

Theron Noble, attorney for CTCC, said, "It appears that Judge Reilly deferred working through

the various applicable statutes in this case of first impression, presenting the appellate courts with the opportunity to interpret the applicable law."

Tony Yankevich, one of the petitioners, said, "We will definitely appeal this as soon as Mr. Noble has the time. I am very disappointed in the ruling because the commissioners clearly violated the law." The next step would be to file an appeal with the Superior Court of the Western District in the state.

In its suit, CCTC claimed the former board of commissioners, composed of Michael Lytle, Mr. Lunsford and Gerry Hatcher, maintained a

budgetary surplus in excess of what is permitted by law. The taxpayers said this was the case in the 1997, 1998 and 1999 budgets and the audit and financial reports for fiscal years 1997 and 1998. The lawsuit was filed in October.

In November, the commissioners responded by filing preliminary objections to the suit and asked the judge to dismiss the case.

Kim Kesner, county solicitor, said the court lacks any jurisdiction on the allegations for any years before 1999. He said the concerned taxpayers failed to act within the statutes of time for 1997 and 1998.

was something

If this case against me is not dismissed in my opinion:

1. The city of Du Bois may lose some of its State and Federal Grant Money as a pently for breaking several state laws
2. Their is no amicable arrangement for trying to cheat people out of economic oppurtonity to have Bussiness Rentals and make money
3. I will be forced to File Apeal to Superior Court of Pa., this is an UNdo delay in settling this matter cause ing additional bussiness loss.
4. The city officals have made no effort to make an offer for the damages they have caused to me by statements to th~~e~~ newspaper, this resulted in loss of Bussiness rental and loss of bussiness!!!!
5. IN MY OPINION: AS AN ACT OF FRAUD THEY HAVE WITH HELD INFORMATION AS TO THE INCREASE IN THE VALUE OF THE PROPERTY THAT THE BUILDING SITS UPON. THEY WANT THE PROPERTY BEFORE THE NEW STATE ROAD GOES IN!
6. THE CITY OF DU BOIS officals have Repeated ACTS OF MALICIOUS ABUSE OF PROCESS IN PASSING CITY LAWS THAT SEEM TO EFFECT MAINLY ONLY ONE PERSON.
7. THE CITY OFFICALS FAILED TO FORCE THE POLICE DEPT TO HANDLE POLICE COMPLAINTS OF VANDLEISM AND ROBBERY. AS MALICIOUS ACTS OF MALICIOUS INJURY TO LOCAL BUSINESS TO LOWER PROPERTY VALUES.

MALICIOUS ABUSE OF PROCESS

In general—p. 278

Malicious prosecution distinguished—
p. 279

Malicious use distinguished—p. 279

Malicious use of process—p. 280

Ultior motive—p. 280

Use for purpose not intended by law—
p. 281

Cross References

Abuse of Process

Malicious Prosecution

In general

The elements of action for "malicious abuse of process" are the issuance of process

In general—Cont'd

and its use for improper purpose, and improper use is one for objective outside scope of operation employed. *Meisels v. J. C. A. Trading Corp.*, 69 N.Y.S.2d 720, 722, 189 Misc. 46.

Action for "malicious abuse of process" proceeds on theory that plaintiff has been victim of an unauthorized abusive use of a criminal or civil process. *George v. Leonard*, D.C.S.C., 84 F.Supp. 205, 207.

"Malicious abuse of legal process" is where a plaintiff in a civil proceeding willfully misapplies the process of a court in order to obtain an object which such a process is not intended by law to effect. *Baldwin v. Davis*, 4 S.E.2d 458, 462, 188 Ga. 587.

Petition, alleging that landlord maliciously and without probable cause employed dispossessionary warrant to coerce tenant into paying more than maximum rental allowable under O. P. A. regulations, stated a cause of action for "malicious abuse of process." *Defnall v. Schoen*, 35 S.E.2d 564, 568, 73 Ga. App. 25.

Petition, alleging that landlord maliciously and without probable cause employed a dispossessionary warrant for the purpose of coercing tenant into paying more than maximum rental allowable under O. P. A. regulations, stated a cause of action for "malicious abuse of process" without alleging that proceeding to evict tenant had terminated in tenant's favor. *Defnall v. Schoen*, 35 S.E.2d 564, 568, 73 Ga.App. 25.

Actions for "malicious prosecution", "malicious abuse of process", "false imprisonment" and "false arrest", although differing from each other in some particulars, are all protective of an individual's interest in freedom from confinement, whether such confinement be physically of the person or a limitation of one's personal rights of freedom, as in holding a person to bail, and it is immaterial whether act of defendant directly or indirectly causes the confinement. *McGrath v. Keenan*, 46 A.2d 725, 726, 727, 24 N.J.Misc. 121.

"Malicious abuse of process" is the use of lawful process for purpose not justified by law. *McGrath v. Keenan*, 46 A.2d 725, 726, 727, 24 N.J.Misc. 121.

A petition held insufficient to state cause of action for "malicious abuse of legal proc-

MALICIOUS INJURY

dict based on replies to questions submitted to jury without objection was that money was obtained without fraud, judgment against bankrupt was dischargeable, under Bankruptcy Act, § 17(2), 11 U.S.C.A. § 35(2), because not for a "willful and malicious" injury, which is a willful disregard of what one knows to be his duty, an act wrongful in itself, and necessarily causing injury and done intentionally. In re Burchfield, D.C. N.Y., 31 F.2d 118, 120.

The term "malicious injury," as used in Rev.St.1898, § 4466a, providing that if two or more persons, who shall combine, associate, agree, mutually undertake, or counsel together for the purpose of willfully or maliciously injuring another in his reputation, trade, business, or profession, by any means whatever, or for the purpose of maliciously compelling another to do or perform any act against his will, etc., is synonymous with that term at the common law. It refers to the infliction of a wrongful injury intentionally. The term is synonymous with that term in the law of conspiracy, independent of the statute. State v. Huegin, 85 N.W. 1046, 1067, 110 Wis. 189.

Injury which is intentional, wrongful, or without just cause is "malicious injury to person or property" within provision of Bankruptcy Act excepting certain claims from release by bankrupt's discharge. The word "willful" is Bankruptcy Act § 17, 11 U.S.C.A. § 35, excepting from release by bankrupt's discharge claims founded on liability for willful and malicious injury to person or property, means nothing more than intentional, while "malice" involved is merely disregard of duty which is apparent from the intentional doing of a willful act to the injury of another, and does not require hatred, spite, or ill will. Shabaz v. Henn, 173 S.E. 249, 251, 48 Ga.App. 441.

Under Bankruptcy Act, § 17, subd. 2, 11 U.S.C.A. § 35, excepting from discharge liabilities for obtaining property by false pretenses, or for willful and malicious injury to the person or property of another, a judgment in an action of replevin for the value of property obtained by the bankrupt by false representation that he was solvent and that his note for the property was good is not barred, though a judgment in replevin based on constructive fraud only would be barred, since "malicious," as used in the section, consists in the willful doing of an

act with knowledge it is liable to injure another and regardless of consequences, and does not include the malignant spirit or specific intention to injure the other. In re Kalk, D.C.N.Y., 270 F. 627, 629.

MALICIOUS INJURY TO BUSINESS

Action of "malicious interference with business" or "malicious injury to business" is based upon interference with right to pursue a lawful business, calling, or occupation, free from undue interference or molestation. French v. U. S. Fidelity & Guaranty Co., D.C.N.J., 88 F.Supp. 714, 721.

MALICIOUS INJURY TO PROPERTY

Wrongful sale of land which was subject to unrecorded deed given as mortgage held "malicious injury to property" of mortgagee, liability for which was unaffected by discharge in bankruptcy. Probst v. Jones, 247 N.W. 779, 780, 262 Mich. 678.

To constitute an offense under Rev.Pep. Code, § 712, punishing the "malicious injury or destruction of property," the act must not only be done willfully, but for the purpose of avenging some wrong sustained by the person charged with the offense. One who, on becoming angry without cause, destroyed without justification and in a spirit of wantonness the property of another, violated Rev.Pen.Code, § 712, punishing the malicious injury or destruction of property. State v. Tarlton, 118 N.W. 706, 708, 22 S.D. 495.

MALICIOUS INTENT

The phrases "malicious intent" and "malice aforethought" are not synonymous with "willful, deliberate, and premeditated" intent required as elements of first-degree murder. Pen.Code, § 190. People v. Thomas, 156 P.2d 7, 17, 18, 25 Cal.2d 880.

"Malicious intent" as used in the definition of murder in the first degree is not synonymous with "willful, deliberate and premeditated intent" and proof of malicious intent without the further proof that it was willful, deliberate and premeditated would establish "second degree murder" but not first degree murder. Pen.Code, § 189. People v. Holt, 153 P.2d 21, 27, 25 Cal.2d 59.

MALICIOUS ABUSE

Use for purpose not intended by law—C't'd probable cause, or that it terminated prior to the institution of the suit for damages." *Farrar Lumber Co. v. Hogan*, 103 S.E. 863, 25 Ga.App. 597; *McElreath v. Gross*, 98 S.E. 190, 191, 23 Ga.App. 287; *Scarborough v. J. W. Goldsmith, Grant Co.*, 103 S.E. 192, 25 Ga.App. 269.

A malicious abuse of legal process consists in the malicious misuse or misapplication of process to accomplish a purpose not warranted or commanded by the writ—the malicious perversion of a regularly issued process, whereby a result not lawfully or properly obtained on a writ is secured—and hence it does not include a case where the process was procured maliciously, but in which there was no abuse or misuse after its issuance. *Bartlett v. Christhilf, Md.*, 14 A. 518, 521, citing *Grainger v. Hill*, 4 Bing. N.C. 212; *Sommer v. Wilt, Pa.*, 4 Serg. & R. 19.

A "malicious abuse of legal process" occurs where a party employs process for some unlawful object, not the purpose which it is intended by the law to effect, and, in action for such malicious abuse, it is not necessary to prove that action in which process issued has been determined, or to aver that it was sued out without reasonable or probable cause. *Fenton Storage Co. v. Feinstein*, 195 A. 176, 178, 179, 129 Pa.Super. 125.

MALICIOUS ACCUSATION

"Malicious accusation," within Comp.St. 1922, § 9579, denouncing blackmail, is to procure accusation or prosecution of another from improper motive and without probable cause, and is similar to malicious prosecution, and is not same as a "malicious threat to accuse of crime," which means that one acts with evil intent and with evil motive by threats of criminal prosecution, through fear of which will of individual threatened is intended to be overcome. *McKenzie v. State*, 204 N.W. 60, 63, 113 Neb. 576.

MALICIOUS ACT

A "malicious act" is an unlawful act done intentionally without just cause, legal justification or excuse. *Michels v. Boruta, Tex. Civ.App.*, 122 S.W.2d 216, 220.

A "malicious act" is one committed in a state of mind which shows a heart regardless

of social duty and fatally bent on mischief, a wrongful act intentionally done without legal justification nor excuse. *Rankin v. State*, 139 S.W.2d 811, 812, 139 Tex.Cr.R. 247.

The act of persuading a person to break his contract for the indirect purpose of injuring the other contracting party or benefiting the person inducing such breach at the expense of the other contracting party is a "malicious act" which is wrongful and therefore actionable if injury issues therefrom. *Wilkinson v. Powe*, 1 N.W.2d 539, 542, 300 Mich. 275.

"A malicious act" is an unlawful act done intentionally, without just cause or excuse. *Tucker v. Bartlett*, 155 P. 1, 2, 97 Kan. 163.

A malicious act is one done without just cause, or one done with a wrongful purpose. *Morrison v. Press Pub. Co.*, 14 N.Y.S., 131, 132, 59 N.Y.Super.Ct.(29 Jones & S.) 216.

In an action for assault, there must be a wrongful act done intentionally without just cause or excuse, and such an act is "malicious" in the statutory sense. In *re Smyser*, 182 Ill.App. 208, 209.

Bouvier defines a malicious act as "a wrongful act, intentionally done, without cause or excuse"—the definition of Bayley, J., in *Bromage v. Prosser*, 4 Barn. & C. 247. *Brandt v. Morning Journal Ass'n*, 80 N.Y.S. 1002, 1004, 81 App.Div. 183.

In general a malicious act involves all that is usually understood by the term "willful," and is further marked by either hatred or ill will toward the party injured, or by such utter recklessness and disregard of the rights of others as denotes a corrupt or malevolent disposition. *State v. Willing*, 105 N.W. 355, 356, 129 Iowa, 72.

A malicious act is one committed in a state of mind which shows a heart regardless of social duty and fatally bent on mischief—a wrongful act intentionally done, without legal justification or excuse. *Bowers v. State*, 7 S.W. 247, 24 Tex.App. 542, 5 Am.St.Rep. 901; *High v. State*, 10 S.W. 238, 241, 26 Tex.App. 545, 8 Am.St.Rep. 488.

In a legal sense, any unlawful act done willfully to the injury of another is, as against that person, malicious, and it is not necessary that the perpetrator of such act should be influenced by ill will towards such

MALICIOUS PROSECUTION

in order to give the injured employee the option of either suing for damages at common law or proceeding under the Workmen's Compensation Act is a conscious and deliberate intent directed to the purpose of inflicting an injury and such intent may not be inferred from mere negligence although it is gross. *Breimhorst v. Beckman*, 35 N. W.2d 719, 730, 227 Minn. 409.

MALICIOUS PROSECUTION

In general—p. 303
Abuse of process distinguished—p. 306
Civil litigation—p. 308
Essential elements—p. 309
False imprisonment distinguished—p. 314
Malice and want of probable cause—p. 318
Malice imputed to attorney—p. 322
Malicious arrest synonymous—p. 322

Cross References

Abuse of Legal Process
Abuse of Process
False Imprisonment
Malice

In general

In a "malicious prosecution," the proceedings are had in pursuance of legal process, maliciously and wrongfully obtained. *Barfield v. Marron*, 62 So.2d 276, 280, 222 La. 210.

"Malicious prosecution" is the putting of the processes of law into operation maliciously and without probable cause leading on in due course to the arrest of the victim. *Huffstutler v. Edge*, 47 So.2d 191, 193, 35 Ala.App. 276.

To state a cause of action for "malicious prosecution" it must be alleged and proved that action upon which the suit is based shall have been terminated in favor of defendant therein. *Simpkins v. Brooks*, D.C.Mun.App., 49 A.2d 549, 551.

Malicious prosecution is not limited to criminal suits. *Hayes v. Union Mercantile Co.*, 70 P. 975, 979, 27 Mont. 264.

Prosecution instituted for purpose of collecting debt or other private motive is "malicious prosecution" in legal sense. *Pritchett v. Northwestern Mut. Life Ins. Co.*, 73 S.W.2d 815, 819, 228 Mo.App. 661.

The mere fact of an acquittal or termination of criminal proceedings in favor of

In general—Cont'd

accused does not make out a prima facie case of "malicious prosecution" against person who instituted those proceedings. *Stinson v. Smith*, 196 A. 843, 329 Pa. 177.

"Malicious prosecution" is criminal prosecution instituted upon no or such slight grounds of suspicion as to indicate general disregard of rights of others directed by chance against individual. *Freezer v. Miller*, 176 S.E. 159, 170, 163 Va. 180.

A complaint which alleged that tenant left leased premises as result of stipulation signed by himself and his attorney and in compliance with resulting judgment in landlord's action under Emergency Rent Act to secure possession, and which further alleged that landlord's statement in regard to his intention to immediately occupy designated premises as a dwelling were fraudulent, could not be upheld as stating a cause of action for "malicious prosecution," where it appeared that the action upon which suit was based terminated in landlord's favor. *Simpkins v. Brooks*, D.C.Mun.App., 49 A.2d 549, 551.

A "malicious prosecution" is a prosecution with malice and without probable cause; "false imprisonment" is arrest and imprisonment without legal process; and "abuse of process" is misuse of legal process for ulterior purpose. *State, for Use of Little v. U. S. Fidelity & Guaranty Co.*, Miss., 64 So.2d 697, 704.

The essential elements of a "malicious prosecution" are the commencement of a criminal prosecution against plaintiff, its causation by defendant, its termination in favor of plaintiff, plaintiff's innocence of crime charged, absence of probable cause for such proceeding, presence of actual malice therein, and damages resulting to plaintiff by reason thereof. *Montgomery Ward & Co. v. Kirkland*, Tex.Civ.App., 225 S.W. 2d 906, 907, 908.

"Malicious prosecution" is an action for the recovery of damages to person, property or reputation shown to have proximately resulted from a previous civil or criminal proceeding which was commenced or continued without probable cause, but with malice, and which has terminated unsuccessfully. *Riegel v. Hygrade Seed Co.*, D.C.N.Y., 47 F.Supp. 290, 293.

MALICIOUS PROSECUTION

In general—Cont'd

Unsuccessful efforts to secure the institution of proceedings, however malicious or unfounded, are not actionable as "malicious prosecution". *Melvin v. Pence*, 130 F.2d 423, 426, 76 U.S.App.D.C. 154, 143 A.L.R. 149.

A cause of action for "malicious prosecution" is complete when the prosecution is terminated in favor of plaintiff, and the statute of limitations begins to run at that time. *White v. Pacific Telephone & Telegraph Co.*, 123 P.2d 193, 195, 168 Or. 371.

The gravamen of "malicious prosecution" action is the wrongful institution or prosecution of action or proceeding without probable cause, to hurt and damage of complainant. *Manufacturers & Jobbers Finance Corp. v. Lane*, 19 S.E.2d 849, 853, 854, 221 N.C. 189.

Where plaintiff brings action or institutes process and prosecutes the same with malice and without probable cause, the defendant can obtain full relief by action for "malicious prosecution". *Manufacturers & Jobbers Finance Corp. v. Lane*, 19 S.E.2d 849, 853, 854, 221 N.C. 189.

Instituting a prosecution for the purpose of aiding in the collection of a debt is for an improper purpose and therefore a "malicious prosecution". *State Life Ins. Co. of Indianapolis, Ind., v. Hardy*, 195 So. 708, 713, 189 Miss. 266.

To create right of action for "malicious prosecution," there must exist malice on part of defendant in procuring or bringing about unfounded prosecution or other action. *Lexington Cab Co. v. Terrell*, 137 S.W.2d 721, 724, 282 Ky. 70.

One who does not swear out the warrant cannot be held liable for "malicious prosecution" unless he instigated a criminal action against plaintiff or caused one to be maintained or voluntarily aided or assisted in its prosecution. *Fertitta v. Herndon*, 3 A.2d 502, 504, 175 Md. 560, 120 A.L.R. 1317.

Defendant who did not advise, aid or abet prosecution of a criminal case could not be held for "malicious prosecution" because after learning of prosecution instituted by another defendant he did nothing to stop it. *Fertitta v. Herndon*, 3 A.2d 502, 504, 175 Md. 560, 120 A.L.R. 1317.

In general—Cont'd

Strictly speaking, the term "malicious prosecution" is applicable only to the carrying on of a criminal case, and is used in such sense only in the statute concerning rights of action for malicious prosecution. Code 1933, § 105-801 et seq. *Baldwin v. Davis*, 4 S.E.2d 458, 461, 188 Ga. 587.

Complaint which alleged that seizure was unlawful, because warrant of attachment was void, in that the papers on which it was granted were insufficient to confer jurisdiction, but which alleged no facts to show lack of probable cause existed, failed to state a cause of action for "malicious prosecution". *Hubbard v. Banker*, 24 N.Y. S.2d 289, 293, 295.

"Malicious prosecution" in law is a tort, and consists in defendant therein maliciously and without probable cause setting in motion the laws of particular jurisdiction whereby the plaintiff in such action is wrongfully and maliciously accused of committing some criminal offense, or committing some other wrong justifying the particular procedure taken against him, though it be a civil one, and by reason of which he sustains the damages he seeks to recover. *Lexington Cab Co. v. Terrell*, 137 S.W.2d 721, 724, 282 Ky. 70.

A petition for "malicious prosecution" will not lie unless it is alleged that prosecution has terminated in favor of petitioner. *Hughes v. Georgia Power Co.*, 15 S.E.2d 466, 468, 65 Ga.App. 163.

A petition did not state cause of action for "malicious prosecution" against street railroad whose officers caused the arrest of plaintiff for unlawfully smoking on street car, where petition alleged that judgment and sentence were still outstanding, and contention that judgment was void was untenable. Code, § 18-203. *Hughes v. Georgia Power Co.*, 15 S.E.2d 466, 468, 65 Ga.App. 163.

Evidence that surveyors who surveyed boundary between plaintiff's and defendant's lands thought that land from which plaintiff cut timber was within defendant's boundary warranted conclusion that defendant had "probable cause" to believe that defendant owned such land and that plaintiff was without color of title to it, and hence defendant was not liable to plaintiff for "malicious prosecution" as result of de-

**LOCK v. SCHREPPLER**

Cite as, Del.Super., 426 A.2d 856

Del. 857

STIFTEL, President Judge.

John LOCK, Sr. and Ella G. Lock,
his wife, Plaintiffs,

v.

George B. SCHREPPLER, Defendant.

Superior Court of Delaware,
New Castle County.

Submitted Nov. 23, 1980.

Decided Jan. 28, 1981.

Purchasers of residence brought action
for statutory and common-law fraud

against seller's real estate agent and others. After extensive discovery, purchasers dismissed action against all defendants except real estate agent, who moved for summary judgment. The Superior Court, New Castle County, Stiftel, President Judge, held that: (1) fact issues precluded summary judgment as to portion of action based on common-law fraud, and (2) statutes providing regulatory powers to Real Estate Commission in order to protect public did not create private cause of action.

Motion granted in part, denied in part.

1. Fraud $\Rightarrow$ 4½

A representation may be fraudulent, even if it is true, if defendant knows that because of facts not stated, statement is materially misleading.

2. Fraud $\Rightarrow$ 17

Where there is no general duty to speak, nevertheless, if person undertakes to speak, he then has duty to make full and fair disclosure as to matters about which he assumes to speak.

4. Fraud $\Rightarrow$ 30

Where broker engaged to sell induces third person to purchase property by means of fraud, broker may be liable to that person for loss suffered as a consequence.

5. Fraud $\Rightarrow$ 21

Where an ordinary investigation will not reveal a latent defect, purchaser of residence may rely upon representation of real estate agent as to defect.

6. Fraud $\Rightarrow$ 21

Where only partial investigation of thing to be purchased is made, under proper

circumstances, purchaser may rely on another's representations to his detriment, particularly where other person making said representations has superior knowledge.

7. Fraud $\Rightarrow$ 20

Justifiable reliance which plaintiffs in action for fraud must demonstrate requires that representation made by defendant and relied upon by plaintiff involve matters which reasonable person would consider important in determining his choice of action in transaction in question, but does not require that reasonable person would make choice solely on basis of that matter; the misrepresentations need merely be a substantial factor in inducing plaintiffs to act.

Unconsolidated Pennsylvania Statutes

EMINENT DOMAIN (Title 26)

ARTICLE I. SHORT TITLE

§ 1-101. Short title.

This act shall be known and may be cited as the "Eminent Domain Code."

[Note: The Eminent Domain Code is inapplicable to condemnations by public utilities. See, *Appeal of Giesler*, 154 Pa. Commonwealth Ct. 48, 622 A.2d 408 (1993). Further, the Rules of Civil Procedure {except rules 4001 and following per Pa.R.C.P.No.4001(a)(1)} do not apply to Eminent Domain Code proceedings. See, *Appeal of McCoy*, 153 Pa. Commonwealth Ct. 504, 621 A.2d 1163 (1993).]

The complete Pennsylvania Statutes are not yet available on the web. However, selected portions have been made available and can be accessed by [CLICKING HERE](#). These statutes, though available instantaneously over the web, may not be the current law. Court decisions overturning them, later statutes amending them, and a host of other factors come into play when interpreting them. They are provided here as a resource. They should provide some information about the state of the law. However, a competent lawyer, *who from other sources will research the law to insure what is current*, should always be employed in matters of importance.

Visit/Return to Home Page of Pennsylvania District Court 15-4-04.

Short Title / Judiciary@aol.com / last revised December 1999

NDOT MUST PAY

NDOT took Kenneth Barsy's land in Las Vegas for part of the new Spring Mountain Road and Interstate 15 Interchange. Before actually taking the property, though, NDOT announced the project. NDOT representatives visited Barsy's tenants and informed them of the project. This announcement caused Barsy's tenants, Decratrend Paints and another business, to move off the property. The effect on Barsy was devastating. Not only did he lose these tenants and the income stream from their rent payments, but other potential tenants would not move into the property because they knew the project was coming.

The department then made it harder on Barsy by not

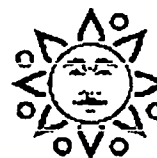
with property he could not rent. Barsy also alleged his property was made more difficult to sell.

When the condemnation finally came, he sought not only the value of the land but the amount of his lost rents. The trial court said "no" but the Supreme Court reversed. The Supreme Court said that when the government unreasonably delays a condemnation after making an official announcement of intent to condemn, the property owner may have whatever precondemnation damages he can prove. These damages can include lost rents. The Court sent the matter back to the trial court for a new trial where Barsy will be allowed a chance to prove his damages.

This decision is important because it is a departure from established Nevada law. Lost rents were previously not

land's market value. This decision creates a new class of damages, called pre-condemnation damages, which are now available to Nevada property owners under proper circumstances. In making its ruling, the Nevada Supreme court endorsed California law precondemnation damages.

This newsletter is published periodically by eminent domain attorney, Michael G. Chapman.



This newsletter is for general information only, and is not legal advice. The statements made herein should not be relied upon as legal advice. Please contact a competent eminent domain attorney for personal help and advice.

Eminent Domain 5

November 1999 • Issue Five

YOUR CASE: PART ONE

In a typical eminent domain case, the government first decides it wants to construct a public project. The project must be for a public purpose, such as a road or flood control basin. Almost any kind of project qualifies as a public project including land

These planning activities can hurt land owners. For example, uncertainty over when the project will be built can cause tenants to vacate the premises, leaving the landowner with empty property on which he must still pay taxes and mortgage installments. In most cases, the government is not liable for the damage caused to

THIS NEWSLETTER

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may extend the time for filing preliminary objections. Preliminary objections shall be limited to and shall be the exclusive method of challenging

- (1) the power or right of the condemnor to appropriate the condemned property unless the same has been previously adjudicated;
- (2) the sufficiency of the security;
- (3) any other procedure followed by the condemnor; or
- (4) the declaration of taking.

Failure to raise these matters by preliminary objections shall constitute a waiver thereof.

(b) Preliminary objections shall state specifically the grounds relied upon.

(c) All preliminary objections shall be raised at one time and in one pleading. They may be inconsistent.

(d) The condemnee shall serve a copy of the preliminary objections on the condemnor within seventy-two hours after filing the same.

(e) The court shall determine promptly all preliminary objections and make such preliminary and final orders and decrees as justice shall require, including the revesting of title. If preliminary objections are finally sustained, which have the effect of finally terminating the condemnation, the condemnee shall be entitled to damages as if the condemnation had been revoked under section 408,1 to be assessed as therein provided. If an issue of fact is raised, the court shall take evidence by depositions or otherwise. The court may allow amendment or direct the filing of a more specific declaration of taking.

1964, Sp.Sess., June 22, P.L. 84, art. Iv, § 406. As amended 1969, Dec. 5, P.L. 316, § 1.

§ 407. Possession; entry; payment of compensation

(a) The condemnor, after the expiration of the time for filing preliminary objections by the condemnee to the declaration of taking, shall be entitled to possession or right of entry upon payment of, or a written offer to pay to the condemnee, the amount>

Transfer interrupted!

>

Transfer interrupted!

after refuses to deliver possession or permit right of entry, the prothonotary upon praecipe of the condemnor shall issue a nile, returnable in five days after service upon the condemnee, to show cause why a writ of possession should not issue, upon which the court, unless preliminary objections warranting delay are pending, may issue a writ of possession conditioned upon payment to the condemnee or into court of such estimated just compensation and on such other terms as the court may direct.

(b) If within sixty days from the filing of the declaration of taking, the condemnor has not paid just compensation as provided in subsection (a) of this section, the condemnee may tender possession or right of entry in writing and the condemnor shall thereupon make payment of the just compensation due such condemnee as estimated by the condemnor. If the condemnor fails to make such payment the court, upon petition of the condemnee, may compel the condemnor to file a declaration of estimated just compensation or, if the condemnor fails or refuses to file such declaration, may at the cost of the condemnor appoint an impartial expert appraiser to estimate such just

compensation. The court may, after hearing, enter judgment for the amount of the estimated just compensation.

(c) The compensation paid under subsections (a) and (b) of this section shall be without prejudice to the rights of either the condemnor or the condemnee to proceed to final determination of the just compensation and the payments heretofore made shall be considered only as payments pro tanto of the just compensation as finally determined.

However, in no event shall the condemnee be compelled to pay back to the condemnor the compensation paid under subsections (a) and/or (b), even if the amount of just compensation as finally determined shall be less than the compensation so paid.

1964, Sp.Sess., June 22, P.L. 84, art. Iv, § 407. As amended 1969, Dec. 5, P.L. 316, § 1.

§ 409. Right to enter property prior to condemnation

Prior to the filing of the declaration of taking, the condemnor or its employees or agents, shall have the right to enter upon any land or improvement which it has the power to condemn, in order to make studies, surveys, tests, soundings and appraisals, provided that the owner of the land or the party in whose name the property is assessed has been notified ten days prior to entry on the property. Any actual damages sustained by the owner of a property interest in the property entered upon by the condemnor shall be paid by the condemnor and shall be assessed by the court or viewers in the same manner as provided in section 408.1

1964, Sp.Sess., June 22, P.L. 84, art. Iv, § 409.

§ 501. Agreement as to damages

At any stage of the proceedings, the condemnor and the condemnee may agree upon all or any part or item of the damages, and proceed to have those parts or items thereof not agreed upon assessed as herein provided. The condemnor may make payment of any part or item thereof so agreed upon.

1964, Sp.Sess., June 22, P.L. 84, art. V, § 501.



Municipal Authorities Act - index

Municipal Law Index

Gleason, DiFrancesco, Shahade, Barbin & Markovitz Home Page

Updated January 1999

acquisitions for downtown redevelopment and airport noise mitigation.

When word of an impending government project that may affect your property first reaches you, you should consider whether any pre-condemnation planning on your part would be worthwhile. Pre-condemnation planning can involve many things, for example, wording leases so the relative rights of the lessors and lessees in the event of condemnation are clearly spelled out. Other steps may be useful as well.

In addition to pre-condemnation planning, you should evaluate whether the actions of the government, before condemnation, are harming the market value of your property. (See newsletter Number 4, where we discuss the Barsity case). The planning process can take a long time.

the land owner during the planning of a project; however, pre-condemnation damages are available when the government acts unreasonably or oppressively.

What you should do during later stages of eminent domain proceedings is covered in the next series of newsletters.

CHAPMAN FIRM NEWS

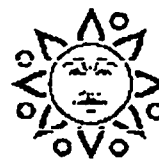
Our firm recently represented a land owner whose property was taken by the Nevada Department of Transportation for road widening in Reno. NDOT's original plan was to take only part of the property. We successfully proved to NDOT that the remainder land would be left in an uneconomical shape and size, and be of little value to the owner. We settled the case with NDOT agreeing to buy the entire parcel, at a substantially higher per square foot value than the department's initial offer.

office for help and advice pertinent to your particular situation.

Reno:
1575 Delucchi Lane, Suite 116A,
Reno, NV 89502. 775-827-1866,
(fax) 775-827-1872.

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This newsletter is for general information only, and is not legal advice. The statements made herein should not be relied upon as legal advice. Please contact a competent eminent domain attorney for personal help and advice.

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD
:
: Type of Case: Condemnation
:
: Type of Pleading: APPEAL TO TRIAL COURT
:
: Filed on Behalf of: Condemnee.
:
: Counsel of Record for this Party:
: James H. Swartz
:
: 2 West Long Avenue
: DuBois Pa 15801
:
: (814) 375-4453

filed By

James H. Swartz

FILED

NOV 13 2000

013:30/WS

William A. Shaw
Prothonotary

1 COPY TO CONDEMNOR

1 COPY TO SUPERIOR COURT
W/SS--

2-20-01 RETURN SS. M/O TO
J. SWARTZ.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

**REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
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vs

**JAMES H. SWARTZ,
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CONTENTS

1. Objections and defense
2. Statements
3. 53 PS § 4103
4. Newspaper article prior actions in question
5. Malicious terms defined
6. Fraud defined
7. Failed to be given enough time to do own legal work
8. Eminent Domain Laws
9. 53 PS section 1719.1
10. WPL US CODE not in best interest of city loss of State and Federal money
11. Prevention of discrimination
12. Point of ISSUE : 53 PS section 1712.1 e -1 NO PROPERTY SHALL BE CERTIFIED TO REDEVELOPMENT AUTHORITY UNLESS VACANT
13. Issue on public record still NO settlement
14. Proff of prior Refusal to let run a business even when upgraded to code.
15. Proof of UTILITES ON.

IN my opinion the Redevelopment Authority of Du Bois ,PA. ,has acted in bad faith in trying to take the building on 2 west long ave. DU BOIS for private not public use. This is ARBITRARILY UNFAIR DISCRIMINATORY PRACTICES BETWEEN BUSINESS and thus UNCONSTITUTIONALLY NOT FOLLOWING STATUTORY PROCEDURES!!!

UNDER 35 P S. 1709 #9 REDEVELOPMENT AUTHORITY HAS NO POWER TO CONDEM PROPERTY UNDER GUISE OF URBAN RENEWAL FOR A PRIVATE PURPOSE!!!

THE person they wanted to sell the property to wanted to use it for the same thing I now do STORES AND OFFICES, STATEMENT TO THIS EFFECT IS A MATTER OF PUBLIC RECORD IN THE DU BOIS NEWSPAPER!!

UNDER PA RULES OF COURT PART 5 MISCELLANEOUS RULE 150 DEFECTS IN FORM: I give note to THE COURT THAT APPEAL WAS ON LEGAL ERROR

REDEVELPPMENT Authority not obeying state laws which have right and control over local laws. IN MY OPINION BOTH THE REDEVELOPMENT AUTHORITY AND THE COURT ACTED WITH DEFECT BEING VERY PREJUDICIAL TO THE RIGHTS OF THE DEFENDANT AND WITH CLEAR TOTAL DISREGARD TO DAMAGES TO MY RENTAL BUSINESS, CREDIT RATE ING AND BUSINESS

MY ABILITY TO REMODLE THE REST OF THE BUILDING DUE TO THE REPEATED HARM OF BAD PRESS CONDEMNATION STATEMENTS ALWAYS ON THE FRONT PAGE OF THE LOCAL NEWSPAPER RESULTED IN NOT BEING ABLE TO GET A LOAN ON THE BUILDING TO PROCEED WITH PLANS TO FIX UP THE 2 nd FLOOR OFFICE UNITS TO RENT, I LOST A LOT OF MONEY BECAUSE OF THIS!!!!

OBJECTIONS AND DEFENSE

Comes now, James Swartz and does hereby respectfully declare as follows.

1. The first floor of the building at 2 west long ave, Du Bois, Pa. is up to code and has utilities on in both Store fronts open to the public.

2. Repairs have been made to the building every year it is open PREJUDICE try to take this building when I am on public record at city council meeting as having a checking account to start up a Building and Construction Co. to fix up the building and make several office spaces AS the result of an ad right in the bookstore window one kid has agreed to help put baseball cards on the internet..

A Under third class city code section 913 City not to Engage in private Construction. clearly states ALL KINDS -TYPES OF CONSTRUCTION WORK BY LEGITIMATE PRIVATE ENTERPRISE!

B. When public records show that campaign funds according to MR. Logan went to the same city official who voted to give this property to DR. RICE I am denied FAIR MARKET VALUE. THEY are on public record in the Courier Express newspaper as trying to get the property at an unfair price, both buildings next to mine are smaller in size the true value is the building Lot not the building.

3. I believe State law says you cannot condemn a part of a building closed for repairs.

4. I believe STATE LAW says you can not condemn a building that is up for sale, I am gathering up the money to pay off the taxes to transfer the building ownership to the construction co

5. The building two down from mine had been listed on Coldwell for about 60,000 . IT is much smaller than mine Also these people know it is illegal to discriminate but according to Dave Logan the owner of Carpet corner Du Bois gave money to city official campaign funds and that building empty and several others that were for sale in the area did not get taken to redevelop.

6. No business or building always 100 percent rented out, I use part of the upstairs as storage for building repairs materials doors windows ect. Also I have been working to gather up goods for an additional internet site for toys to use up a second office space on the second floor for my own business.

7. My mail box for home address is on this building and my drivers lic. is to this address.

8. I request trial by jury and appeal.

9. I am unable to find any other building in the downtown near a parking lot that does not have a high price tag

10. The city with open Prejudice has twice passed well over twenty pages of city ordinance to try to hurt my business, most ADULT stores do 50,000 to 100,000 in business a year,

If this case against me is not dismissed in my opinion:

1. The city of Du Bois may lose some of its State and Federal Grant Money as a pently for breaking several state laws
2. Their is no amicable arrangement for trying to cheat people out of economic oppurtonity to have Bussiness Rentals and make money
3. I will be forced to File Apeal to Superior Court of Pa., this is an UNdo delay in settling this matter cause ing additional bussiness loss.
4. The city officals have made no effort to make an offer for the damages they have caused to me by statements to thr newspaper, this resulted in loss of Bussiness rental and loss of bussiness!!!!
5. IN MY OPINION: AS AN ACT OF FRAUD THEY HAVE WITH HELD INFORMATION AS TO THE INCREASE IN THE VALUE OF THE PROPERTY THAT THE BUILDING SITS UPON. THEY WANT THE PROPERTY BEFORE THE NEW STATE ROAD GOES IN!
6. THE CITY OF DU BOIS officals have REpeated ACTS OF MALICIOUS ABUSE OF PROCESS IN PASSING CITY LAWS THAT SEEM TO EFFECT MAINLY ONLY ONE PERSON.
7. THE CITY OFFICALS FAILED TO FORCE THE POLICE DEPT TO HANDLE POLICE COMPLAINTS OF VANDLEISM AND ROBBERY. AS MALICIOUS ACTS OF MALICIOUS INJURY TO LOCAL BUSINESS TO LOWER PROPERTY VALUES.

53 P.S. § 4102

GENERAL MUNICIPAL LAW

Library References

Injunction ⇨89(3).
WESTLAW Topic No. 212.

C.J.S. Injunctions § 133.
P.L.E. Injunction § 25.

Notes of Decisions

In general 1

1. In general

An ordinance prohibiting the erection of frame buildings will not be enforced by injunction, unless the building constitutes a nuisance per se. *Williamsport v. McFadden*, 15 W.N.C. 269, 1884; *Lan-*

caster v. Shaub, 7 Lanc. 340, 1890; *Honesdale Borough v. Weaver*, 2 Dist. 344, 1893; *Ellwood City v. Mani*, 16 C.C. 474, 1895.

This section does not authorize recourse to any proceedings other than the usual and regular action at law or bill in equity. *City of Philadelphia v. Bartell*, 11 A.2d 563, 139 Pa.Super. 319, Super.1940.

§ 4103. Regulations to supplement state laws

The ordinances enacted pursuant to this act shall not be inconsistent with the provisions of any statute governing the same matter, but all regulations prescribed by such ordinances which are additional or supplementary to the statute law, and not inconsistent therewith, or enacted for the purpose of carrying into effect the provisions of the statute law, shall be valid and binding.

1937, April 14, P.L. 313, No. 87, § 3.

Library References

Municipal Corporations ⇨592(1) to 592(4).
WESTLAW Topic No. 268.

C.J.S. Municipal Corporations §§ 143 to 145.
P.L.E. Municipal Corporations § 412.

Notes of Decisions

In general 1

1. In general

This section providing that zoning ordinances to be enacted be not inconsistent

with provisions of any statute governing the same matter relates to existing statutes and is wholly prospective. *City of Philadelphia v. Bartell*, 11 A.2d 563, 139 Pa.Super. 319, Super.1940.

§ 4104. Building permits; time for approval; explanation for disapproval; highway occupancy permits; "buildings, structures or devices" defined

(a) A municipality which regulates the construction, erection, maintenance, operation or repair of buildings, structures or devices by means of an ordinance requiring the filing of an application, the payment of a fee and the issuance of a permit shall render a decision either approving or disapproving the application for a permit within 90 days after the application is filed unless the ordinance requires a decision within a lesser period of time, provided that any disapproval

Vol. 94 — No. 22

Our 87th Year

Clearfield, Curwensville, Philipsburg, Moshannon Valley, Pa.,

Thursday, January 27, 20

THE PROOF

Judge dismisses lawsuit again

By Rebecca Koleno
Staff Writer

Clearfield County President Judge John K. Reilly Jr. has ruled in favor of the Clearfield County Commissioners in regards to the lawsuit filed against them by the Concerned Taxpayers of Clearfield County.

"We are very pleased with the decision," said Gene Lunsford, current commissioner chairman. "In my opinion, the accusations were frivolous and misleading from the beginning."

Theron Noble, attorney for CTC, said, "It appears that Judge Reilly deferred working through

the various applicable statutes in this case of first impression, presenting the appellate courts with the opportunity to interpret the applicable law."

Tony Yankevich, one of the petitioners, said, "We will definitely appeal this as soon as Mr. Noble has the time. I am very disappointed in the ruling because the commissioners clearly violated the law." The next step would be to file an appeal with the Superior Court of the Western District in the state.

In its suit, CCTC claimed the former board of commissioners, composed of Michael Lytle, Mr. Lunsford and Gerry Halcher, maintained a

budgetary surplus in excess of what is permitted by law. The taxpayers said this was the case in the 1997, 1998 and 1999 budgets and the audit and financial reports for fiscal years 1997 and 1998. The lawsuit was filed in October.

In November, the commissioners responded by filing preliminary objections to the suit and asked the judge to dismiss the case.

Kim Kesner, county solicitor, said the court lacks any jurisdiction on the allegations for any years before 1999. He said the concerned taxpayers failed to act within the statutes of time for 1997 and 1998.

MALICIOUS ABUSE OF PROCESS

In general—p. 278

Malicious prosecution distinguished—
p. 279

Malicious use distinguished—p. 279

Malicious use of process—p. 280

Ultterior motive—p. 280

Use for purpose not intended by law—
p. 281

Cross References

Abuse of Process

Malicious Prosecution

In general

The elements of action for "malicious abuse of process" are the issuance of process

In general—Cont'd

and its use for improper purpose, and improper use is one for objective outside scope of operation employed. *Meisels v. J. C. A. Trading Corp.*, 69 N.Y.S.2d 720, 722, 189 Misc. 46.

Action for "malicious abuse of process" proceeds on theory that plaintiff has been victim of an unauthorized abusive use of a criminal or civil process. *George v. Leonard*, D.C.S.C., 84 F.Supp. 205, 207.

"Malicious abuse of legal process" is where a plaintiff in a civil proceeding willfully misapplies the process of a court in order to obtain an object which such a process is not intended by law to effect. *Baldwin v. Davis*, 4 S.E.2d 458, 462, 188 Ga. 587.

Petition, alleging that landlord maliciously and without probable cause employed dispossessory warrant to coerce tenant into paying more than maximum rental allowable under O. P. A. regulations, stated a cause of action for "malicious abuse of process." *Defnall v. Schoen*, 35 S.E.2d 564, 568, 73 Ga. App. 25.

Petition, alleging that landlord maliciously and without probable cause employed a dispossessory warrant for the purpose of coercing tenant into paying more than maximum rental allowable under O. P. A. regulations, stated a cause of action for "malicious abuse of process" without alleging that proceeding to evict tenant had terminated in tenant's favor. *Defnall v. Schoen*, 35 S.E.2d 564, 568, 73 Ga.App. 25.

Actions for "malicious prosecution", "malicious abuse of process", "false imprisonment" and "false arrest", although differing from each other in some particulars, are all protective of an individual's interest in freedom from confinement, whether such confinement be physically of the person or a limitation of one's personal rights of freedom, as in holding a person to bail, and it is immaterial whether act of defendant directly or indirectly causes the confinement. *McGrath v. Keenan*, 46 A.2d 725, 726, 727, 24 N.J.Misc. 121.

"Malicious abuse of process" is the use of lawful process for purpose not justified by law. *McGrath v. Keenan*, 46 A.2d 725, 726, 727, 24 N.J.Misc. 121.

A petition held insufficient to state cause of action for "malicious abuse of legal process"

MALICIOUS INJURY

diet based on replies to questions submitted to jury without objection was that money was obtained without fraud, judgment against bankrupt was dischargeable, under Bankruptcy Act, § 17(2), 11 U.S.C.A. § 35(2), because not for a "willful and malicious" injury, which is a willful disregard of what one knows to be his duty, an act wrongful in itself, and necessarily causing injury and done intentionally. In re Burchfield, D.C. N.Y., 31 F.2d 118, 120.

The term "malicious injury," as used in Rev.St.1898, § 4466a, providing that if two or more persons, who shall combine, associate, agree, mutually undertake, or counsel together for the purpose of willfully or maliciously injuring another in his reputation, trade, business, or profession, by any means whatever, or for the purpose of maliciously compelling another to do or perform any act against his will, etc., is synonymous with that term at the common law. It refers to the infliction of a wrongful injury intentionally. The term is synonymous with that term in the law of conspiracy, independent of the statute. State v. Huegin, 85 N.W. 1046, 1067, 110 Wis. 189.

Injury which is intentional, wrongful, or without just cause is "malicious injury to person or property" within provision of Bankruptcy Act excepting certain claims from release by bankrupt's discharge. The word "willful" is Bankruptcy Act § 17, 11 U.S.C.A. § 35, excepting from release by bankrupt's discharge claims founded on liability for willful and malicious injury to person or property, means nothing more than intentional, while "malice" involved is merely disregard of duty which is apparent from the intentional doing of a willful act to the injury of another, and does not require hatred, spite, or ill will. Shabaz v. Henn, 173 S.E. 249, 251, 48 Ga.App. 441.

Under Bankruptcy Act, § 17, subd. 2, 11 U.S.C.A. § 35, excepting from discharge liabilities for obtaining property by false pretenses, or for willful and malicious injury to the person or property of another, a judgment in an action of replevin for the value of property obtained by the bankrupt by false representation that he was solvent and that his note for the property was good is not barred, though a judgment in replevin based on constructive fraud only would be barred, since "malicious," as used in the section, consists in the willful doing of an

act with knowledge it is liable to injure another and regardless of consequences, and does not include the malignant spirit or specific intention to injure the other. In re Kalk, D.C.N.Y., 270 F. 627, 629.

MALICIOUS INJURY TO BUSINESS

Action of "malicious interference with business" or "malicious injury to business" is based upon interference with right to pursue a lawful business, calling, or occupation, free from undue interference or molestation. French v. U. S. Fidelity & Guaranty Co., D.C.N.J., 88 F.Supp. 714, 721.

MALICIOUS INJURY TO PROPERTY

Wrongful sale of land which was subject to unrecorded deed given as mortgage held "malicious injury to property" of mortgagee, liability for which was unaffected by discharge in bankruptcy. Probst v. Jones, 247 N.W. 779, 780, 262 Mich. 678.

To constitute an offense under Rev.Pep. Code, § 712, punishing the "malicious injury or destruction of property," the act must not only be done willfully, but for the purpose of avenging some wrong sustained by the person charged with the offense. One who, on becoming angry without cause, destroyed without justification and in a spirit of wantonness the property of another, violated Rev.Pen.Code, § 712, punishing the malicious injury or destruction of property. State v. Tarlton, 118 N.W. 706, 708, 22 S.D. 495.

MALICIOUS INTENT

The phrases "malicious intent" and "malice aforethought" are not synonymous with "willful, deliberate, and premeditated" intent required as elements of first-degree murder. Pen.Code, § 190. People v. Thomas, 156 P.2d 7, 17, 18, 25 Cal.2d 880.

"Malicious intent" as used in the definition of murder in the first degree is not synonymous with "willful, deliberate and premeditated intent" and proof of malicious intent without the further proof that it was willful, deliberate and premeditated would establish "second degree murder" but not first degree murder. Pen.Code, § 189. People v. Holt, 153 P.2d 21, 27, 25 Cal.2d 59.

MALICIOUS ABUSE

Use for purpose not intended by law—C't'd probable cause, or that it terminated prior to the institution of the suit for damages." *Farrar Lumber Co. v. Hogan*, 103 S.E. 863, 25 Ga.App. 597; *McElreath v. Gross*, 98 S.E. 190, 191, 23 Ga.App. 287; *Scarborough v. J. W. Goldsmith, Grant Co.*, 103 S.E. 192, 25 Ga.App. 269.

A malicious abuse of legal process consists in the malicious misuse or misapplication of process to accomplish a purpose not warranted or commanded by the writ—the malicious perversion of a regularly issued process, whereby a result not lawfully or properly obtained on a writ is secured—and hence it does not include a case where the process was procured maliciously, but in which there was no abuse or misuse after its issuance. *Bartlett v. Christhill, Md.*, 14 A. 518, 521, citing *Grainger v. Hill*, 4 Bing. N.C. 212; *Sommer v. Wilt, Pa.*, 4 Serg. & R. 19.

A "malicious abuse of legal process" occurs where a party employs process for some unlawful object, not the purpose which it is intended by the law to effect, and, in action for such malicious abuse, it is not necessary to prove that action in which process issued has been determined, or to aver that it was sued out without reasonable or probable cause. *Fenton Storage Co. v. Feinstein*, 195 A. 176, 178, 179, 129 Pa.Super. 125.

MALICIOUS ACCUSATION

"Malicious accusation," within Comp.St. 1922, § 9579, denouncing blackmail, is to procure accusation or prosecution of another from improper motive and without probable cause, and is similar to malicious prosecution, and is not same as a "malicious threat to accuse of crime," which means that one acts with evil intent and with evil motive by threats of criminal prosecution, through fear of which will of individual threatened is intended to be overcome. *McKenzie v. State*, 204 N.W. 60, 63, 113 Neb. 576.

MALICIOUS ACT

A "malicious act" is an unlawful act done intentionally without just cause, legal justification or excuse. *Michels v. Boruta, Tex. Civ.App.*, 122 S.W.2d 216, 220.

A "malicious act" is one committed in a state of mind which shows a heart regardless

of social duty and fatally bent on mischief, a wrongful act intentionally done without legal justification nor excuse. *Rankin v. State*, 139 S.W.2d 811, 812, 139 Tex.Cr.R. 247.

The act of persuading a person to break his contract for the indirect purpose of injuring the other contracting party or benefiting the person inducing such breach at the expense of the other contracting party is a "malicious act" which is wrongful and therefore actionable if injury issues therefrom. *Wilkinson v. Powe*, 1 N.W.2d 539, 542, 300 Mich. 275.

"A malicious act" is an unlawful act done intentionally, without just cause or excuse. *Tucker v. Bartlett*, 155 P. 1, 2, 97 Kan. 163.

A malicious act is one done without just cause, or one done with a wrongful purpose. *Morrison v. Press Pub. Co.*, 14 N.Y.S., 131, 132, 59 N.Y.Super.Ct.(29 Jones & S.) 216.

In an action for assault, there must be a wrongful act done intentionally without just cause or excuse, and such an act is "malicious" in the statutory sense. In re *Smyser*, 182 Ill.App. 208, 209.

Bouvier defines a malicious act as "a wrongful act, intentionally done, without cause or excuse"—the definition of Bayley, J., in *Bromage v. Prosser*, 4 Barn. & C. 247. *Brandt v. Morning Journal Ass'n*, 80 N.Y.S. 1002, 1004, 81 App.Div. 183.

In general a malicious act involves all that is usually understood by the term "willful," and is further marked by either hatred or ill will toward the party injured, or by such utter recklessness and disregard of the rights of others as denotes a corrupt or malevolent disposition. *State v. Willing*, 105 N.W. 355, 356, 129 Iowa, 72.

A malicious act is one committed in a state of mind which shows a heart regardless of social duty and fatally bent on mischief—a wrongful act intentionally done, without legal justification or excuse. *Bowers v. State*, 7 S.W. 247, 24 Tex.App. 542, 5 Am.St.Rep. 901; *High v. State*, 10 S.W. 238, 241, 26 Tex.App. 545, 8 Am.St.Rep. 488.

In a legal sense, any unlawful act done willfully to the injury of another is, as against that person, malicious, and it is not necessary that the perpetrator of such act should be influenced by ill will towards such

MALICIOUS PROSECUTION

in order to give the injured employee the option of either suing for damages at common law or proceeding under the Workmen's Compensation Act is a conscious and deliberate intent directed to the purpose of inflicting an injury and such intent may not be inferred from mere negligence although it is gross. *Breimhorst v. Beckman*, 35 N. W.2d 719, 730, 227 Minn. 409.

MALICIOUS PROSECUTION

In general—p. 303

Abuse of process distinguished—p. 306

Civil litigation—p. 308

Essential elements—p. 309

False imprisonment distinguished—p. 314

Malice and want of probable cause—p. 318

Malice imputed to attorney—p. 322

Malicious arrest synonymous—p. 322

Cross References

Abuse of Legal Process

Abuse of Process

False Imprisonment

Malice

In general

In a "malicious prosecution," the proceedings are had in pursuance of legal process, maliciously and wrongfully obtained. *Barfield v. Marron*, 62 So.2d 276, 280, 222 La. 210.

"Malicious prosecution" is the putting of the processes of law into operation maliciously and without probable cause leading on in due course to the arrest of the victim. *Huffstutler v. Edge*, 47 So.2d 191, 193, 35 Ala.App. 276.

To state a cause of action for "malicious prosecution" it must be alleged and proved that action upon which the suit is based shall have been terminated in favor of defendant therein. *Simpkins v. Brooks*, D.C.Mun.App., 49 A.2d 549, 551.

Malicious prosecution is not limited to criminal suits. *Hayes v. Union Mercantile Co.*, 70 P. 975, 979, 27 Mont. 264.

Prosecution instituted for purpose of collecting debt or other private motive is "malicious prosecution" in legal sense. *Pritchett v. Northwestern Mut. Life Ins. Co.*, 73 S.W.2d 815, 819, 228 Mo.App. 661.

The mere fact of an acquittal or termination of criminal proceedings in favor of

In general—Cont'd

accused does not make out a prima facie case of "malicious prosecution" against person who instituted those proceedings. *Stinson v. Smith*, 196 A. 843, 329 Pa. 177.

"Malicious prosecution" is criminal prosecution instituted upon no or such slight grounds of suspicion as to indicate general disregard of rights of others directed by chance against individual. *Freezer v. Miller*, 176 S.E. 159, 170, 163 Va. 180.

A complaint which alleged that tenant left leased premises as result of stipulation signed by himself and his attorney and in compliance with resulting judgment in landlord's action under Emergency Rent Act to secure possession, and which further alleged that landlord's statement in regard to his intention to immediately occupy designated premises as a dwelling were fraudulent, could not be upheld as stating a cause of action for "malicious prosecution," where it appeared that the action upon which suit was based terminated in landlord's favor. *Simpkins v. Brooks*, D.C.Mun.App., 49 A.2d 549, 551.

A "malicious prosecution" is a prosecution with malice and without probable cause; "false imprisonment" is arrest and imprisonment without legal process; and "abuse of process" is misuse of legal process for ulterior purpose. *State, for Use of Little v. U. S. Fidelity & Guaranty Co.*, Miss., 64 So.2d 697, 704.

The essential elements of a "malicious prosecution" are the commencement of a criminal prosecution against plaintiff, its causation by defendant, its termination in favor of plaintiff, plaintiff's innocence of crime charged, absence of probable cause for such proceeding, presence of actual malice therein, and damages resulting to plaintiff by reason thereof. *Montgomery Ward & Co. v. Kirkland*, Tex.Civ.App., 225 S.W. 2d 906, 907, 908.

"Malicious prosecution" is an action for the recovery of damages to person, property or reputation shown to have proximately resulted from a previous civil or criminal proceeding which was commenced or continued without probable cause, but with malice, and which has terminated unsuccessfully. *Riegel v. Hygrade Seed Co.*, D.C.N.Y., 47 F.Supp. 290, 293.

MALICIOUS PROSECUTION

In general—Cont'd

Unsuccessful efforts to secure the institution of proceedings, however malicious or unfounded, are not actionable as "malicious prosecution". *Melvin v. Pence*, 130 F.2d 423, 426, 76 U.S.App.D.C. 154, 143 A.L.R. 149.

A cause of action for "malicious prosecution" is complete when the prosecution is terminated in favor of plaintiff, and the statute of limitations begins to run at that time. *White v. Pacific Telephone & Telegraph Co.*, 123 P.2d 193, 195, 168 Or. 371.

The gravamen of "malicious prosecution" action is the wrongful institution or prosecution of action or proceeding without probable cause, to hurt and damage of complainant. *Manufacturers & Jobbers Finance Corp. v. Lane*, 19 S.E.2d 849, 853, 854, 221 N.C. 189.

Where plaintiff brings action or institutes process and prosecutes the same with malice and without probable cause, the defendant can obtain full relief by action for "malicious prosecution". *Manufacturers & Jobbers Finance Corp. v. Lane*, 19 S.E.2d 849, 853, 854, 221 N.C. 189.

Instituting a prosecution for the purpose of aiding in the collection of a debt is for an improper purpose and therefore a "malicious prosecution". *State Life Ins. Co. of Indianapolis, Ind., v. Hardy*, 195 So. 708, 713, 189 Miss. 266.

To create right of action for "malicious prosecution," there must exist malice on part of defendant in procuring or bringing about unfounded prosecution or other action. *Lexington Cab Co. v. Terrell*, 137 S.W.2d 721, 724, 282 Ky. 70.

One who does not swear out the warrant cannot be held liable for "malicious prosecution" unless he instigated a criminal action against plaintiff or caused one to be maintained or voluntarily aided or assisted in its prosecution. *Fertitta v. Herndon*, 3 A.2d 502, 504, 175 Md. 560, 120 A.L.R. 1317.

Defendant who did not advise, aid or abet prosecution of a criminal case could not be held for "malicious prosecution" because after learning of prosecution instituted by another defendant he did nothing to stop it. *Fertitta v. Herndon*, 3 A.2d 502, 504, 175 Md. 560, 120 A.L.R. 1317.

In general—Cont'd

Strictly speaking, the term "malicious prosecution" is applicable only to the carrying on of a criminal case, and is used in such sense only in the statute concerning rights of action for malicious prosecution. Code 1933, § 105-801 et seq. *Baldwin v. Davis*, 4 S.E.2d 458, 461, 188 Ga. 587.

Complaint which alleged that seizure was unlawful, because warrant of attachment was void, in that the papers on which it was granted were insufficient to confer jurisdiction, but which alleged no facts to show lack of probable cause existed, failed to state a cause of action for "malicious prosecution". *Hubbard v. Banker*, 24 N.Y.S.2d 289, 293, 295.

"Malicious prosecution" in law is a tort, and consists in defendant therein maliciously and without probable cause setting in motion the laws of particular jurisdiction whereby the plaintiff in such action is wrongfully and maliciously accused of committing some criminal offense, or committing some other wrong justifying the particular procedure taken against him, though it be a civil one, and by reason of which he sustains the damages he seeks to recover. *Lexington Cab Co. v. Terrell*, 137 S.W.2d 721, 724, 282 Ky. 70.

A petition for "malicious prosecution" will not lie unless it is alleged that prosecution has terminated in favor of petitioner. *Hughes v. Georgia Power Co.*, 15 S.E.2d 466, 468, 65 Ga.App. 163.

A petition did not state cause of action for "malicious prosecution" against street railroad whose officers caused the arrest of plaintiff for unlawfully smoking on street car, where petition alleged that judgment and sentence were still outstanding, and contention that judgment was void was untenable. Code, § 18-203. *Hughes v. Georgia Power Co.*, 15 S.E.2d 466, 468, 65 Ga.App. 163.

Evidence that surveyors who surveyed boundary between plaintiff's and defendant's lands thought that land from which plaintiff cut timber was within defendant's boundary warranted conclusion that defendant had "probable cause" to believe that defendant owned such land and that plaintiff was without color of title to it, and hence defendant was not liable to plaintiff for "malicious prosecution" as result of de-

**LOCK V. SCHREPPLER**

Cite as, Del.Super., 426 A.2d 856

Del. 857

STIFTEL, President Judge.

John LOCK, Sr. and Ella G. Lock,
his wife, Plaintiffs,

v.

George B. SCHREPPLER, Defendant.

Superior Court of Delaware,
New Castle County.

Submitted Nov. 23, 1980.

Decided Jan. 28, 1981.

Purchasers of residence brought action
for statutory and common-law fraud

against seller's real estate agent and others. After extensive discovery, purchasers dismissed action against all defendants except real estate agent, who moved for summary judgment. The Superior Court, New Castle County, Stiftel, President Judge, held that: (1) fact issues precluded summary judgment as to portion of action based on common-law fraud, and (2) statutes providing regulatory powers to Real Estate Commission in order to protect public did not create private cause of action.

Motion granted in part, denied in part.

1. Fraud $\Rightarrow$ 4½

A representation may be fraudulent, even if it is true, if defendant knows that because of facts not stated, statement is materially misleading.

2. Fraud $\Rightarrow$ 17

Where there is no general duty to speak, nevertheless, if person undertakes to speak, he then has duty to make full and fair disclosure as to matters about which he assumes to speak.

4. Fraud $\Rightarrow$ 30

Where broker engaged to sell induces third person to purchase property by means of fraud, broker may be liable to that person for loss suffered as a consequence.

5. Fraud $\Rightarrow$ 21

Where an ordinary investigation will not reveal a latent defect, purchaser of residence may rely upon representation of real estate agent as to defect.

6. Fraud $\Rightarrow$ 21

Where only partial investigation of thing to be purchased is made, under proper

circumstances, purchaser may rely on another's representations to his detriment, particularly where other person making said representations has superior knowledge.

7. Fraud $\Rightarrow$ 20

Justifiable reliance which plaintiffs in action for fraud must demonstrate requires that representation made by defendant and relied upon by plaintiff involve matters which reasonable person would consider important in determining his choice of action in transaction in question, but does not require that reasonable person would make choice solely on basis of that matter; the misrepresentations need merely be a substantial factor in inducing plaintiffs to act.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

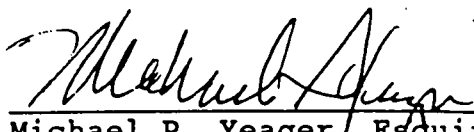
REDEVELOPMENT AUTHORITY OF	:	
THE CITY OF DUBOIS,	:	No. 00 - 591 - CD
Condemnor	:	
vs	:	IN CONDEMNATION
	:	
JAMES H. SWARTZ,	:	
Condemnee	:	

OBJECTION TO CONDEMNEE'S REQUEST FOR ANOTHER THIRTY DAY EXTENSION

COMES NOW, MICHAEL P. YEAGER, ESQUIRE, Attorney for the
Condemnor, and files the within Objection to the Request for a
Another Thirty Day Extension filed on behalf of Condemnee based
upon the following:

1. Condemnee has already sought and secured a thirty-day
extension within which to file a legal Brief.
2. The oral argument on this matter is still not scheduled
until September 28, 2000.
3. Accordingly, Condemnee has had sufficient time from the
filing of his Objection and Defense on June 19, 2000 to prepare.

WHEREFORE, Condemnor respectfully objects to the Request for
Thirty Day Extension as filed by Condemnee.



Michael P. Yeager, Esquire
Attorney for Condemnor

Unconsolidated Pennsylvania Statutes

EMINENT DOMAIN (Title 26)

ARTICLE I. SHORT TITLE

§ 1-101. Short title.

This act shall be known and may be cited as the "Eminent Domain Code."

[Note: The Eminent Domain Code is inapplicable to condemnations by public utilities. See, *Appeal of Giesler*, 154 Pa. Commonwealth Ct. 48, 622 A.2d 408 (1993). Further, the Rules of Civil Procedure {except rules 4001 and following per Pa.R.C.P.No.4001(a)(1)} do not apply to Eminent Domain Code proceedings. See, *Appeal of McCoy*, 153 Pa. Commonwealth Ct. 504, 621 A.2d 1163 (1993).]

The complete Pennsylvania Statutes are not yet available on the web. However, selected portions have been made available and can be accessed by [CLICKING HERE](#). These statutes, though available instantaneously over the web, may not be the current law. Court decisions overturning them, later statutes amending them, and a host of other factors come into play when interpreting them. They are provided here as a resource. They should provide some information about the state of the law. However, a competent lawyer, *who from other sources will research the law to insure what is current*, should always be employed in matters of importance.

Visit/Return to Home Page of Pennsylvania District Court 15-4-04.

Short Title / Judiciary@aol.com / last revised December 1999

NDOT MUST PAY

NDOT took Kenneth Barsy's land in Las Vegas for part of the new Spring Mountain Road and Interstate 15 Interchange. Before actually taking the property, though, NDOT announced the project. NDOT representatives visited Barsy's tenants and informed them of the project. This announcement caused Barsy's tenants, Decratrend Paints and another business, to move off the property. The effect on Barsy was devastating. Not only did he lose these tenants and the income stream from their rent payments, but other potential tenants would not move into the property because they knew the project was coming.

The department then made it harder on Barsy by not

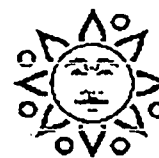
with property he could not rent. Barsy also alleged his property was made more difficult to sell.

When the condemnation finally came, he sought not only the value of the land but the amount of his lost rents. The trial court said "no" but the Supreme Court reversed. The Supreme Court said that when the government unreasonably delays a condemnation after making an official announcement of intent to condemn, the property owner may have whatever precondemnation damages he can prove. These damages can include lost rents. The Court sent the matter back to the trial court for a new trial where Barsy will be allowed a chance to prove his damages.

This decision is important because it is a departure from established Nevada law. Lost rents were previously not

land's market value. This decision creates a new class of damages, called pre-condemnation damages, which are now available to Nevada property owners under proper circumstances. In making its ruling, the Nevada Supreme court endorsed California law precondemnation damages.

This newsletter is published periodically by eminent domain attorney, Michael G. Chapman.



This newsletter is for general information only, and is not legal advice. The statements made herein should not be relied upon as legal advice. Please contact a competent eminent domain attorney for personal help and advice.

Eminent Domain 5

November 1999 • Issue Five

YOUR CASE: PART ONE

In a typical eminent domain case, the government first decides it wants to construct a public project. The project must be for a public purpose, such as a road or flood control basin. Almost any kind of project qualifies as a public project including land

These planning activities can hurt land owners. For example, uncertainty over when the project will be built can cause tenants to vacate the premises, leaving the landowner with empty property on which he must still pay taxes and mortgage installments. In most cases, the government is not liable for the damage caused to

THIS NEWSLETTER

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may extend the time for filing preliminary objections. Preliminary objections shall be limited to and shall be the exclusive method of challenging

- (1) the power or right of the condemnor to appropriate the condemned property unless the same has been previously adjudicated;
- (2) the sufficiency of the security;
- (3) any other procedure followed by the condemnor; or
- (4) the declaration of taking.

Failure to raise these matters by preliminary objections shall constitute a waiver thereof.

(b) Preliminary objections shall state specifically the grounds relied upon.

(c) All preliminary objections shall be raised at one time and in one pleading. They may be inconsistent.

(d) The condemnee shall serve a copy of the preliminary objections on the condemnor within seventy-two hours after filing the same.

(e) The court shall determine promptly all preliminary objections and make such preliminary and final orders and decrees as justice shall require, including the revesting of title. If preliminary objections are finally sustained, which have the effect of finally terminating the condemnation, the condemnee shall be entitled to damages as if the condemnation had been revoked under section 408,1 to be assessed as therein provided. If an issue of fact is raised, the court shall take evidence by depositions or otherwise. The court may allow amendment or direct the filing of a more specific declaration of taking.

1964, Sp.Sess., June 22, P.L. 84, art. Iv, § 406. As amended 1969, Dec. 5, P.L. 316, § 1.

§ 407. Possession; entry; payment of compensation

(a) The condemnor, after the expiration of the time for filing preliminary objections by the condemnee to the declaration of taking, shall be entitled to possession or right of entry upon payment of, or a written offer to pay to the condemnee, the amount>

Transfer interrupted!

>

Transfer interrupted!

after refuses to deliver possession or permit right of entry, the prothonotary upon praecipe of the condemnor shall issue a nile, returnable in five days after service upon the condemnee, to show cause why a writ of possession should not issue, upon which the court, unless preliminary objections warranting delay are pending, may issue a writ of possession conditioned upon payment to the condemnee or into court of such estimated just compensation and on such other terms as the court may direct.

(b) If within sixty days from the filing of the declaration of taking, the condemnor has not paid just compensation as provided in subsection (a) of this section, the condemnee may tender possession or right of entry in writing and the condemnor shall thereupon make payment of the just compensation due such condemnee as estimated by the condemnor. If the condemnor fails to make such payment the court, upon petition of the condemnee, may compel the condemnor to file a declaration of estimated just compensation or, if the condemnor fails or refuses to file such declaration, may at the cost of the condemnor appoint an impartial expert appraiser to estimate such just

compensation. The court may, after hearing, enter judgment for the amount of the estimated just compensation.

(c) The compensation paid under subsections (a) and (b) of this section shall be without prejudice to the rights of either the condemnor or the condemnee to proceed to final determination of the just compensation and the payments heretofore made shall be considered only as payments pro tanto of the just compensation as finally determined. However, in no event shall the condemnee be compelled to pay back to the condemnor the compensation paid under subsections (a) and/or (b), even if the amount of just compensation as finally determined shall be less than the compensation so paid.

1964, Sp.Sess., June 22, P.L. 84, art. IV, § 407. As amended 1969, Dec. 5, P.L. 316, § 1.

§ 409. Right to enter property prior to condemnation

Prior to the filing of the declaration of taking, the condemnor or its employees or agents, shall have the right to enter upon any land or improvement which it has the power to condemn, in order to make studies, surveys, tests, soundings and appraisals, provided that the owner of the land or the party in whose name the property is assessed has been notified ten days prior to entry on the property. Any actual damages sustained by the owner of a property interest in the property entered upon by the condemnor shall be paid by the condemnor and shall be assessed by the court or viewers in the same manner as provided in section 408.1

1964, Sp.Sess., June 22, P.L. 84, art. IV, § 409.

§ 501. Agreement as to damages

At any stage of the proceedings, the condemnor and the condemnee may agree upon all or any part or item of the damages, and proceed to have those parts or items thereof not agreed upon assessed as herein provided. The condemnor may make payment of any part or item thereof so agreed upon.

1964, Sp.Sess., June 22, P.L. 84, art. V, § 501.



Municipal Authorities Act - index

Municipal Law Index

Gleason, DiFrancesco, Shahade, Barbin & Markovitz Home Page

Updated January 1999

acquisitions for downtown redevelopment and airport noise mitigation.

When word of an impending government project that may affect your property first reaches you, you should consider whether any pre-condemnation planning on your part would be worthwhile. Pre-condemnation planning can involve many things, for example, wording leases so the relative rights of the lessors and lessees in the event of condemnation are clearly spelled out. Other steps may be useful as well.

In addition to pre-condemnation planning, you should evaluate whether the actions of the government, before condemnation, are harming the market value of your property. (See newsletter Number 4, where we discuss the Barys case). The planning process can take a long time.

the land owner during the planning of a project; however, pre-condemnation damages are available when the government acts unreasonably or oppressively.

What you should do during later stages of eminent domain proceedings is covered in the next series of newsletters.

CHAPMAN FIRM NEWS

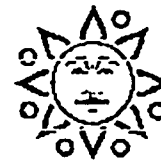
Our firm recently represented a land owner whose property was taken by the Nevada Department of Transportation for road widening in Reno. NDOT's original plan was to take only part of the property. We successfully proved to NDOT that the remainder land would be left in an uneconomical shape and size, and be of little value to the owner. We settled the case with NDOT agreeing to buy the entire parcel, at a substantially higher per square foot value than the department's initial offer.

office for help and advice pertinent to your particular situation.

Reno:
1575 Delucchi Lane, Suite 116A,
Reno, NV 89502. 775-827-1866,
(fax) 775-827-1872.

Las
Vegas: Hughes Center, 3753
Howard Hughes Parkway, Suite
200, Las Vegas, NV 89109, 702-
892-3706, (fax) 702-892-3950.

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michael@chapman.reno.nv.us



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(Las Vegas) Hughes Center 3753 Howard Hughes Pkwy #200 Las Vegas, NV Voice 702.892.3706 Fax 702.825.8002
email - michael@chapman.reno.nv.us web - <http://www.michaelchapman.com>

Johnstown Redevelopment Authority

Urban Redevelopment Law 53 P.S. Section 1719.1

Johnstown, Pennsylvania

§ 1719.1. Notice to displaced persons

- (a) A redevelopment authority in a city of the first class intending to alter or demolish property in furtherance of authority projects or programs shall give timely notice to all occupants required by such alteration or demolition to vacate the property.
- (b) Notice shall be given at the earliest practicable time prior to the dislocation of person affected, but no later than 30 days prior to the commencement of the alteration or demolition of the property.
- (c) The form of notice shall include, but not be limited to, posters or other graphic materials of sufficient size and design as will reasonably draw attention and which will reasonably inform the occupants of the property of the impending alteration or demolition and the date by which the occupants must vacate the property. Posters or other graphic materials shall be posted on and about the property in sufficient numbers as to reasonably draw the attention of all occupants of the property.
- (d) This section shall not be construed to relieve any authority of any duty to occupants of property as provided by law or regulation, including, but not limited to, the relocation assistance provisions of the act of June 22, 1964 (Sp.Sess., P.L. 84, No. 6), known as the "Eminent Domain Code," and regulations promulgated thereunder.

1945, May 24, P.L. 991, § 19.1, added 1978, April 18, P.L. 39, No. 21, §1, imd. effective.

Urban Redevelopment Law - Table of Contents

Johnstown Redevelopment Authority Home Page

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officer or employee designated by any executive department or agency subject to this order may hold such hearings, public or private, as the Committee, department, or agency may deem advisable for compliance, enforcement, or educational purposes.

Sec. 302. If any executive department or agency subject to this order concludes that any person or firm (including but not limited to any individual, partnership, association, trust, or corporation) or any State or local public agency has violated any rule, regulation, or procedure issued or adopted pursuant to this order, or any nondiscrimination provision included in any agreement or contract pursuant to any such rule, regulation, or procedure, it shall endeavor to end and remedy such violation by informal means, including conference, conciliation, and persuasion unless similar efforts made by another Federal department or agency have been unsuccessful. In conformity with rules, regulations, procedures, or policies issued or adopted by it pursuant to Section 203 hereof, a department or agency may take such action as may be appropriate under its governing laws, including, but not limited to, the following:

It may -

(a) cancel or terminate in whole or in part any agreement or contract with such person, firm, or State or local public agency providing for a loan, grant, contribution, or other Federal aid, or for the payment of a commission or fee;

(b) refrain from extending any further aid under any program administered by it and affected by this order until it is satisfied that the affected person, firm, or State or local public agency will comply with the rules, regulations, and procedures issued or adopted pursuant to this order, and any nondiscrimination provisions included in any agreement or contract;

(c) refuse to approve a lending institution or any other lender as a beneficiary under any program administered by it which is affected by this order or revoke such approval if previously given.

Sec. 303. In appropriate cases executive departments and agencies shall refer to the Attorney General violations of any rules, regulations, or procedures issued or adopted pursuant to this order, or violations of any nondiscrimination provisions included in any agreement or contract, for such civil or criminal action as he may deem appropriate. The Attorney General is authorized to furnish legal advice concerning this order to the Committee and to any department or agency requesting such advice.

Sec. 304. Any executive department or agency affected by this

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feasible of the goal of a decent home and a suitable living environment for every American family; and

WHEREAS discriminatory policies and practices based upon race, color, creed, or national origin now operate to deny many Americans the benefits of housing financed through Federal assistance and as a consequence prevent such assistance from providing them with an alternative to substandard, unsafe, unsanitary, and overcrowded housing; and

WHEREAS such discriminatory policies and practices result in segregated patterns of housing and necessarily produce other forms of discrimination and segregation which deprive many Americans of equal opportunity in the exercise of their unalienable rights to life, liberty, and the pursuit of happiness; and

WHEREAS the executive branch of the Government, in faithfully executing the laws of the United States which authorize Federal financial assistance, directly or indirectly, for the provision, rehabilitation, and operation of housing and related facilities, is charged with an obligation and duty to assure that those laws are fairly administered and that benefits thereunder are made available to all Americans without regard to their race, color, creed, or national origin:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, it is ordered as follows:

PART I - PREVENTION OF DISCRIMINATION

Section 101. I hereby direct all departments and agencies in the executive branch of the Federal Government, insofar as their functions relate to the provision, rehabilitation, or operation of housing and related facilities, to take all action necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex or national origin -

(a) in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities are -

(i) owned or operated by the Federal Government, or

(ii) provided in whole or in part with the aid of loans, advances, grants, or contributions hereafter agreed to be made by the Federal Government, or

(iii) provided in whole or in part by loans hereafter insured, guaranteed, or otherwise secured by the credit of the Federal Government or

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-CITE-

42 USC Sec. 1982

-EXPCITE-

TITLE 42

CHAPTER 21

SUBCHAPTER I

-HEAD-

Sec. 1982. Property rights of citizens

★ -STATUTE-

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

-SOURCE-

(R.S. Sec. 1978.)

-COD-

CODIFICATION

R.S. Sec. 1978 derived from act Apr. 9, 1866, ch. 31, Sec. 1, 14 Stat. 27.

Section was formerly classified to section 42 of Title 8, Aliens and Nationality.

-EXEC-

EX. ORD. NO. 11063. EQUAL OPPORTUNITY IN HOUSING

Ex. Ord. No. 11063, Nov. 20, 1962, 27 F.R. 11527, as amended by Ex. Ord. No. 12259, Dec. 31, 1980, 46 F.R. 1253, provided:

WHEREAS the granting of Federal assistance for the provision, rehabilitation, or operation of housing and related facilities from which Americans are excluded because of their race, color, creed, or national origin is unfair, unjust, and inconsistent with the public policy of the United States as manifested in its Constitution and laws; and

WHEREAS the Congress in the Housing Act of 1949 (see Short Title note set out under section 1441 of this title) has declared that the general welfare and security of the Nation and the health and living standards of its people require the realization as soon as

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(iv) provided by the development or the redevelopment of real property purchased, leased, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under a loan of grant contract hereafter entered into; and

(b) in the lending practices with respect to residential property and related facilities (including land to be developed for residential use) of lending institutions, insofar as such practices relate to loans hereafter insured or guaranteed by the Federal Government.

Sec. 102. I hereby direct the Department of Housing and Urban Development and all other executive departments and agencies to use their good offices and to take other appropriate action permitted by law, including the institution of appropriate litigation, if required, to promote the abandonment of discriminatory practices with respect to residential property and related facilities heretofore provided with Federal financial assistance of the types referred to in Section 101(a)(ii), (iii), and (iv).

PART II - IMPLEMENTATION BY DEPARTMENTS AND AGENCIES

Sec. 201. Each executive department and agency subject to this order is directed to submit to the President's Committee on Equal Opportunity in Housing established pursuant to Part IV of this order (hereinafter sometimes referred to as the Committee), within thirty days from the date of this order, a report outlining all current programs administered by it which are affected by this order.

Sec. 202. Each such department and agency shall be primarily responsible for obtaining compliance with the purposes of this order as the order applies to programs administered by it, and is directed to cooperate with the Committee, to furnish it, in accordance with law, such information and assistance as it may request in the performance of its functions, and to report to it at such intervals as the Committee may require.

Sec. 203. Each such department and agency shall, within thirty days from the date of this order, issue such rules and regulations, adopt such procedures and policies, and make such exemptions and exceptions as may be consistent with law and necessary or appropriate to effectuate the purposes of this order. Each such department and agency shall consult with the Committee in order to achieve such consistency and uniformity as may be feasible.

PART III - ENFORCEMENT

Sec. 301. The Committee, any subcommittee thereof, and any

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Johnstown Redevelopment Authority

Urban Redevelopment Law 53 P.S. Section 1712.1

Johnstown, Pennsylvania

§ 1712.1. Blighted property removal

- (a) Notwithstanding any other provision of this act, any Redevelopment Authority shall have the power to acquire by purchase, gift, bequest, eminent domain or otherwise, any blighted property as defined in this section, either within or outside of a certified redevelopment area and, further, shall have the power to hold, clear, manage and/or dispose of said property for residential and related reuse and commercial or industrial reuse. This power shall be exercised in accord with the procedures set forth in this section.
- (b) Such power on the part of any Redevelopment Authority shall be conditioned upon the creation or existence of a vacant property review committee by ordinance of the governing body of the municipality. The committee shall be made up of members as determined in the said ordinance, but shall include at least one member of the governing body, a representative of the Redevelopment Authority, a representative of the appropriate planning commission, and a representative to be designated by the chief executive officer or officers from the executive branch of the government of the municipality.
- (c) Blighted property shall include:
 - (1) Any premises which because of physical condition or use is regarded as a public nuisance at common law or has been declared a public nuisance in accordance with the local housing, building, plumbing, fire and related codes.
 - (2) Any premises which because of physical condition, use or occupancy is considered an attractive nuisance to children, including but not limited to abandoned wells, shafts, basements, excavations, and unsafe fences or structures.
 - (3) Any dwelling which because it is dilapidated, unsanitary, unsafe, vermin-infested or lacking in the facilities and equipment required by the housing code of the municipality, has been designated by the department responsible

for enforcement of the code as unfit for human habitation.

-
- (4) Any structure which is a fire hazard, or is otherwise dangerous to the safety of persons or property.
-
- (5) Any structure from which the utilities, plumbing, heating, sewerage or other facilities have been disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use.
-
- (6) Any vacant or unimproved lot or parcel of ground in a predominantly built-up-neighborhood, which by reason of neglect or lack of maintenance has become a place for accumulation of trash and debris, or a haven for rodents or other vermin.
-
- (7) Any unoccupied property which has been tax delinquent for a period of two years prior to the effective date of this act, and those in the future having a two year tax delinquency.
-
- (8) Any property which is vacant but not tax delinquent, which has not been rehabilitated within one year of the receipt of notice to rehabilitate from the appropriate code enforcement agency.
- (d) Residential and related use shall include residential property for sale or rental and related uses, including, but not limited to, park and recreation areas, neighborhood community service, and neighborhood parking lots.
- (e) The blighted property review committee and the appropriate planning commission, upon making a determination that any property is blighted within the terms of this section, must certify said blighted property to the Redevelopment Authority, except that:
 -
 - ★ ○ (1) No property shall be certified to the Redevelopment Authority unless it is vacant.
 -
 - (2) No property shall be certified to the Redevelopment Authority unless the owner of the property or an agent designated by him for receipt of service of notices within the municipality has been served with notice of the determination that the property is blighted, together with an appropriate order to eliminate the conditions causing the blight and notification that failure to do so may render the property subject to condemnation under this act. The notice shall be served upon the owner or his agent in accord with the provisions of a local ordinance pertaining to service of notice of determination of a public nuisance. The owner or his agent shall have the right of appeal from the determination in the same manner as an appeal from

the determination of public nuisance.

-
- (3) No blighted property shall be certified to the Redevelopment Authority until the time period for appeal has expired and no appeal has been taken, or, if taken, the appeal has been disposed of, and the owner or his agent has failed to comply with the order of the responsible department or other officer or agency.
- (f) Acquisition and disposition of blighted property under this section shall not require preparation, adoption or approval of a redevelopment area plan or redevelopment proposal as set forth in section 10, but at least thirty days prior to acquisition of any property under this section, the Redevelopment Authority shall transmit identification of the property to the planning commission of the municipality and shall request a recommendation as to the appropriate reuse of the property. The Redevelopment Authority shall not acquire the property where the planning commission certifies that disposition for residential or related use would not be in accord with the comprehensive plan of the municipality.
- (g) Power of eminent domain shall be exercised pursuant to a resolution of the Redevelopment Authority and the procedure set forth in the act of June 22, 1964 (Sp.Sess., P.L. 84, No. 6),² known as the "Eminent Domain Code," as amended.
- (h) Property disposed of within a redevelopment area shall be disposed of under a redevelopment contract in accordance with the provisions of this act.

Property disposed of outside an urban renewal project area shall be disposed of by deed in accordance with the provisions set forth in applicable law.

1945, May 24, P.L. 991, § 12.1, added 1978, June 23, P.L. 556, No. 94, § 2, effective in 60 days. Amended 1988, March 30, P.L. 304, No. 39, § 5, imd. effective.

Urban Redevelopment Law - Table of Contents

Johnstown Redevelopment Authority Home Page

Paving projects post

By MARY JO YEBERNETSKY

Building owner: Condemnation plans in error

By MARY JO YEBERNETSKY
C-E Staff Writer

DuBOIS — James Swartz of 2 W. Long Ave. told the DuBois City Council Monday



DuBois

there is an error in the condemnation plans for his building. Swartz owns 2-4 W. Long Ave. the site of Used Books N Stuff and a tattoo shop.

The DuBois Redevelopment Authority is legally condemning the property to acquire it under the authority's right of eminent domain. Swartz will be paid the appraised value of the building when the condemnation process is completed, according to previously published reports.

The building is said to be key to the city's downtown revitalization, according to Lance Martin. See BUILDING, Page A11

— Graham A. Whalen, 6, as over his brother, Jude catch a baseball. The boys catch with their father in N.Y. (AP Photo)

ng family
mentally
t boy
ckstop

ONCH... Miss (SHN)... On

WELCH, GOLD & SIEGEL, P.C.

ATTORNEYS AT LAW

SUITE 1240, LAWYERS BUILDING • 428 FORBES AVENUE • PITTSBURGH, PENNSYLVANIA 15219
TELEPHONE: 1-800-375-3089 • FAX: (412) 391-8232

COPY

PHILADELPHIA OFFICE
ASSOCIATED WITH
MATTLEMAN, WEINROTH & MILLER
ATTORNEYS AT LAW
PHILADELPHIA, PA 19110

October 9, 1997

Ms. Essie Quinn
Code Enforcement Officer
City of DuBois
16 West Scribner Avenue
Dubois, PA 15801

Re: James Swartz
Our Intake No. 15755

Dear Ms. Quinn:

Please be advised that this office has recently been contacted by James H. Swartz, 2 West Long Avenue, DuBois, PA 15801. According to Mr. Swartz, you inspected his bookstore and notified him of electrical code violations. You then gave him ninety (90) days to correct these violations. Mr. Swartz informs us that although he has made the requisite corrections, you have not inspected the property.

We are therefore requesting that you inspect Mr. Swartz's bookstore to confirm that he is in compliance with the DuBois Electric Code. We would further appreciate if you would be able to furnish Mr. Swartz a copy of your certification to conduct inspections of this type. Thank you for your courtesy and cooperation in this matter.

Very truly yours,

WELCH, GOLD & SIEGEL, P.C.


S. JOSEPH SCHRAMM, ESQUIRE

SJS/klp

cc: James W. Swartz

There is a previous balance on your account. Your payment will be appreciated.

Register any question or complaint prior to the due date.

ACCOUNT NUMBER 4981-380-03
PA SM COMM/PUBLIC AUTH LL RATE

Name J & B TATTOO SHOP
Service address 10 W LONG AVE

Next Meter Reading on or about Jan 14 Meter 02839134

Billing Information

In 33 days you used 59 ccf of gas determined as follows:

This Reading Dec 13 8529 ESTIMATED
Last Reading Nov 10 8470 ESTIMATED

Amount of gas used 59

This is an estimated bill.

Basic service charge		\$16.25
Charge for first 50 ccf at .734390 per ccf		36.72
Charge for next 9 ccf at .717190 per ccf		6.45
State tax adjustment		-0.06
Sales tax		3.56
Gross receipts tax estimate	2.83	
Current Charges		\$62.92

Billing Summary	
Net credit posted	\$0.00
Late paymt. chng	0.67
Current charges	62.92
Previous balance	44.50
Total amount owed	108.09 62.92

pd 1-25-00 #186
Your due date is DEC 31 99.
A 1.5% late charge will be added to any past due amount

To ask questions or for service call:
1-(800) 365-3234

Your local office address is:
1 RELIEF ST
OIL CITY PA 16301

Your current charges for this billing period include total State taxes of \$6.33.



July 19, 2000

Account Number: 10 00 03 7388 9 8

Page 1 of 3

P72

Bill for:

2 W LONG AVE
DU BOIS PA 15801

Billing Period: Jun 17 to Jul 19, 2000 for 33 days
Next Reading Date: On or about Aug 16, 2000
Bill Based On: Actual Meter Reading

General Secondary 3 Phase Service

Account Summary		Amount Due
Your previous bill was	52.65	52.65
Total payments/adjustments	0.00	
Balance at billing on July 19, 2000	52.65	
Current Basic Charges		18.34
GPU Energy - Consumption		
Total Due by Aug 07, 2000 - Please pay this amount		\$70.99

To avoid a 1.5% Late Payment Charge being added to your bill, please pay by the due date.

When this bill was prepared, your account had an unpaid balance.
If you have already paid, Thank You. If not, that balance is due now,
not the due date shown on this bill. If you have any questions,
call 1-800-962-4848.

General Information	
	Bill issued by: GPU Energy PO Box 15152 Reading PA 19612-5152
	Customer Service 1-800-545-7741 Emergency/Power Outage 1-800-545-7738 Collections 1-800-962-4848

PRINTS SHIP N SAVE \$ 000001
ONLY TO ACCOUNT 01071428
GPU ENERGY NEW
01071428
06/01/00 3:45PM
DU BOIS PA
\$70.99
\$70.99
TOTAL PA
\$0.00

Billing Period: Apr 19 to May 16, 2000 for 28 days
Next Reading Date: On or about Jun 16, 2000
Bill Based On: Actual Meter Reading

General Secondary 3 Phase Service

Account Summary		Amount Due
Your previous bill was	32.72	
Total payments/adjustments	0.00	
Balance at billing on May 17, 2000	32.72	32.72
Current Basic Charges		
GPU Energy - Consumption		30.30
Total Due by Jun 06, 2000 - Please pay this amount		63.02

To avoid a 1.5% Late Payment Charge being added to your bill, please pay by the due date.

When this bill was prepared, your account had an unpaid balance.
If you have already paid, Thank You. If not, that balance is due now,
not the due date shown on this bill. If you have any questions,
call 1-800-962-4848.

General Information

	Bill issued by:		Customer Service	1-800-545-7741
	GPU Energy PO Box 15152 Reading PA 19612-5152		Emergency/Power Outage Collections	1-800-545-7738 1-800-962-4848

See other pages for additional information and telephone numbers

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

REDEVELOPMENT AUTHORITY OF :

THE CITY OF DUBOIS :

-vs-

No. 00 - 591 - CD

JAMES H. SWARTZ :

ORDER

NOW, this 14th day of November, 2000, upon consideration of Motion for Judgment Not Withstanding The Verdict filed by Defendant pro se above named, it is the ORDER of this Court that said Motion be and is hereby dismissed.

By the Court,

President Judge

FILED

NOV 14 2000

William A. Shaw
Prothonotary

19

FILED

10/10

NOV 14 2000

William A. Shaw
Prothonotary

3:31/1cc

*James
Stewart*

*1cc with V
Learson*

**THE SUPERIOR COURT OF PENNSYLVANIA
PITTSBURGH OFFICE**

**TO: WILLIAM SHAW, PROTHONOTARY
CLEARFIELD COUNTY
ELEANOR R. VALECKO, Deputy Prothonotary**

DATE: NOVEMBER 16, 2000

**IN RE: REDEVELOPMENT AUTHORITY OF THE CITY OF DUBOIS
VS. JAMES H. SCHWARTZ
NO. 00-591-CD**

The Notice(s) of Appeal is being returned for the following defects:

The use of et al or any abbreviation is not permitted. The caption must Appear, as it was when the original complaint or indictment paper was Filed with the trial court.

A separate Notice of Appeal should be filed if the captions are not Uniform and has a different trial court docket number or more than one Order is being appealed. (see P.A.R.A.P. 512).

**X OTHER: THE APPELLANT MUST INDICATE THE COURT IN WHICH HE IS
X APPEALING AS WELL AS THE TRIAL COURT ORDER THAT HE WISHES THE
X SUPERIOR COURT TO REVIEW.
X
X**

**X Complete name and address for all counsel and whom they represent;
X Trial court Judge and court reporter. If no testimony was taken it must
X Be so noted.**

**X \$55.00 fee; In Forma Pauper Order or Verified Statement indicating the
X Date In Forma Pauperis was granted, not included**

Copy of Petition to Proceed In Forma Pauperis/Application for Appointment Of Counsel pending disposition by the trial court not attached.

**WHEN THE APPELLANT FILES THE APPROPRIATE CORRECTIONS OR
AN AMENDED NOTICE OF APPEAL HAS BEEN FILED WITH YOUR
OFFICE, THE INITIAL NOTICE OF APPEAL AND THE CORRECTIONS
ARE TO BE FORWARDED TO THE SUPERIOR COURT FOR DOCKETING.**

CC: KEVIN W. BARRON, ESQUIRE

FILED

NOV 20 2000
m/2000/100
William A. Shaw
Prothonotary

#20

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD

:
: Counsel of Record for this Party:

:
: Michael P. Yeager, Esq.
: Supreme Court No.: 15587

:
: P.O. Box 752
: 110 North Second Street
: Clearfield, PA 16830

:
: (814) 765-9611

: Type of Case: Condemnation

:
: Type of Pleading: APPEAL TO TRIAL COURT

:
: SUPERIOR COURT, PITTSBURG

: Filed on Behalf of: Condemnee.

:
: Counsel of Record for this Party:

: James H. Swartz

:
: 2 West Long Avenue
: DuBois Pa 15801

:
: (814) 375-4453

FILED

NOV 27 2000

William A. Shaw
Prothonotary

21

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD
:
: Type of Case: Condemnation
:
:
:
:
:

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1. Corrections and additions to appeal,mitigating circumstances
2. IN FORMA PAUPERIS papers
3. Order for review requested by court
4. Statements
5. 53 PS § 4103
6. Newspaper article prior judgement to local government over people
7. Malicious terms defined
8. Fraud defined
9. Failed to give defendant enough time to do own legal work
10. Eminent Domain Laws
11. 53 P S section 1719.1
12. WPL US CODE not in best interest of city loss of State and Federal money
13. Prevention of discrimination
14. Point of issue : 53 PS section 1712.1 e-1 NO PROPERTY SHALL BE CERTIFIED TO REDEVELOPMENT AUTHORITY UNLESS VACANT!
15. Proof issue on public record still NO SETTLEMENT
16. Proof of prior refusal to let run a business even when upgraded to code!
17. Proof of UTILITIES ON STATE LAW.

CORRECTIONS AND ADDITIONS TO APPEAL

NOTED: NO court reporter was at the hearing for preliminary objections, the trial court judge was Honorable John K. Reilly, Jr. President Judge Attached find copy of the trial court order,

AS MITIGATING CIRCUMSTANCES on in forma pauper order I wish to enter the following:

THE points in controversy here are willful disregard of STATE LAWS and

IN MY OPINION: Malicious abuse of process in legal matters by the city of DU BOIS

A. They already tried to take my building by sherrif sale and at the hearing gaveled down admissions of evidence, wittness were threatened and a gag order to my knowledge placed on MR. Raybuck who had found out other information

IN MY OPINION:

AT least some of the money redeveloping this 5 county area is Laundryed DRUG MONEY going through construction companies from Mafia DRUG LABS !!!!!

1. When the one motel was being built by sears at the du bois mall that contractor told me he had to fire over 40 of his workers in a 6 month period and hire others to met deadline because of drug related poor job performance problems. This INDicates by hearsay that some of the other building contractors these young men worked for were paying them not only with money but partly in COKE!!

YOU want the other evidence on these matters you appoint the Attorney or its obstruction of justice. I lack the legal knowledge to show whats going on alone.

IN MY OPINION what is needed is EN CAMERA by the APPEAL JUDGE of suppressed information and wittness as to this malicious abuse of process so as not to put wittness or their families in j#opardy. Once it is realized what is going on I believe the court will have NO choise but act with the state as plantive, the phone calls to the nation of Columbia ,NEW JERSY, and MAIMIA billed to the city of DU BOIS and one other key point force this.

I ASK FOR a restraining order on the Redevelopment Authority of DU BOIS not to enter the building at 2 west long ave Du Bois Pa., and motion for relief from judgement to take build until a hearing has been held

1. I am the (~~plaintiff~~) (defendant) in the above matter and because of my financial condition am unable to pay the fees and costs of prosecuting or defending the action or proceeding.

2. I am unable to obtain funds from anyone, including my family and associates, to pay the costs of litigation.

3. I represent that the information below relating to my ability to pay the fees and costs is true and correct:

(a) Name: JAMES H. SWARTZ
Address: 2 West Long Ave.
Du Bois, Pa. 15801
Social Security Number: 195-40-9174

(b) Employment

If you are presently employed, state

Employer: Self Employed
Address: 2 West Long Ave
DuBois Pa. 15801

Salary or wages per month: _____

Type of work: SALES

If you are presently unemployed, state

Date of last employment: _____

Salary or wages per month: _____

Type of work: _____

(c) Other income within the past twelve months:

Business or profession: Rentals 1 At 175 per month

Other self-employment: 1 At 160 per month

Interest: less than \$2.00 Timberland credit

Dividends: None UNION

Pension and annuities: None

Social security benefits: None

Support payments: None

Disability payments: None

Unemployment compensation and supplementary benefits: None

Workman's compensation: None

Public assistance: _____

Other: Applying for food stamps

(d) Other contributions to household support

(Wife) (~~Husband~~) Name: NONE

If your (wife) (~~husband~~) is employed, state:

Employer: _____

Salary or wages per month: _____

Type of work: _____

Contributions from children: None

Contributions from parents: None

Other contributions: _____

(e) Property owned

Long Ave and
127 South Brady St. DuBois.

Cash: _____

Checking account: less than 100.00 usually

Savings account: less than 40.00

Certificates of deposit: None

Real estate (including home): _____

Motor vehicle: Make _____, Year _____,

Cost _____, Amount Owed \$ _____

Stocks; bonds: _____

Other: Store Inventory

(f) Debts and obligations

Mortgage: None

Rent: None

Loans: Credit Cards - About 2,500

Other: TAXES Buildings due -

About 4,000 Other About 2,600

(g) Persons dependent upon you for support

☒ (Wife) (~~Husband~~) Name: None

Children, if any:

Name: None Age:

Other persons:

Name: None

Relationship:

4. I understand that I have a continuing obligation to inform the court of improvement in my financial circumstances which would permit me to pay the costs incurred herein.

5. I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: Nov 2000

James Swartz
Petitioner

(i) The praecipe required by subdivision (d) shall be substantially in the following form:

(Caption)

PRAECIPE TO PROCEED IN
FORMA PAUPERIS

To the Prothonotary:

Kindly allow _____, (Plaintiff) (Defendant), to proceed in forma pauperis.

I, _____, attorney for the party proceeding in forma pauperis, certify that I believe the party is unable to pay the costs and that I am providing free legal service to the party. The party's affidavit showing inability to pay the costs of litigation is attached hereto.

Attorney for

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

REDEVELOPMENT AUTHORITY OF :

THE CITY OF DUBOIS :

-vs-

: No. 00 - 591 - CD

JAMES H. SWARTZ: :

ORDER

NOW, this 11th day of October, 2000, the Court having considered
Condemnee's pro se captioned Objections and Defense and treating it as preliminary
objections, it is the ORDER of this Court that said preliminary objections shall be and are
hereby denied.

BY THE COURT,

Honorable John K. Reilly, Jr.
President Judge

FILED

OCT 11 2000

William A. Shaw
Prothonotary

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

NOV 27 2000

Attest.

William A. Shaw
Prothonotary

IN my opinion the Redevelopment Authority of Du Bois ,PA. ,has acted in bad faith in trying to take the building on 2 west long ave. DU BOIS for private not public use. This is ARBITRARILY UNFAIR DISCRIMINATORY PRACTICES BETWEEN BUSINESS and thus UNCONSTITUTIONALLY NOT FOLLOWING STATUTORY PROCEDURES!!!

UNDER 35 P S. 1709 #9 REDEVELOPMENT AUTHORITY HAS NO POWER TO CONDEM PROPERTY UNDER GUISE OF URBAN RENEWAL FOR A PRIVATE PURPOSE!!!

THE person they wanted to sell the property to wanted to use it for the same thing I now do STORES AND OFFICES, ~~SOME~~ STATEMENT TO THIS EFFECT IS A MATTER OF PUBLIC RECORD IN THE DU BOIS NEWSPAPER!!

UNDER PA RULES OF COURT PART 5 MISCELLANEOUS RULE 150 DEFECTS IN FORM: I give note to THE COURT THAT APPEAL WAS ON LEGAL ERROR

REDEVELPPMENT Authority not obeying state laws which have right and control over local laws. IN MY OPINION BOTH THE REDEVELOPMENT AUTHORITY AND THE COURT ACTED WITH DEFECT BEING VERY PREJUDICIAL TO THE RIGHTS OF THE DEFENDANT AND WITH CLEAR TOTAL DISREGARD TO DAMAGES TO MY RENTAL BUSINESS, CREDIT RATE ING AND BUSINESS

MY ABILITY TO REMODLE THE REST OF THE BUILDING DUE TO THE REPEATED HARM OF BAD PRESS CONDEMNATION STATEMENTS, ALWAYS ON THE FRONT PAGE OF THE LOCAL NEWSPAPER RESULTED IN NOT BEING ABLE TO GET A LOAN ON THE BUILDING TO PROCEED WITH PLANS TO FIX UP THE 2 nd FLOOR OFFICE UNITS TO RENT, I LOST A LOT OF MONEY BECAUSE OF THIS!!!!

OBJECTIONS AND DEFENSE

Comes now, James Swartz and does hereby respectfully declare as follows.

1. The first floor of the building at 2 west long ave, Du Bois, Pa. is up to code and has utilities on in both Store fronts open to the public.

2. Repairs have been made to the building every year it is open PREJUDICE try to take this building when I am on public record at city council meeting as having a checking account to start up a Building and Construction Co. to fix up the building and make several office spaces AS the result of an ad right in the bookstore window one kid has agreed to help put baseball cards on the internet..

A Under third class city code section 913 City not to Engage in private Construction. clearly states ALL KINDS -TYPES OF CONSTRUCTION WORK BY LEGITIMATE PRIVATE ENTERPRISE!

B. When public records show that campaign funds according to MR. Logan went to the same city official who voted to give this property to DR. RICE I am denied FAIR MARKET VALUE. THEY are on public record in the Courier Express newspaper as trying to get the property at an unfair price, both buildings next to mine are smaller in size the true value is the building Lot not the building.

3. I believe State law says you cannot condemn a part of a building closed for repairs.

4. I believe STATE LAW says you can not condemn a building that is up for sale, I am gathering up the money to pay off the taxes to transfer the building ownership to the construction co

5. The building two down from mine had been listed on Coldwell for about 60,000 . IT is much smaller than mine Also these people know it is illegal to discriminate but according to Dave Logan the owner of Carpet corner Du Bois gave money to city official campaign funds and that building empty and several others that were for sale in the area did not get taken to redevelop.

6. No business or building always 100 percent rented out, I use part of the upstairs as storage for building repairs materials doors windows ect. Also I have been working to gather up goods for an additional internet site for toys to use up a second office space on the second floor for my own business.

7. My mail box for home address is on this building and my drivers lic. is to this address.

8. I request trial by jury and appeal.

9. I am unable to find any other building in the downtown near a parking lot that does not have a high price tag

10. The city with open Prejudice has twice passed well over twenty pages of city ordinance to try to hurt my business, most ADULT stores do 50,000 to 100,000 in business a year,

If this case against me is not dismissed in my opinion:

1. The city of Du Bois may lose some of its State and Federal Grant Money as a pently for breaking several state laws
2. Their is no amicable arrangement for trying to cheat people out of economic oppurtunity to have Bussiness Rentals and make money
3. I will be forced to File Apeal to Superior Court of Pa., this is an UNdo delay in settling this matter cause ing additional bussiness loss.
4. The city officals have made no effort to make an offer for the damages they have caused to me by statements to th^e newspaper, this resulted in loss of Bussiness rental and loss of bussiness!!!!
5. IN MY OPINION: AS AN ACT OF FRAUD THEY HAVE WITH HELD INFORMATION AS TO THE INCREASE IN THE VALUE OF THE PROPERTY THAT THE BUILDING SITS UPON. THEY WANT THE PROPERTY BEFORE THE NEW STATE ROAD GOES IN!
6. THE CITY OF DU BOIS officals have REpeated ACTS OF MALICIOUS ABUSE OF PROCESS IN PASSING CITY LAWS THAT SEEM TO EFFECT MAINLY ONLY ONE PERSON.
7. THE CITY OFFICALS FAILED TO FORCE THE POLICE DEPT TO HANDLE POLICE COMPLAINTS OF VANDLEISM AND ROBBERY. AS MALICIOUS ACTS OF MALICIOUS INJURY TO LOCAL BUSINESS TO LOWER PROPERTY VALUES.

Library References

Injunction ⇐89(3).
WESTLAW Topic No. 212.

C.J.S. Injunctions § 133.
P.L.E. Injunction § 25.

Notes of Decisions

In general 1

1. In general

An ordinance prohibiting the erection of frame buildings will not be enforced by injunction, unless the building constitutes a nuisance per se. *Williamsport v. McFadden*, 15 W.N.C. 269, 1884; *Lan-*

caster v. Shaub, 7 Lanc. 340, 1890; *Honesdale Borough v. Weaver*, 2 Dist 344, 1893; *Ellwood City v. Mani*, 16 C.C. 474, 1895.

This section does not authorize recourse to any proceedings other than the usual and regular action at law or bill in equity. *City of Philadelphia v. Bartell*, 11 A.2d 563, 139 Pa.Super. 319, Super.1940.

§ 4103. Regulations to supplement state laws

The ordinances enacted pursuant to this act shall not be inconsistent with the provisions of any statute governing the same matter, but all regulations prescribed by such ordinances which are additional or supplementary to the statute law, and not inconsistent therewith, or enacted for the purpose of carrying into effect the provisions of the statute law, shall be valid and binding.

1937, April 14, P.L. 313, No. 87, § 3.

Library References

Municipal Corporations ⇐592(1) to 592(4).
WESTLAW Topic No. 268.

C.J.S. Municipal Corporations §§ 143 to 145.
P.L.E. Municipal Corporations § 412.

Notes of Decisions

In general 1

1. In general

This section providing that zoning ordinances to be enacted be not inconsistent

with provisions of any statute governing the same matter relates to existing statutes and is wholly prospective. *City of Philadelphia v. Bartell*, 11 A.2d 563, 139 Pa.Super. 319, Super.1940.

§ 4104. Building permits; time for approval; explanation for disapproval; highway occupancy permits; "buildings, structures or devices" defined

(a) A municipality which regulates the construction, erection, maintenance, operation or repair of buildings, structures or devices by means of an ordinance requiring the filing of an application, the payment of a fee and the issuance of a permit shall render a decision either approving or disapproving the application for a permit within 90 days after the application is filed unless the ordinance requires a decision within a lesser period of time, provided that any disapproval

THE PROOF

Vol. 94—No. 22

Our 87th Year

Clearfield, Curwensville, Philipsburg, Moshannon Valley, Pa.,

Thursday, January 27, 20

Judge dismisses lawsuit again

By Rebecca Koleno
Staff Writer

Clearfield County President Judge John K. Reilly Jr. has ruled in favor of the Clearfield County Commissioners in regards to the lawsuit filed against them by the Concerned Taxpayers of Clearfield County.

"We are very pleased with the decision," said Gene Lunsford, current commissioner chairman. "In my opinion, the accusations were frivolous and misleading from the beginning."

Theron Noble, attorney for CTCC, said, "It appears that Judge Reilly deferred working through

the various applicable statutes in this case of first impression, presenting the appellate courts with the opportunity to interpret the applicable law."

Tony Yankevich, one of the petitioners, said, "We will definitely appeal this as soon as Mr. Noble has the time. I am very disappointed in the ruling because the commissioners clearly violated the law." The next step would be to file an appeal with the Superior Court of the Western District in the state.

In its suit, CCTC claimed the former board of commissioners, composed of Michael Lytle, Mr. Lunsford and Gerry Hatcher, maintained a

budgetary surplus in excess of what is permitted by law. The taxpayers said this was the case in the 1997, 1998 and 1999 budgets and the audit and financial reports for fiscal years 1997 and 1998. The lawsuit was filed in October.

In November, the commissioners responded by filing preliminary objections to the suit and asked the judge to dismiss the case.

Kim Kesner, county solicitor, said the court lacks any jurisdiction on the allegations for any years before 1999. He said the concerned taxpayers failed to act within the statutes of time for 1997 and 1998.

MALICIOUS ABUSE OF PROCESS

In general—p. 278

Malicious prosecution distinguished—
p. 279

Malicious use distinguished—p. 279

Malicious use of process—p. 280

Ulterior motive—p. 280

Use for purpose not intended by law—
p. 281

Cross References

Abuse of Process

Malicious Prosecution

In general

The elements of action for "malicious abuse of process" are the issuance of process

In general—Cont'd

and its use for improper purpose, and improper use is one for objective outside scope of operation employed. *Melsels v. J. C. A. Trading Corp.*, 69 N.Y.S.2d 720, 722, 189 Misc. 46.

Action for "malicious abuse of process" proceeds on theory that plaintiff has been victim of an unauthorized abusive use of a criminal or civil process. *George v. Leonard*, D.C.S.C., 84 F.Supp. 205, 207.

"Malicious abuse of legal process" is where a plaintiff in a civil proceeding willfully misapplies the process of a court in order to obtain an object which such a process is not intended by law to effect. *Baldwin v. Davis*, 4 S.E.2d 458, 462, 188 Ga. 587.

Petition, alleging that landlord maliciously and without probable cause employed dispossessionary warrant to coerce tenant into paying more than maximum rental allowable under O. P. A. regulations, stated a cause of action for "malicious abuse of process." *Defnall v. Schoen*, 35 S.E.2d 564, 568, 73 Ga. App. 25.

Petition, alleging that landlord maliciously and without probable cause employed a dispossessionary warrant for the purpose of coercing tenant into paying more than maximum rental allowable under O. P. A. regulations, stated a cause of action for "malicious abuse of process" without alleging that proceeding to evict tenant had terminated in tenant's favor. *Defnall v. Schoen*, 35 S.E.2d 564, 568, 73 Ga.App. 25.

Actions for "malicious prosecution", "malicious abuse of process", "false imprisonment" and "false arrest", although differing from each other in some particulars, are all protective of an individual's interest in freedom from confinement, whether such confinement be physically of the person or a limitation of one's personal rights of freedom, as in holding a person to bail, and it is immaterial whether act of defendant directly or indirectly causes the confinement. *McGrath v. Keenan*, 46 A.2d 725, 726, 727, 24 N.J.Misc. 121.

"Malicious abuse of process" is the use of lawful process for purpose not justified by law. *McGrath v. Keenan*, 46 A.2d 725, 726, 727, 24 N.J.Misc. 121.

A petition held insufficient to state cause of action for "malicious abuse of legal proc-

MALICIOUS INJURY

dict based on replies to questions submitted to jury without objection was that money was obtained without fraud, judgment against bankrupt was dischargeable, under Bankruptcy Act, § 17(2), 11 U.S.C.A. § 35(2), because not for a "willful and malicious" injury, which is a willful disregard of what one knows to be his duty, an act wrongful in itself, and necessarily causing injury and done intentionally. In re Burchfield, D.C. N.Y., 31 F.2d 118, 120.

The term "malicious injury," as used in Rev.St.1893, § 4466a, providing that if two or more persons, who shall combine, associate, agree, mutually undertake, or counsel together for the purpose of willfully or maliciously injuring another in his reputation, trade, business, or profession, by any means whatever, or for the purpose of maliciously compelling another to do or perform any act against his will, etc., is synonymous with that term at the common law. It refers to the infliction of a wrongful injury intentionally. The term is synonymous with that term in the law of conspiracy, independent of the statute. State v. Huegin, 85 N.W. 1046, 1067, 110 Wis. 189.

Injury which is intentional, wrongful, or without just cause is "malicious injury to person or property" within provision of Bankruptcy Act excepting certain claims from release by bankrupt's discharge. The word "willful" is Bankruptcy Act § 17, 11 U.S.C.A. § 35, excepting from release by bankrupt's discharge claims founded on liability for willful and malicious injury to person or property, means nothing more than intentional, while "malice" involved is merely disregard of duty which is apparent from the intentional doing of a willful act to the injury of another, and does not require hatred, spite, or ill will. Shabaz v. Henn, 173 S.E. 249, 251, 48 Ga.App. 441.

Under Bankruptcy Act, § 17, subd. 2, 11 U.S.C.A. § 35, excepting from discharge liabilities for obtaining property by false pretenses, or for willful and malicious injury to the person or property of another, a judgment in an action of replevin for the value of property obtained by the bankrupt by false representation that he was solvent and that his note for the property was good is not barred, though a judgment in replevin based on constructive fraud only would be barred, since "malicious," as used in the section, consists in the willful doing of an

act with knowledge it is liable to injure another and regardless of consequences, and does not include the malignant spirit or specific intention to injure the other. In re Kalk, D.C.N.Y., 270 F. 627, 629.

MALICIOUS INJURY TO BUSINESS

Action of "malicious interference with business" or "malicious injury to business" is based upon interference with right to pursue a lawful business, calling, or occupation, free from undue interference or molestation. French v. U. S. Fidelity & Guaranty Co., D.C.N.J., 88 F.Supp. 714, 721.

MALICIOUS INJURY TO PROPERTY

Wrongful sale of land which was subject to unrecorded deed given as mortgage held "malicious injury to property" of mortgagee, liability for which was unaffected by discharge in bankruptcy. Probst v. Jones, 247 N.W. 779, 780, 262 Mich. 678.

To constitute an offense under Rev.Pep. Code, § 712, punishing the "malicious injury or destruction of property," the act must not only be done willfully, but for the purpose of avenging some wrong sustained by the person charged with the offense. One who, on becoming angry without cause, destroyed without justification and in a spirit of wantonness the property of another, violated Rev.Pen.Code, § 712, punishing the malicious injury or destruction of property. State v. Tarlton, 113 N.W. 706, 708, 22 S.D. 495.

MALICIOUS INTENT

The phrases "malicious intent" and "malice aforethought" are not synonymous with "willful, deliberate, and premeditated" intent required as elements of first-degree murder. Pen.Code, § 190. People v. Thomas, 156 P.2d 7, 17, 18, 25 Cal.2d 880.

"Malicious intent" as used in the definition of murder in the first degree is not synonymous with "willful, deliberate and premeditated intent" and proof of malicious intent without the further proof that it was willful, deliberate and premeditated would establish "second degree murder" but not first degree murder. Pen.Code, § 189. People v. Holt, 153 P.2d 21, 27, 25 Cal.2d 59.

MALICIOUS ABUSE

Use for purpose not intended by law—C't'd probable cause, or that it terminated prior to the institution of the suit for damages." *Farrar Lumber Co. v. Hogan*, 103 S.E. 863, 25 Ga.App. 597; *McElreath v. Gross*, 98 S.E. 190, 191, 23 Ga.App. 287; *Scarborough v. J. W. Goldsmith, Grant Co.*, 103 S.E. 192, 25 Ga.App. 269.

A malicious abuse of legal process consists in the malicious misuse or misapplication of process to accomplish a purpose not warranted or commanded by the writ—the malicious perversion of a regularly issued process, whereby a result not lawfully or properly obtained on a writ is secured—and hence it does not include a case where the process was procured maliciously, but in which there was no abuse or misuse after its issuance. *Bartlett v. Christhill, Md.*, 14 A. 518, 521, citing *Grainger v. Hill*, 4 Bing. N.O. 212; *Sommer v. Wilt, Pa.*, 4 Serg. & R. 19.

A "malicious abuse of legal process" occurs where a party employs process for some unlawful object, not the purpose which it is intended by the law to effect, and, in action for such malicious abuse, it is not necessary to prove that action in which process issued has been determined, or to aver that it was sued out without reasonable or probable cause. *Fenton Storage Co. v. Feinstein*, 195 A. 176, 178, 179, 129 Pa.Super. 125.

MALICIOUS ACCUSATION

"Malicious accusation," within Comp.St. 1922, § 9579, denouncing blackmail, is to procure accusation or prosecution of another from improper motive and without probable cause, and is similar to malicious prosecution, and is not same as a "malicious threat to accuse of crime," which means that one acts with evil intent and with evil motive by threats of criminal prosecution, through fear of which will of individual threatened is intended to be overcome. *McKenzie v. State*, 204 N.W. 60, 63, 113 Neb. 576.

MALICIOUS ACT

A "malicious act" is an unlawful act done intentionally without just cause, legal justification or excuse. *Michels v. Boruta, Tex. Civ.App.*, 122 S.W.2d 216, 220.

A "malicious act" is one committed in a state of mind which shows a heart regardless

of social duty and fatally bent on mischief, a wrongful act intentionally done without legal justification nor excuse. *Rankin v. State*, 139 S.W.2d 811, 812, 139 Tex.Cr.R. 247.

The act of persuading a person to break his contract for the indirect purpose of injuring the other contracting party or benefiting the person inducing such breach at the expense of the other contracting party is a "malicious act" which is wrongful and therefore actionable if injury issues therefrom. *Wilkinson v. Powe*, 1 N.W.2d 539, 542, 300 Mich. 275.

"A malicious act" is an unlawful act done intentionally, without just cause or excuse. *Tucker v. Bartlett*, 155 P. 1, 2, 97 Kan. 163.

A malicious act is one done without just cause, or one done with a wrongful purpose. *Morrison v. Press Pub. Co.*, 14 N. Y.S., 131, 132, 59 N.Y.Super.Ct.(29 Jones & S.) 216.

In an action for assault, there must be a wrongful act done intentionally without just cause or excuse, and such an act is "malicious" in the statutory sense. In re *Smyser*, 182 Ill.App. 208, 209.

Bouvier defines a malicious act as "a wrongful act, intentionally done, without cause or excuse"—the definition of Bayley, J., in *Bromage v. Prosser*, 4 Barn. & C. 247. *Brandt v. Morning Journal Ass'n*, 80 N.Y.S. 1002, 1004, 81 App.Div. 183.

In general a malicious act involves all that is usually understood by the term "willful," and is further marked by either hatred or ill will toward the party injured, or by such utter recklessness and disregard of the rights of others as denotes a corrupt or malevolent disposition. *State v. Willing*, 105 N.W. 355, 356, 129 Iowa, 72.

A malicious act is one committed in a state of mind which shows a heart regardless of social duty and fatally bent on mischief—a wrongful act intentionally done, without legal justification or excuse. *Bowers v. State*, 7 S.W. 247, 24 Tex.App. 542, 5 Am.St.Rep. 901; *High v. State*, 10 S.W. 238, 241, 26 Tex.App. 545, 8 Am.St.Rep. 488.

In a legal sense, any unlawful act done willfully to the injury of another is, as against that person, malicious, and it is not necessary that the perpetrator of such act should be influenced by ill will towards such

MALICIOUS PROSECUTION

in order to give the injured employee the option of either suing for damages at common law or proceeding under the Workmen's Compensation Act is a conscious and deliberate intent directed to the purpose of inflicting an injury and such intent may not be inferred from mere negligence although it is gross. *Brelmhorst v. Beckman*, 35 N. W.2d 719, 730, 227 Minn. 409.

MALICIOUS PROSECUTION

In general—p. 303
 Abuse of process distinguished—p. 308
 Civil litigation—p. 308
 Essential elements—p. 309
 False imprisonment distinguished—p. 314
 Malice and want of probable cause—p. 318
 Malice imputed to attorney—p. 322
 Malicious arrest synonymous—p. 322

Cross References

Abuse of Legal Process
 Abuse of Process
 False Imprisonment
 Malice

In general

In a "malicious prosecution," the proceedings are had in pursuance of legal process, maliciously and wrongfully obtained. *Barfield v. Marron*, 62 So.2d 276, 280, 222 La. 210.

"Malicious prosecution" is the putting of the processes of law into operation maliciously and without probable cause leading on in due course to the arrest of the victim. *Huffstutler v. Edge*, 47 So.2d 191, 193, 35 Ala.App. 276.

To state a cause of action for "malicious prosecution" it must be alleged and proved that action upon which the suit is based shall have been terminated in favor of defendant therein. *Simpkins v. Brooks*, D.C.Mun.App., 49 A.2d 549, 551.

Malicious prosecution is not limited to criminal suits. *Hayes v. Union Mercantile Co.*, 70 P. 975, 979, 27 Mont. 264.

Prosecution instituted for purpose of collecting debt or other private motive is "malicious prosecution" in legal sense. *Pritchett v. Northwestern Mut. Life Ins. Co.*, 73 S.W.2d 815, 819, 223 Mo.App. 661.

The mere fact of an acquittal or termination of criminal proceedings in favor of

In general—Cont'd

accused does not make out a prima facie case of "malicious prosecution" against person who instituted those proceedings. *Stinson v. Smith*, 196 A. 843, 329 Pa. 177.

"Malicious prosecution" is criminal prosecution instituted upon no or such slight grounds of suspicion as to indicate general disregard of rights of others directed by chance against individual. *Freezer v. Miller*, 176 S.E. 159, 170, 163 Va. 180.

A complaint which alleged that tenant left leased premises as result of stipulation signed by himself and his attorney and in compliance with resulting judgment in landlord's action under Emergency Rent Act to secure possession, and which further alleged that landlord's statement in regard to his intention to immediately occupy designated premises as a dwelling were fraudulent, could not be upheld as stating a cause of action for "malicious prosecution," where it appeared that the action upon which suit was based terminated in landlord's favor. *Simpkins v. Brooks*, D.C.Mun.App., 49 A.2d 549, 551.

A "malicious prosecution" is a prosecution with malice and without probable cause; "false imprisonment" is arrest and imprisonment without legal process; and "abuse of process" is misuse of legal process for ulterior purpose. *State, for Use of Little v. U. S. Fidelity & Guaranty Co.*, Miss., 64 So.2d 697, 704.

The essential elements of a "malicious prosecution" are the commencement of a criminal prosecution against plaintiff, its causation by defendant, its termination in favor of plaintiff, plaintiff's innocence of crime charged, absence of probable cause for such proceeding, presence of actual malice therein, and damages resulting to plaintiff by reason thereof. *Montgomery Ward & Co. v. Kirkland*, Tex.Civ.App., 225 S.W.2d 906, 907, 908.

"Malicious prosecution" is an action for the recovery of damages to person, property or reputation shown to have proximately resulted from a previous civil or criminal proceeding which was commenced or continued without probable cause, but with malice, and which has terminated unsuccessfully. *Riegel v. Hygrade Seed Co.*, D.C.N.Y., 47 F.Supp. 290, 293.

MALICIOUS PROSECUTION

In general—Cont'd

Unsuccessful efforts to secure the institution of proceedings, however malicious or unfounded, are not actionable as "malicious prosecution". *Melvin v. Pence*, 130 F.2d 423, 426, 76 U.S.App.D.C. 154, 143 A.L.R. 149.

A cause of action for "malicious prosecution" is complete when the prosecution is terminated in favor of plaintiff, and the statute of limitations begins to run at that time. *White v. Pacific Telephone & Telegraph Co.*, 123 P.2d 193, 195, 168 Or. 371.

The gravamen of "malicious prosecution" action is the wrongful institution or prosecution of action or proceeding without probable cause, to hurt and damage of complainant. *Manufacturers & Jobbers Finance Corp. v. Lane*, 19 S.E.2d 849, 853, 854, 221 N.C. 189.

Where plaintiff brings action or institutes process and prosecutes the same with malice and without probable cause, the defendant can obtain full relief by action for "malicious prosecution". *Manufacturers & Jobbers Finance Corp. v. Lane*, 19 S.E.2d 849, 853, 854, 221 N.C. 189.

Instituting a prosecution for the purpose of aiding in the collection of a debt is for an improper purpose and therefore a "malicious prosecution". *State Life Ins. Co. of Indianapolis, Ind., v. Hardy*, 195 So. 708, 713, 189 Miss. 266.

To create right of action for "malicious prosecution," there must exist malice on part of defendant in procuring or bringing about unfounded prosecution or other action. *Lexington Cab Co. v. Terrell*, 137 S.W.2d 721, 724, 282 Ky. 70.

One who does not swear out the warrant cannot be held liable for "malicious prosecution" unless he instigated a criminal action against plaintiff or caused one to be maintained or voluntarily aided or assisted in its prosecution. *Fertitta v. Herndon*, 3 A.2d 502, 504, 175 Md. 560, 120 A.L.R. 1317.

Defendant who did not advise, aid or abet prosecution of a criminal case could not be held for "malicious prosecution" because after learning of prosecution instituted by another defendant he did nothing to stop it. *Fertitta v. Herndon*, 3 A.2d 502, 504, 175 Md. 560, 120 A.L.R. 1317.

In general—Cont'd

Strictly speaking, the term "malicious prosecution" is applicable only to the carrying on of a criminal case, and is used in such sense only in the statute concerning rights of action for malicious prosecution. Code 1933, § 105-801 et seq. *Baldwin v. Davis*, 4 S.E.2d 458, 461, 188 Ga. 587.

Complaint which alleged that seizure was unlawful, because warrant of attachment was void, in that the papers on which it was granted were insufficient to confer jurisdiction, but which alleged no facts to show lack of probable cause existed, failed to state a cause of action for "malicious prosecution". *Hubbard v. Banker*, 24 N.Y.S.2d 289, 293, 295.

"Malicious prosecution" in law is a tort, and consists in defendant therein maliciously and without probable cause setting in motion the laws of particular jurisdiction whereby the plaintiff in such action is wrongfully and maliciously accused of committing some criminal offense, or committing some other wrong justifying the particular procedure taken against him, though it be a civil one, and by reason of which he sustains the damages he seeks to recover. *Lexington Cab Co. v. Terrell*, 137 S.W.2d 721, 724, 282 Ky. 70.

A petition for "malicious prosecution" will not lie unless it is alleged that prosecution has terminated in favor of petitioner. *Hughes v. Georgia Power Co.*, 15 S.E.2d 466, 468, 65 Ga.App. 163.

A petition did not state cause of action for "malicious prosecution" against street railroad whose officers caused the arrest of plaintiff for unlawfully smoking on street car, where petition alleged that judgment and sentence were still outstanding, and contention that judgment was void was untenable. Code, § 18-203. *Hughes v. Georgia Power Co.*, 15 S.E.2d 466, 468, 65 Ga.App. 163.

Evidence that surveyors who surveyed boundary between plaintiff's and defendant's lands thought that land from which plaintiff cut timber was within defendant's boundary warranted conclusion that defendant had "probable cause" to believe that defendant owned such land and that plaintiff was without color of title to it, and hence defendant was not liable to plaintiff for "malicious prosecution" as result of de-

Developer does not want downtown building

DUBOIS — Dr. Jeff Rice, who has led the renaissance of much of South Brady Street during the past few years, said Wednesday he does not intend to buy the "Used Books 'N' Stuff" building at the northwest corner of Brady Street and Long Avenue even if the DuBois Redevelopment authority does acquire the property through its power of condemning it.

DUBOIS

The eminent downtown issue is now before the Clearfield County Court. The building had been up for a tax sale, but some taxes have been paid by owner James Swartz. The building is also involved as an asset in a civil suit filed against Swartz.

The authority seeks to acquire the building and have it

renovated as part of the ongoing redevelopment of downtown DuBois. Rice said Wednesday he had considered buying the building privately, but that fell through. Rice entered into a contract with the DuBois Redevelopment Authority in April 1989, according to previous Courier-Express stories.

That contract has expired. Lance Marshall, authority ex-

ecutive director, said Wednesday the authority is going to work with Swartz on whatever steps forward. At this time, Rice said, he will work with the Redevelopment Authority and assist in efforts to improve the area if the authority does acquire the building, but he himself won't buy it.

Rice has renovated several buildings along South Brady Street. See RICE, Page A 11



LOCK V. SCHREPPLER

Cite as, Del. Super., 426 A.2d 856

Del. 857

STIFTEL, President Judge.

John LOCK, Sr. and Ella G. Lock,
his wife, Plaintiffs,

v.

George B. SCHREPPLER, Defendant.

Superior Court of Delaware,
New Castle County.

Submitted Nov. 23, 1980.

Decided Jan. 28, 1981.

Purchasers of residence brought action
for statutory and common-law fraud

against seller's real estate agent and others. After extensive discovery, purchasers dismissed action against all defendants except real estate agent, who moved for summary judgment. The Superior Court, New Castle County, Stiftel, President Judge, held that: (1) fact issues precluded summary judgment as to portion of action based on common-law fraud, and (2) statutes providing regulatory powers to Real Estate Commission in order to protect public did not create private cause of action.

Motion granted in part, denied in part.

1. Fraud ⇐ 4½

A representation may be fraudulent, even if it is true, if defendant knows that because of facts not stated, statement is materially misleading.

2. Fraud ⇐ 17

Where there is no general duty to speak, nevertheless, if person undertakes to speak, he then has duty to make full and fair disclosure as to matters about which he assumes to speak.

4. Fraud ⇐ 30

Where broker engaged to sell induces third person to purchase property by means of fraud, broker may be liable to that person for loss suffered as a consequence.

5. Fraud ⇐ 21

Where an ordinary investigation will not reveal a latent defect, purchaser of residence may rely upon representation of real estate agent as to defect.

6. Fraud ⇐ 21

Where only partial investigation of thing to be purchased is made, under proper

circumstances, purchaser may rely on another's representations to his detriment, particularly where other person making said representations has superior knowledge.

7. Fraud ⇐ 20

Justifiable reliance which plaintiffs in action for fraud must demonstrate requires that representation made by defendant and relied upon by plaintiff involve matters which reasonable person would consider important in determining his choice of action in transaction in question, but does not require that reasonable person would make choice solely on basis of that matter; the misrepresentations need merely be a substantial factor in inducing plaintiffs to act.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

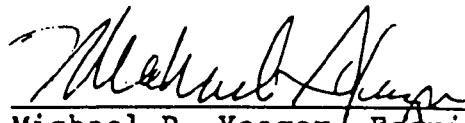
REDEVELOPMENT AUTHORITY OF	:	
THE CITY OF DUBOIS,	:	No. 00 - 591 - CD
Condemnor	:	
vs	:	IN CONDEMNATION
	:	
JAMES H. SWARTZ,	:	
Condemnee	:	

OBJECTION TO CONDEMNEE'S REQUEST FOR ANOTHER THIRTY DAY EXTENSION

COMES NOW, MICHAEL P. YEAGER, ESQUIRE, Attorney for the
Condemnor, and files the within Objection to the Request for a
Another Thirty Day Extension filed on behalf of Condemnee based
upon the following:

1. Condemnee has already sought and secured a thirty-day
extension within which to file a legal Brief.
2. The oral argument on this matter is still not scheduled
until September 28, 2000.
3. Accordingly, Condemnee has had sufficient time from the
filing of his Objection and Defense on June 19, 2000 to prepare.

WHEREFORE, Condemnor respectfully objects to the Request for
Thirty Day Extension as filed by Condemnee.



Michael P. Yeager, Esquire
Attorney for Condemnor

Unconsolidated Pennsylvania Statutes

EMINENT DOMAIN (Title 26)

ARTICLE I. SHORT TITLE

§ 1-101. Short title.

This act shall be known and may be cited as the "Eminent Domain Code."

[Note: The Eminent Domain Code is inapplicable to condemnations by public utilities. See, *Appeal of Giesler*, 154 Pa. Commonwealth Ct. 48, 622 A.2d 408 (1993). Further, the Rules of Civil Procedure {except rules 4001 and following per Pa.R.C.P.No.4001(a)(1)} do not apply to Eminent Domain Code proceedings. See, *Appeal of McCoy*, 153 Pa. Commonwealth Ct. 504, 621 A.2d 1163 (1993).]

The complete Pennsylvania Statutes are not yet available on the web. However, selected portions have been made available and can be accessed by [CLICKING HERE](#). These statutes, though available instantaneously over the web, may not be the current law. Court decisions overturning them, later statutes amending them, and a host of other factors come into play when interpreting them. They are provided here as a resource. They should provide some information about the state of the law. However, a competent lawyer, *who from other sources will research the law to insure what is current*, should always be employed in matters of importance.

Visit/Return to Home Page of Pennsylvania District Court 15-4-04.

Short Title / Judiciary@aol.com / last revised December 1999

NDOT MUST PAY

NDOT took Kenneth Barsy's land in Las Vegas for part of the new Spring Mountain Road and Interstate 15 Interchange. Before actually taking the property, though, NDOT announced the project. NDOT representatives visited Barsy's tenants and informed them of the project. This announcement caused Barsy's tenants, Decratrend Paints and another business, to move off the property. The effect on Barsy was devastating. Not only did he lose these tenants and the income stream from their rent payments, but other potential tenants would not move into the property because they knew the project was coming.

The department then made it harder on Barsy by not

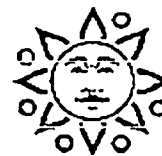
with property he could not rent. Barsy also alleged his property was made more difficult to sell.

When the condemnation finally came, he sought not only the value of the land but the amount of his lost rents. The trial court said "no" but the Supreme Court reversed. The Supreme Court said that when the government unreasonably delays a condemnation after making an official announcement of intent to condemn, the property owner may have whatever precondemnation damages he can prove. These damages can include lost rents. The Court sent the matter back to the trial court for a new trial where Barsy will be allowed a chance to prove his damages.

This decision is important because it is a departure from established Nevada law. Lost rents were previously not

land's market value. This decision creates a new class of damages, called pre-condemnation damages, which are now available to Nevada property owners under proper circumstances. In making its ruling, the Nevada Supreme court endorsed California law precondemnation damages.

This newsletter is published periodically by eminent domain attorney, Michael G. Chapman.



This newsletter is for general information only, and is not legal advice. The statements made herein should not be relied upon as legal advice. Please contact a competent eminent domain attorney for personal help and advice.

Eminent Domain 5

November 1999 • Issue Five

YOUR CASE: PART ONE

In a typical eminent domain case, the government first decides it wants to construct a public project. The project must be for a public purpose, such as a road or flood control basin. Almost any kind of project qualifies as a public project, including land

These planning activities can hurt land owners. For example, uncertainty over when the project will be built can cause tenants to vacate the premises, leaving the landowner with empty property on which he must still pay taxes and mortgage installments. In most cases, the government is not liable for the damage caused to

THIS NEWSLETTER

This newsletter is published periodically by Eminent Domain Attorney, Michael G. Chapman. This newsletter is for general information only, and is not legal advice. The statements made herein should not be relied upon as legal advice. Please contact an

may extend the time for filing preliminary objections. Preliminary objections shall be limited to and shall be the exclusive method of challenging

- (1) the power or right of the condemnor to appropriate the condemned property unless the same has been previously adjudicated;
- (2) the sufficiency of the security;
- (3) any other procedure followed by the condemnor; or
- (4) the declaration of taking.

Failure to raise these matters by preliminary objections shall constitute a waiver thereof.

(b) Preliminary objections shall state specifically the grounds relied upon.

(c) All preliminary objections shall be raised at one time and in one pleading. They may be inconsistent.

(d) The condemnee shall serve a copy of the preliminary objections on the condemnor within seventy-two hours after filing the same.

(e) The court shall determine promptly all preliminary objections and make such preliminary and final orders and decrees as justice shall require, including the revesting of title. If preliminary objections are finally sustained, which have the effect of finally terminating the condemnation, the condemnee shall be entitled to damages as if the condemnation had been revoked under section 408,1 to be assessed as therein provided. If an issue of fact is raised, the court shall take evidence by depositions or otherwise. The court may allow amendment or direct the filing of a more specific declaration of taking.

1964, Sp.Sess., June 22, P.L. 84, art. Iv, § 406. As amended 1969, Dec. 5, P.L. 316, § 1.

§ 407. Possession; entry; payment of compensation

(a) The condemnor, after the expiration of the time for filing preliminary objections by the condemnee to the declaration of taking, shall be entitled to possession or right of entry upon payment of, or a written offer to pay to the condemnee, the amount>

Transfer interrupted!

>

Transfer interrupted!

after refuses to deliver possession or permit right of entry, the prothonotary upon praecipe of the condemnor shall issue a nile, returnable in five days after service upon the condemnee, to show cause why a writ of possession should not issue, upon which the court, unless preliminary objections warranting delay are pending, may issue a writ of possession conditioned upon payment to the condemnee or into court of such estimated just compensation and on such other terms as the court may direct.

(b) If within sixty days from the filing of the declaration of taking, the condemnor has not paid just compensation as provided in subsection (a) of this section, the condemnee may tender possession or right of entry in writing and the condemnor shall thereupon make payment of the just compensation due such condemnee as estimated by the condemnor. If the condemnor fails to make such payment the court, upon petition of the condemnee, may compel the condemnor to file a declaration of estimated just compensation or, if the condemnor fails or refuses to file such declaration, may at the cost of the condemnor appoint an impartial expert appraiser to estimate such just

compensation. The court may, after hearing, enter judgment for the amount of the estimated just compensation.

(c) The compensation paid under subsections (a) and (b) of this section shall be without prejudice to the rights of either the condemnor or the condemnee to proceed to final determination of the just compensation and the payments heretofore made shall be considered only as payments pro tanto of the just compensation as finally determined. However, in no event shall the condemnee be compelled to pay back to the condemnor the compensation paid under subsections (a) and/or (b), even if the amount of just compensation as finally determined shall be less than the compensation so paid.

1964, Sp.Sess., June 22, P.L. 84, art. IV, § 407. As amended 1969, Dec. 5, P.L. 316, § 1.

§ 409. Right to enter property prior to condemnation

Prior to the filing of the declaration of taking, the condemnor or its employees or agents, shall have the right to enter upon any land or improvement which it has the power to condemn, in order to make studies, surveys, tests, soundings and appraisals, provided that the owner of the land or the party in whose name the property is assessed has been notified ten days prior to entry on the property. Any actual damages sustained by the owner of a property interest in the property entered upon by the condemnor shall be paid by the condemnor and shall be assessed by the court or viewers in the same manner as provided in section 408.1

1964, Sp.Sess., June 22, P.L. 84, art. IV, § 409.

§ 501. Agreement as to damages

At any stage of the proceedings, the condemnor and the condemnee may agree upon all or any part or item of the damages, and proceed to have those parts or items thereof not agreed upon assessed as herein provided. The condemnor may make payment of any part or item thereof so agreed upon.

1964, Sp.Sess., June 22, P.L. 84, art. V, § 501.



Municipal Authorities Act - index

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Gleason, DiFrancesco, Shahade, Barbin & Markovitz Home Page

Updated January 1999

acquisitions for downtown redevelopment and airport noise mitigation.

When word of an impending government project that may affect your property first reaches you, you should consider whether any pre-condemnation planning on your part would be worthwhile. Pre-condemnation planning can involve many things, for example, wording leases so the relative rights of the lessors and lessees in the event of condemnation are clearly spelled out. Other steps may be useful as well.

In addition to pre-condemnation planning, you should evaluate whether the actions of the government, before condemnation, are harming the market value of your property. (See newsletter Number 4, where we discuss the Barys case). The planning process can take a long time.

the land owner during the planning of a project; however, pre-condemnation damages are available when the government acts unreasonably or oppressively.

What you should do during later stages of eminent domain proceedings is covered in the next series of newsletters.

CHAPMAN FIRM NEWS

Our firm recently represented a land owner whose property was taken by the Nevada Department of Transportation for road widening in Reno. NDOT's original plan was to take only part of the property. We successfully proved to NDOT that the remainder land would be left in an uneconomical shape and size, and be of little value to the owner. We settled the case with NDOT agreeing to buy the entire parcel, at a substantially higher per square foot value than the department's initial offer.

office for help and advice pertinent to your particular situation.

Reno:

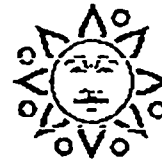
1575 Delucchi Lane, Suite 116A,
Reno, NV 89502. 775-827-1866,
(fax) 775-827-1872.

Las

Vegas: Hughes Center, 3753
Howard Hughes Parkway, Suite
200, Las Vegas, NV 89109, 702-
892-3706, (fax) 702-892-3650.

Email:

michael@chapman.reno.nv.us



This newsletter is for general information only, and is not legal advice. The statements made herein should not be relied upon as legal advice. Please contact a competent eminent domain attorney for personal help and advice.

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(Reno) 1575 Delucchi Lane, Suite 116-A, Reno NV 89502 Voice 775.827.1866 Fax 775.827.1872

(Las Vegas) Hughes Center 3753 Howard Hughes Pkwy #200 Las Vegas, NV Voice 702.892.3706 Fax 702.825.8002

email - michael@chapman.reno.nv.us web - <http://www.michaelchapman.com>

Johnstown Redevelopment Authority

Urban Redevelopment Law 53 P.S. Section 1719.1

Johnstown, Pennsylvania

§ 1719.1. Notice to displaced persons

- (a) A redevelopment authority in a city of the first class intending to alter or demolish property in furtherance of authority projects or programs shall give timely notice to all occupants required by such alteration or demolition to vacate the property.
- (b) Notice shall be given at the earliest practicable time prior to the dislocation of person affected, but no later than 30 days prior to the commencement of the alteration or demolition of the property.
- (c) The form of notice shall include, but not be limited to, posters or other graphic materials of sufficient size and design as will reasonably draw attention and which will reasonably inform the occupants of the property of the impending alteration or demolition and the date by which the occupants must vacate the property. Posters or other graphic materials shall be posted on and about the property in sufficient numbers as to reasonably draw the attention of all occupants of the property.
- (d) This section shall not be construed to relieve any authority of any duty to occupants of property as provided by law or regulation, including, but not limited to, the relocation assistance provisions of the act of June 22, 1964 (Sp.Sess., P.L. 84, No. 6), known as the "Eminent Domain Code," and regulations promulgated thereunder.

1945, May 24, P.L. 991, § 19.1, added 1978, April 18, P.L. 39, No. 21, §1, imd. effective.

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officer or employee designated by any executive department or agency subject to this order may hold such hearings, public or private, as the Committee, department, or agency may deem advisable for compliance, enforcement, or educational purposes.

Sec. 302. If any executive department or agency subject to this order concludes that any person or firm (including but not limited to any individual, partnership, association, trust, or corporation) or any State or local public agency has violated any rule, regulation, or procedure issued or adopted pursuant to this order, or any nondiscrimination provision included in any agreement or contract pursuant to any such rule, regulation, or procedure, it shall endeavor to end and remedy such violation by informal means, including conference, conciliation, and persuasion unless similar efforts made by another Federal department or agency have been unsuccessful. In conformity with rules, regulations, procedures, or policies issued or adopted by it pursuant to Section 203 hereof, a department or agency may take such action as may be appropriate under its governing laws, including, but not limited to, the following:

It may -

(a) cancel or terminate in whole or in part any agreement or contract with such person, firm, or State or local public agency providing for a loan, grant, contribution, or other Federal aid, or for the payment of a commission or fee;

(b) refrain from extending any further aid under any program administered by it and affected by this order until it is satisfied that the affected person, firm, or State or local public agency will comply with the rules, regulations, and procedures issued or adopted pursuant to this order, and any nondiscrimination provisions included in any agreement or contract;

(c) refuse to approve a lending institution or any other lender as a beneficiary under any program administered by it which is affected by this order or revoke such approval if previously given.

Sec. 303. In appropriate cases executive departments and agencies shall refer to the Attorney General violations of any rules, regulations, or procedures issued or adopted pursuant to this order, or violations of any nondiscrimination provisions included in any agreement or contract, for such civil or criminal action as he may deem appropriate. The Attorney General is authorized to furnish legal advice concerning this order to the Committee and to any department or agency requesting such advice.

Sec. 304. Any executive department or agency affected by this

KNOW YOUR LAND RIGHTS!

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WPL USCODE

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feasible of the goal of a decent home and a suitable living environment for every American family; and

WHEREAS discriminatory policies and practices based upon race, color, creed, or national origin now operate to deny many Americans the benefits of housing financed through Federal assistance and as a consequence prevent such assistance from providing them with an alternative to substandard, unsafe, unsanitary, and overcrowded housing; and

WHEREAS such discriminatory policies and practices result in segregated patterns of housing and necessarily produce other forms of discrimination and segregation which deprive many Americans of equal opportunity in the exercise of their unalienable rights to life, liberty, and the pursuit of happiness; and

WHEREAS the executive branch of the Government, in faithfully executing the laws of the United States which authorize Federal financial assistance, directly or indirectly, for the provision, rehabilitation, and operation of housing and related facilities, is charged with an obligation and duty to assure that those laws are fairly administered and that benefits thereunder are made available to all Americans without regard to their race, color, creed, or national origin:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, it is ordered as follows:

PART I - PREVENTION OF DISCRIMINATION

Section 101. I hereby direct all departments and agencies in the executive branch of the Federal Government, insofar as their functions relate to the provision, rehabilitation, or operation of housing and related facilities, to take all action necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex or national origin -

(a) in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities are -

(i) owned or operated by the Federal Government, or
(ii) provided in whole or in part with the aid of loans, advances, grants, or contributions hereafter agreed to be made by the Federal Government, or

(iii) provided in whole or in part by loans hereafter insured, guaranteed, or otherwise secured by the credit of the Federal Government or

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<=BACK NEXT=>

Johnstown Redevelopment Authority

Urban Redevelopment Law 53 P.S. Section 1712.1

Johnstown, Pennsylvania

§ 1712.1. Blighted property removal

- (a) Notwithstanding any other provision of this act, any Redevelopment Authority shall have the power to acquire by purchase, gift, bequest, eminent domain or otherwise, any blighted property as defined in this section, either within or outside of a certified redevelopment area and, further, shall have the power to hold, clear, manage and/or dispose of said property for residential and related reuse and commercial or industrial reuse. This power shall be exercised in accord with the procedures set forth in this section.
- (b) Such power on the part of any Redevelopment Authority shall be conditioned upon the creation or existence of a vacant property review committee by ordinance of the governing body of the municipality. The committee shall be made up of members as determined in the said ordinance, but shall include at least one member of the governing body, a representative of the Redevelopment Authority, a representative of the appropriate planning commission, and a representative to be designated by the chief executive officer or officers from the executive branch of the government of the municipality.
- (c) Blighted property shall include:
 - (1) Any premises which because of physical condition or use is regarded as a public nuisance at common law or has been declared a public nuisance in accordance with the local housing, building, plumbing, fire and related codes.
 - (2) Any premises which because of physical condition, use or occupancy is considered an attractive nuisance to children, including but not limited to abandoned wells, shafts, basements, excavations, and unsafe fences or structures.
 - (3) Any dwelling which because it is dilapidated, unsanitary, unsafe, vermin-infested or lacking in the facilities and equipment required by the housing code of the municipality, has been designated by the department responsible

for enforcement of the code as unfit for human habitation.

-
- (4) Any structure which is a fire hazard, or is otherwise dangerous to the safety of persons or property.
-
- (5) Any structure from which the utilities, plumbing, heating, sewerage or other facilities have been disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use.
-
- (6) Any vacant or unimproved lot or parcel of ground in a predominantly built-up-neighborhood, which by reason of neglect or lack of maintenance has become a place for accumulation of trash and debris, or a haven for rodents or other vermin.
-
- (7) Any unoccupied property which has been tax delinquent for a period of two years prior to the effective date of this act, and those in the future having a two year tax delinquency.
-
- (8) Any property which is vacant but not tax delinquent, which has not been rehabilitated within one year of the receipt of notice to rehabilitate from the appropriate code enforcement agency.
- (d) Residential and related use shall include residential property for sale or rental and related uses, including, but not limited to, park and recreation areas, neighborhood community service, and neighborhood parking lots.
- (e) The blighted property review committee and the appropriate planning commission, upon making a determination that any property is blighted within the terms of this section, must certify said blighted property to the Redevelopment Authority, except that:
 -
 - ★ ○ (1) No property shall be certified to the Redevelopment Authority unless it is vacant.
 -
 - (2) No property shall be certified to the Redevelopment Authority unless the owner of the property or an agent designated by him for receipt of service of notices within the municipality has been served with notice of the determination that the property is blighted, together with an appropriate order to eliminate the conditions causing the blight and notification that failure to do so may render the property subject to condemnation under this act. The notice shall be served upon the owner or his agent in accord with the provisions of a local ordinance pertaining to service of notice of determination of a public nuisance. The owner or his agent shall have the right of appeal from the determination in the same manner as an appeal from

the determination of public nuisance.

-
- (3) No blighted property shall be certified to the Redevelopment Authority until the time period for appeal has expired and no appeal has been taken, or, if taken, the appeal has been disposed of, and the owner or his agent has failed to comply with the order of the responsible department or other officer or agency.
- (f) Acquisition and disposition of blighted property under this section shall not require preparation, adoption or approval of a redevelopment area plan or redevelopment proposal as set forth in section 10, but at least thirty days prior to acquisition of any property under this section, the Redevelopment Authority shall transmit identification of the property to the planning commission of the municipality and shall request a recommendation as to the appropriate reuse of the property. The Redevelopment Authority shall not acquire the property where the planning commission certifies that disposition for residential or related use would not be in accord with the comprehensive plan of the municipality.
- (g) Power of eminent domain shall be exercised pursuant to a resolution of the Redevelopment Authority and the procedure set forth in the act of June 22, 1964 (Sp.Sess., P.L. 84, No. 6),² known as the "Eminent Domain Code," as amended.
- (h) Property disposed of within a redevelopment area shall be disposed of under a redevelopment contract in accordance with the provisions of this act.

Property disposed of outside an urban renewal project area shall be disposed of by deed in accordance with the provisions set forth in applicable law.

1945, May 24, P.L. 991, § 12.1, added 1978, June 23, P.L. 556, No. 94, § 2, effective in 60 days. Amended 1988, March 30, P.L. 304, No. 39, § 5, ind. effective.

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Johnstown Redevelopment Authority Home Page

Paving projects post

By MARY JO YEBERNETSKY

Building owner: Condemnation plans in error

By MARY JO YEBERNETSKY
C-E Staff Writer

The DuBois Redevelopment Authority is legally condemning the property to acquire it under the authority's right of eminent domain. Swartz will be paid the appraised value of the building when the condemnation process is completed, according to previously published reports.

The building is said to be key to the city's downtown revitalization, according to Lance Martin. See BUILDING, Page A 11



DuBois

— Graham A. Whalen, 6, ... over his brother, Jude ... a baseball. The boys ... catch with their father in ... N.Y. (AP Photo)



ng family
mentally
t boy
ckstop

ONCH Miss (SHN) On

There is a previous balance on your account. Your payment will be appreciated.

Register any question or complaint prior to the due date.

ACCOUNT NUMBER 4981-380-03
PA SM COMM/PUBLIC AUTH LL RATE

Name J & B TATTOO SHOP
Service address 10 W LONG AVE

Next Meter Reading on or about Jan 14 Meter 02839134

Billing Information

In 33 days you used 59 ccf of gas determined as follows:

This Reading Dec 13 8529 ESTIMATED
Last Reading Nov 10 8470 ESTIMATED

Amount of gas used 59

This is an estimated bill.

Basic service charge		\$16.25
Charge for first 50 ccf at .734390 per ccf		36.72
Charge for next 9 ccf at .717190 per ccf		6.45
State tax adjustment		-0.06
Sales tax		3.56
Gross receipts tax estimate	2.83	
Current Charges		\$62.92

Billing Summary	
Net credit posted	\$0.00
Late paymt. chrg.	0.67
Current charges	62.92
Previous balance	44.50
Total amount owed	108.09 62.92

pd 1-25-00 #186
Your due date is DEC 31 99.
A 1.5% late charge will be added to any past due amount

To ask questions or for
service call:
1-(800) 365-3234

Your local office
address is:
1 RELIEF ST
OIL CITY PA 16301

Your current charges for this billing period include total
State taxes of \$6.33.

Account Number: 10 00 03 28 9 8

2 W LONG AVE
DU BOIS PA 15801

General Secondary 3 Phase Service

To avoid a 1.5% Late Payment Charge being added to your bill, please pay by the due date.



GPU

Customer Service	1-800-545-7741
Emergency/Power Outage	1-800-545-7738
Collections	1-800-962-4848

FILED

NOV 27 2000

03:40 P.M.

William A. Shaw

Prothonotary

ES

Yours ~~stated~~ ^{write} to Dayle
One Court to Superior Court

**THE SUPERIOR COURT OF PENNSYLVANIA
PITTSBURGH OFFICE**

**TO: WILLIAM SHAW, PROTHONOTARY
CLEARFIELD COUNTY
ELEANOR R. VALECKO, Deputy Prothonotary**

DATE: NOVEMBER 29, 2000

**IN RE: REDEVELOPMENT AUTHORITY OF THE CITY OF DUBOIS
VS. JAMES H. SWARTZ
NO. 00-591-CD**

The Notice(s) of Appeal is being returned for the following defects:

The use of et al or any abbreviation is not permitted. The caption must Appear, as it was when the original complaint or indictment paper was Filed with the trial court.

A separate Notice of Appeal should be filed if the captions are not Uniform and has a different trial court docket number or more than one Order is being appealed. (see PA.R.A.P. 512).

**X OTHER: THE APPELLANT MUST INDICATE THE COURT IN WHICH HE IS
X APPEALING AS WELL AS THE TRIAL COURT ORDER THE HE WISHES TO BE
X REVIEWED.**

**X Complete name and address for all counsel and whom they represent;
X Trial court Judge and court reporter. If no testimony was taken it must
X Be so noted.**

\$55.00 fee; In Forma Pauper Order or Verified Statement indicating the Date In Forma Pauperis was granted, not included

Copy of Petition to Proceed In Forma Pauperis/Application for Appointment Of Counsel pending disposition by the trial court not attached.

**WHEN THE APPELLANT FILES THE APPROPRIATE CORRECTIONS OR
AN AMENDED NOTICE OF APPEAL HAS BEEN FILED WITH YOUR
OFFICE, THE INITIAL NOTICE OF APPEAL AND THE CORRECTIONS
ARE TO BE FORWARDED TO THE SUPERIOR COURT FOR DOCKETING.**

CC: MR. JAMES SWARTZ

FILED

DEC 01 2000

William A. Shaw
Prothonotary

#22

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00-591-CD

: Counsel of Record for this Party:

: Michael P. Yeager, Esq.
: Supreme Court No.: 15587

: P.O. Box 752
: 110 North Second Street
: Clearfield, PA 16830

: (814) 765-9611

: Type of Case: Condemnation

: Type of Pleading: APPEAL TO TRIAL COURT

: SUPERIOR COURT, PITTSBURG

: Filed on Behalf of: Condemnee.

: Counsel of Record for this Party:

: James H. Swartz

: 2 West Long Avenue
: DuBois Pa 15801

: (814) 375-4453

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

NOV 27 2000

Attest:

William L. [Signature]
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,

CONDEMNOR

vs

JAMES H. SWARTZ,

Condemnee

: NO. 00 - 591 - CD

:

: Type of Case: Condemnation

:

:

:

:

:

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9. Failed to give defendant enough time to do own legal work
10. Eminent Domain Laws
11. 53 P S section 1719.1
12. WPL US CODE not in best interest of city loss of State and Federal money
13. Prevention of discrimination
14. Poont of issue : 53 PS section 1712.1 e-1 NO PROPERTY SHALL BE CERTIFIED TO REDEVELOPMENT AUTHORITY UNLESS VACANT!
15. Proof issue on public record still NO SETTLEMENT
16. Proof of prior refusal to let run a bussiness even when upgraded to code!
17. Proof of UTILITES ON STATE LAW.

CORRECTIONS AND ADDITIONS TO APPEAL

NOTED: NO court reporter was at the hearing for preliminary objections, the trial court judge was Honorable John K. Reilly, Jr. President Judge Attached find copy of the trial court order,

AS MITIGATING CIRCUMSTANCES on in forma pauper order I wish to enter the following:

THE points in controversy here are willful disregard of STATE LAWS and

IN MY OPINION: Malicious abuse of process in legal matters by the city of DU BOIS

A. They already tried to take my building by sherrif sale and at the hearing gaveled down admissions of evidence, wittness were threatened and a gag order to my knowledge placed on MR. Raybuck who had found out other information

IN MY OPINION:

AT least some of the money redeveloping this 5 county area is Laundryed DRUG MONEY going through construction companies from Mafia DRUG LABS !!!!!!!

1. When the one motel was being built by sears at the du bois mall that contractor told me he had to fire over 40 of his workers in a 6 month period and hire others to met deadline because of drug related poor job performance problems. This INDicates by hearsay that some of the other building contractors these young men worked for were paying them not only with money but partly in COKE!!

YOU want the other evidence on these matters you appoint the Attorney or its obstruction of justice. I lack the legal knowledge to show whats going on alone.

IN MY OPINION what is needed is EN CAMERA by the APPEAL JUDGE of suppressed information and wittness as to this malicious abuse of process so as not to put wittness or their families in jeopardy. Once it is realized what is going on I believe the court will have NO choise but act with the state as plantive, the phone calls to the nation of Columbia ,NEW JERSY, and MAIMIA billed to the city of DU BOIS and one other key point force this.

I ASK FOR a restraining order on the Redevelopment Authority of DU BOIS not to enter the building at 2 west long ave Du Bois Pa., and motion for relief from judgement to take build until a hearing has been held

1. I am the (~~plaintiff~~) (defendant) in the above matter and because of my financial condition am unable to pay the fees and costs of prosecuting or defending the action or proceeding.

2. I am unable to obtain funds from anyone, including my family and associates, to pay the costs of litigation.

3. I represent that the information below relating to my ability to pay the fees and costs is true and correct:

(a) Name: JAMES H. SWARTZ
Address: 2 WEST LONG AVE.
Du Bois, Pa. 15801
Social Security Number: 195-40-9174

(b) Employment

If you are presently employed, state

Employer: Self Employed
Address: 2 West Long Ave
DuBois Pa. 15801

Salary or wages per month: _____

Type of work: SALES

If you are presently unemployed, state

Date of last employment: _____

Salary or wages per month: _____

Type of work: _____

(c) Other income within the past twelve months:

Business or profession: Rentals 1 At 175 per month

Other self-employment: 1 At 160 per month

Interest: less than \$2.00 Timberland Credit

Dividends: None UNION

Pension and annuities: None

Social security benefits: None

Support payments: None

Disability payments: None
Unemployment compensation and supple
benefits: None
Workman's compensation: None
Public assistance: _____
Other: Applying for food stamps

(d) Other contributions to household support
(Wife) (~~Husband~~) Name: NONE

If your (wife) (~~husband~~) is employed, state
Employer: _____

Salary or wages per month: _____

Type of work: _____

Contributions from children: None

Contributions from parents: None

Other contributions: _____

(e) Property owned Long Ave and
127 South Brady St. DuBois.
Cash: _____

Checking account: less than 100.00 usually

Savings account: less than 40.00

Certificates of deposit: None

Real estate (including home): _____

Motor vehicle: Make _____, Year _____,

Cost _____, Amount Owed \$ _____

Stocks; bonds: _____

Other: Store Inventory

(f) Debts and obligations

Mortgage: None

Rent: None

Loans: Credit Cards - About 2,500

Other: TAXES Buildings due -

About 4,000 Other About 2,600

(g) Persons dependent upon you for support

(Wife) (Husband) Name: None

Children, if any:

None

Name: _____

Age: _____

Other persons:

Name: None

Relationship: _____

4. I understand that I have a continuing obligation to inform the court of improvement in my financial circumstances which would permit me to pay the costs incurred herein.

5. I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: Nov 2000

Petitioner

James Swartz

(i) The praecipe required by subdivision (d) shall be substantially in the following form:

(Caption)

PRAECIPE TO PROCEED IN
FORMA PAUPERIS

To the Prothonotary:

Kindly allow _____, (Plaintiff) (Defendant), to proceed in forma pauperis.

I, _____, attorney for the party proceeding in forma pauperis, certify that I believe the party is unable to pay the costs and that I am providing free legal service to the party. The party's affidavit showing inability to pay the costs of litigation is attached hereto.

Attorney for

IN my opinion the Redevelopment Authority of Du Bois ,PA. ,has acted in bad faith in trying to take the building on 2 west long ave. DU BOIS for private not public use. This is ARBITRARILY UNFAIR DISCRIMINATORY PRACTICES BETWEEN BUSINESS and thus UNCONSTITUTIONALLY NOT FOLLOWING STATUTORY PROCEDURES!!!

UNDER 35 P S. 1709 #9 REDEVELOPMENT AUTHORITY HAS NO POWER TO CONDEM PROPERTY UNDER GUISE OF URBAN RENEWAL FOR A PRIVATE PURPOSE!!!

THE person they wanted to sell the property to wanted to use it for the same thing I now do STORES AND OFFICES, ~~SOME~~ STATEMENT TO THIS EFFECT IS A MATTER OF PUBLIC RECORD IN THE DU BOIS NEWSPAPER!!

UNDER PA RULES OF COURT PART 5 MISCELLANEOUS RULE 150 DEFECTS IN FORM: I give note to THE COURT THAT APPEAL WAS ON LEGAL ERROR

REDEVELPPMENT Authority not obeying state laws which have right and control over local laws. IN MY OPINION BOTH THE REDEVELOPMENT AUTHORITY AND THE COURT ACTED WITH DEFECT BEING VERY PREJUDICIAL TO THE RIGHTS OF THE DEFENDANT AND WITH CLEAR TOTAL DISREGARD TO DAMAGES TO MY RENTAL BUSINESS, CREDIT RATE ING AND BUSINESS

MY ABILITY TO REMODLE THE REST OF THE BUILDING DUE TO THE REPEATED HARM OF BAD PRESS CONDEMNATION STATEMENTS, ALWAYS ON THE FRONT PAGE OF THE LOCAL NEWSPAPER RESULTED IN NOT BEING ABLE TO GET A LOAN ON THE BUILDING TO PROCEED WITH PLANS TO FIX UP THE 2 nd FLOOR OFFICE UNITS TO RENT, I LOST A LOT OF MONEY BECAUSE OF THIS!!!!

OBJECTIONS AND DEFENSE

Comes now, James Swartz and does hereby respectfully declare as follows.

1. The first floor of the building at 2 west long ave, Du Bois, Pa. is up to code and has utilities on in both Store fronts open to the public.

2. Repairs have been made to the building every year it is open PREJUDICE try to take this building when I am on public record at city council meeting as having a checking account to start up a Building and Construction Co. to fix up the building and make several office spaces AS the result of an ad right in the bookstore window one kid has agreed to help put baseball cards on the internet..

A Under third class city code section 913 City not to Engage in private Construction. clearly states ALL KINDS -TYPES OF CONSTRUCTION WORK BY LEGITIMATE PRIVATE ENTERPRISE!

B. When public records show that campaign funds according to MR. Logan went to the same city official who voted to give this property to DR. RICE I am denied FAIR MARKET VALUE. THEY are on public record in the Courier Express newspaper as trying to get the property at an unfair price, both buildings next to mine are smaller in size the true value is the building Lot not the building.

3. I believe State law says you cannot condemn a part of a building closed for repairs.

4. I believe STATE LAW says you can not condemn a building that is up for sale, I am gathering up the money to pay off the taxes to transfer the building ownership to the construction co

5. The building two down from mine had been listed on Coldwell for about 60,000 . IT is much smaller than mine Also these people know it is illegal to discriminate but according to Dave Logan the owner of Carpet corner Du Bois gave money to city official campaign funds and that building empty and several others that were for sale in the area did not get taken to redevelop.

6. No business or building always 100 percent rented out, I use part of the upstairs as storage for building repairs materials doors windows ect. Also I have been working to gather up goods for an additional internet site for toys to use up a second office space on the second floor for for my own business.

7. My mail box for home address is on this building and my drivers lic. is to this address.

8. I request trial by jury and appeal.

9. I am unable to find any other building in the downtown near a parking lot that does not have a high price tag

10. The city with open Prejudice has twice passed well over twenty pages of city ordinance to try to hurt my business, most ADULT stores do 50,000 to 100,000 in business a year,

If this case against me is not dismissed in my opinion:

1. The city of Du Bois may lose some of its State and Federal Grant Money as a penalty for breaking several state laws
2. There is no amicable arrangement for trying to cheat people out of economic opportunity to have Business Rentals and make money
3. I will be forced to File Appeal to Superior Court of Pa., this is an UNdo delay in settling this matter causing additional business loss.
4. The city officials have made no effort to make an offer for the damages they have caused to me by statements to the newspaper, this resulted in loss of Business rental and loss of business!!!!
5. IN MY OPINION: AS AN ACT OF FRAUD THEY HAVE WITH HELD INFORMATION AS TO THE INCREASE IN THE VALUE OF THE PROPERTY THAT THE BUILDING SITS UPON. THEY WANT THE PROPERTY BEFORE THE NEW STATE ROAD GOES IN!
6. THE CITY OF DU BOIS officials have REpeated ACTS OF MALICIOUS ABUSE OF PROCESS IN PASSING CITY LAWS THAT SEEM TO EFFECT MAINLY ONLY ONE PERSON.
7. THE CITY OFFICIALS FAILED TO FORCE THE POLICE DEPT TO HANDLE POLICE COMPLAINTS OF VANDALISM AND ROBBERY. AS MALICIOUS ACTS OF MALICIOUS INJURY TO LOCAL BUSINESS TO LOWER PROPERTY VALUES.

Library References

Injunction § 89(3).
WESTLAW Topic No. 212.

C.J.S. Injunctions § 133.
P.L.E. Injunction § 25.

Notes of Decisions

In general 1

1. In general

An ordinance prohibiting the erection of frame buildings will not be enforced by injunction, unless the building constitutes a nuisance per se. *Williamsport v. McFadden*, 15 W.N.C. 269, 1884; *Lan-*

caster v. Shaub, 7 Lanc. 340, 1890; *Honesdale Borough v. Weaver*, 2 Dist. 344, 1893; *Ellwood City v. Mani*, 16 C.C. 474, 1895.

This section does not authorize recourse to any proceedings other than the usual and regular action at law or bill in equity. *City of Philadelphia v. Bartell*, 11 A.2d 563, 139 Pa.Super. 319, Super.1940.

§ 4103. Regulations to supplement state laws

The ordinances enacted pursuant to this act shall not be inconsistent with the provisions of any statute governing the same matter, but all regulations prescribed by such ordinances which are additional or supplementary to the statute law, and not inconsistent therewith, or enacted for the purpose of carrying into effect the provisions of the statute law, shall be valid and binding.

1937, April 14, P.L. 313, No. 87, § 3.

Library References

Municipal Corporations § 592(1) to 592(4).
WESTLAW Topic No. 268.

C.J.S. Municipal Corporations §§ 143 to 145.
P.L.E. Municipal Corporations § 412.

Notes of Decisions

In general 1

1. In general

This section providing that zoning ordinances to be enacted be not inconsistent

with provisions of any statute governing the same matter relates to existing statutes and is wholly prospective. *City of Philadelphia v. Bartell*, 11 A.2d 563, 139 Pa.Super. 319, Super.1940.

§ 4104. Building permits; time for approval; explanation for disapproval; highway occupancy permits; "buildings, structures or devices" defined

(a) A municipality which regulates the construction, erection, maintenance, operation or repair of buildings, structures or devices by means of an ordinance requiring the filing of an application, the payment of a fee and the issuance of a permit shall render a decision either approving or disapproving the application for a permit within 90 days after the application is filed unless the ordinance requires a decision within a lesser period of time, provided that any disapproval

THE PROGR

Vol. 94—No. 22

Our 87th Year

Clearfield, Curwensville, Philipsburg, Moshannon Valley, Pa.,

Thursday, January 27, 20

Judge dismisses lawsuit again

By Rebecca Koleno
Staff Writer

Clearfield County President Judge John K. Reilly Jr. has ruled in favor of the Clearfield County Commissioners in regards to the lawsuit filed against them by the Concerned Taxpayers of Clearfield County.

"We are very pleased with the decision," said Gene Lunsford, current commissioner chairman. "In my opinion, the accusations were frivolous and misleading from the beginning."

Theron Noble, attorney for CTCC, said, "It appears that Judge Reilly deferred working through

the various applicable statutes in this case of first impression, presenting the appellate courts with the opportunity to interpret the applicable law."

Tony Yankevich, one of the petitioners, said, "We will definitely appeal this as soon as Mr. Noble has the time. I am very disappointed in the ruling because the commissioners clearly violated the law." The next step would be to file an appeal with the Superior Court of the Western District in the state.

In its suit, CCTC claimed the former board of commissioners, composed of Michael Lytle, Mr. Lunsford and Gerry Hatcher, maintained a

budgetary surplus in excess of what is permitted by law. The taxpayers said this was the case in the 1997, 1998 and 1999 budgets and the audit and financial reports for fiscal years 1997 and 1998. The lawsuit was filed in October.

In November, the commissioners responded by filing preliminary objections to the suit and asked the judge to dismiss the case.

Kim Kesner, county solicitor, said the court lacks any jurisdiction on the allegations for any years before 1999. He said the concerned taxpayers failed to act within the statutes of time for 1997 and 1998.

was something

MALICIOUS ABUSE OF PROCESS

In general—p. 278

Malicious prosecution distinguished—
p. 279

Malicious use distinguished—p. 279

Malicious use of process—p. 280

Ulterior motive—p. 280

Use for purpose not intended by law—
p. 281

Cross References

Abuse of Process

Malicious Prosecution

In general

The elements of action for "malicious abuse of process" are the issuance of process

In general—Cont'd

and its use for improper purpose, and improper use is one for objective outside scope of operation employed. *Melsels v. J. C. A. Trading Corp.*, 69 N.Y.S.2d 720, 722, 189 Misc. 48.

Action for "malicious abuse of process" proceeds on theory that plaintiff has been victim of an unauthorized abusive use of a criminal or civil process. *George v. Leonard*, D.C.S.C., 84 F.Supp. 205, 207.

"Malicious abuse of legal process" is where a plaintiff in a civil proceeding willfully misapplies the process of a court in order to obtain an object which such a process is not intended by law to effect. *Baldwin v. Davis*, 4 S.E.2d 458, 462, 188 Ga. 587.

Petition, alleging that landlord maliciously and without probable cause employed dispossessory warrant to coerce tenant into paying more than maximum rental allowable under O. P. A. regulations, stated a cause of action for "malicious abuse of process." *Defnall v. Schoen*, 35 S.E.2d 564, 568, 73 Ga. App. 25.

Petition, alleging that landlord maliciously and without probable cause employed a dispossessory warrant for the purpose of coercing tenant into paying more than maximum rental allowable under O. P. A. regulations, stated a cause of action for "malicious abuse of process" without alleging that proceeding to evict tenant had terminated in tenant's favor. *Defnall v. Schoen*, 35 S.E.2d 564, 568, 73 Ga. App. 25.

Actions for "malicious prosecution", "malicious abuse of process", "false imprisonment" and "false arrest", although differing from each other in some particulars, are all protective of an individual's interest in freedom from confinement, whether such confinement be physically of the person or a limitation of one's personal rights of freedom, as in holding a person to bail, and it is immaterial whether act of defendant directly or indirectly causes the confinement. *McGrath v. Keenan*, 46 A.2d 725, 726, 727, 24 N.J.Misc. 121.

"Malicious abuse of process" is the use of lawful process for purpose not justified by law. *McGrath v. Keenan*, 46 A.2d 725, 726, 727, 24 N.J.Misc. 121.

A petition held insufficient to state cause of action for "malicious abuse of legal proc-

MALICIOUS INJURY

dict based on replies to questions submitted to jury without objection was that money was obtained without fraud, judgment against bankrupt was dischargeable, under Bankruptcy Act, § 17(2), 11 U.S.C.A. § 35(2), because not for a "willful and malicious" injury, which is a willful disregard of what one knows to be his duty, an act wrongful in itself, and necessarily causing injury and done intentionally. In re Burchfield, D.C. N.Y., 31 F.2d 118, 120.

The term "malicious injury," as used in Rev.St.1898, § 4466a, providing that if two or more persons, who shall combine, associate, agree, mutually undertake, or counsel together for the purpose of willfully or maliciously injuring another in his reputation, trade, business, or profession, by any means whatever, or for the purpose of maliciously compelling another to do or perform any act against his will, etc., is synonymous with that term at the common law. It refers to the infliction of a wrongful injury intentionally. The term is synonymous with that term in the law of conspiracy, independent of the statute. State v. Huegin, 85 N.W. 1046, 1067, 110 Wis. 189.

Injury which is intentional, wrongful, or without just cause is "malicious injury to person or property" within provision of Bankruptcy Act excepting certain claims from release by bankrupt's discharge. The word "willful" is Bankruptcy Act § 17, 11 U.S.C.A. § 35, excepting from release by bankrupt's discharge claims founded on liability for willful and malicious injury to person or property, means nothing more than intentional, while "malice" involved is merely disregard of duty which is apparent from the intentional doing of a willful act to the injury of another, and does not require hatred, spite, or ill will. Shabaz v. Henn, 173 S.E. 249, 251, 48 Ga.App. 441.

Under Bankruptcy Act, § 17, subd. 2, 11 U.S.C.A. § 35, excepting from discharge liabilities for obtaining property by false pretenses, or for willful and malicious injury to the person or property of another, a judgment in an action of replevin for the value of property obtained by the bankrupt by false representation that he was solvent and that his note for the property was good is not barred, though a judgment in replevin based on constructive fraud only would be barred, since "malicious," as used in the section, consists in the willful doing of an

act with knowledge it is liable to injure another and regardless of consequences, and does not include the malignant spirit or specific intention to injure the other. In re Kalk, D.C.N.Y., 270 F. 627, 629.

MALICIOUS INJURY TO BUSINESS

Action of "malicious interference with business" or "malicious injury to business" is based upon interference with right to pursue a lawful business, calling, or occupation, free from undue interference or molestation. French v. U. S. Fidelity & Guaranty Co., D.C.N.J., 88 F.Supp. 714, 721.

MALICIOUS INJURY TO PROPERTY

Wrongful sale of land which was subject to unrecorded deed given as mortgage held "malicious injury to property" of mortgagee, liability for which was unaffected by discharge in bankruptcy. Probst v. Jones, 247 N.W. 779, 780, 262 Mich. 678.

To constitute an offense under Rev.Pep. Code, § 712, punishing the "malicious injury or destruction of property," the act must not only be done willfully, but for the purpose of avenging some wrong sustained by the person charged with the offense. One who, on becoming angry without cause, destroyed without justification and in a spirit of wantonness the property of another, violated Rev.Pen.Code, § 712, punishing the malicious injury or destruction of property. State v. Tarlton, 118 N.W. 706, 708, 22 S.D. 495.

MALICIOUS INTENT

The phrases "malicious intent" and "malice aforethought" are not synonymous with "willful, deliberate, and premeditated" intent required as elements of first-degree murder. Pen.Code, § 190. People v. Thomas, 156 P.2d 7, 17, 18, 25 Cal.2d 880.

"Malicious intent" as used in the definition of murder in the first degree is not synonymous with "willful, deliberate and premeditated intent" and proof of malicious intent without the further proof that it was willful, deliberate and premeditated would establish "second degree murder" but not first degree murder. Pen.Code, § 189. People v. Holt, 153 P.2d 21, 27, 25 Cal.2d 59.

MALICIOUS ABUSE

Use for purpose not intended by law—C't'd
probable cause, or that it terminated prior to
the institution of the suit for damages." *Farrar Lumber Co. v. Hogan*, 103 S.E. 863, 25
Ga.App. 597; *McElreath v. Gross*, 98 S.E.
190, 191, 23 Ga.App. 287; *Scarborough v. J. W. Goldsmith, Grant Co.*, 103 S.E. 192, 25
Ga.App. 269.

A malicious abuse of legal process consists in the malicious misuse or misapplication of process to accomplish a purpose not warranted or commanded by the writ—the malicious perversion of a regularly issued process, whereby a result not lawfully or properly obtained on a writ is secured—and hence it does not include a case where the process was procured maliciously, but in which there was no abuse or misuse after its issuance. *Bartlett v. Christhill, Md.*, 14 A. 518, 521, citing *Gralinger v. Hill*, 4 Bing. N.C. 212; *Sommer v. Wilt, Pa.*, 4 Serg. & R. 19.

A "malicious abuse of legal process" occurs where a party employs process for some unlawful object, not the purpose which it is intended by the law to effect, and, in action for such malicious abuse, it is not necessary to prove that action in which process issued has been determined, or to aver that it was sued out without reasonable or probable cause. *Fenton Storage Co. v. Feinstein*, 195 A. 170, 178, 179, 129 Pa.Super. 125.

MALICIOUS ACCUSATION

"Malicious accusation," within Comp.St. 1922, § 9579, denouncing blackmail, is to procure accusation or prosecution of another from improper motive and without probable cause, and is similar to malicious prosecution, and is not same as a "malicious threat to accuse of crime," which means that one acts with evil intent and with evil motive by threats of criminal prosecution, through fear of which will of individual threatened is intended to be overcome. *McKenzie v. State*, 204 N.W. 60, 63, 113 Neb. 576.

MALICIOUS ACT

A "malicious act" is an unlawful act done intentionally without just cause, legal justification or excuse. *Michels v. Boruta, Tex. Civ.App.*, 122 S.W.2d 216, 220.

A "malicious act" is one committed in a state of mind which shows a heart regardless

of social duty and fatally bent on mischief, a wrongful act intentionally done without legal justification nor excuse. *Rankin v. State*, 139 S.W.2d 811, 812, 139 Tex.Cr.R. 247.

The act of persuading a person to break his contract for the indirect purpose of injuring the other contracting party or benefiting the person inducing such breach at the expense of the other contracting party is a "malicious act" which is wrongful and therefore actionable if injury issues therefrom. *Wilkinson v. Powe*, 1 N.W.2d 530, 542, 300 Mich. 275.

"A malicious act" is an unlawful act done intentionally, without just cause or excuse. *Tucker v. Bartlett*, 155 P. 1, 2, 97 Kan. 163.

A malicious act is one done without just cause, or one done with a wrongful purpose. *Morrison v. Press Pub. Co.*, 14 N. Y.S., 131, 132, 59 N.Y.Super.Ct.(29 Jones & S.) 216.

In an action for assault, there must be a wrongful act done intentionally without just cause or excuse, and such an act is "malicious" in the statutory sense. In re *Smyser*, 182 Ill.App. 208, 209.

Bouvier defines a malicious act as "a wrongful act, intentionally done, without cause or excuse"—the definition of Bayley, J., in *Bromage v. Prosser*, 4 Barn. & C. 247. *Brandt v. Morning Journal Ass'n*, 80 N.Y.S. 1002, 1004, 81 App.Div. 183.

In general a malicious act involves all that is usually understood by the term "willful," and is further marked by either hatred or ill will toward the party injured, or by such utter recklessness and disregard of the rights of others as denotes a corrupt or malevolent disposition. *State v. Willing*, 105 N.W. 353, 356, 129 Iowa, 72.

A malicious act is one committed in a state of mind which shows a heart regardless of social duty and fatally bent on mischief—a wrongful act intentionally done, without legal justification or excuse. *Bowers v. State*, 7 S.W. 247, 24 Tex.App. 542, 5 Am.St.Rep. 901; *High v. State*, 10 S.W. 238, 241, 26 Tex.App. 545, 8 Am.St.Rep. 488.

In a legal sense, any unlawful act done willfully to the injury of another is, as against that person, malicious, and it is not necessary that the perpetrator of such act should be influenced by ill will towards such

MALICIOUS PROSECUTION

in order to give the injured employee the option of either suing for damages at common law or proceeding under the Workmen's Compensation Act is a conscious and deliberate intent directed to the purpose of inflicting an injury and such intent may not be inferred from mere negligence although it is gross. *Breimhorst v. Beckman*, 35 N. W.2d 719, 730, 227 Minn. 409.

MALICIOUS PROSECUTION

In general—p. 303
Abuse of process distinguished—p. 308
Civil litigation—p. 308
Essential elements—p. 309
False imprisonment distinguished—p. 314
Malice and want of probable cause—p. 318
Malice imputed to attorney—p. 322
Malicious arrest synonymous—p. 322

Cross References

Abuse of Legal Process
Abuse of Process
False Imprisonment
Malice

In general

In a "malicious prosecution," the proceedings are had in pursuance of legal process, maliciously and wrongfully obtained. *Barfield v. Marron*, 62 So.2d 276, 280, 222 La. 210.

"Malicious prosecution" is the putting of the processes of law into operation maliciously and without probable cause leading on in due course to the arrest of the victim. *Huffstutler v. Edge*, 47 So.2d 191, 193, 35 Ala.App. 276.

To state a cause of action for "malicious prosecution" it must be alleged and proved that action upon which the suit is based shall have been terminated in favor of defendant therein. *Simpkins v. Brooks*, D.C.Mun.App., 49 A.2d 549, 551.

Malicious prosecution is not limited to criminal suits. *Hayes v. Union Mercantile Co.*, 70 P. 975, 979, 27 Mont. 264.

Prosecution instituted for purpose of collecting debt or other private motive is "malicious prosecution" in legal sense. *Pritchett v. Northwestern Mut. Life Ins. Co.*, 73 S.W.2d 815, 819, 223 Mo.App. 661.

The mere fact of an acquittal or termination of criminal proceedings in favor of

In general—Cont'd

accused does not make out a prima facie case of "malicious prosecution" against person who instituted those proceedings. *Stinson v. Smith*, 196 A. 843, 329 Pa. 177.

"Malicious prosecution" is criminal prosecution instituted upon no or such slight grounds of suspicion as to indicate general disregard of rights of others directed by chance against individual. *Freezer v. Miller*, 176 S.E. 159, 170, 163 Va. 180.

A complaint which alleged that tenant left leased premises as result of stipulation signed by himself and his attorney and in compliance with resulting judgment in landlord's action under Emergency Rent Act to secure possession, and which further alleged that landlord's statement in regard to his intention to immediately occupy designated premises as a dwelling were fraudulent, could not be upheld as stating a cause of action for "malicious prosecution," where it appeared that the action upon which suit was based terminated in landlord's favor. *Simpkins v. Brooks*, D.C.Mun.App., 49 A.2d 549, 551.

A "malicious prosecution" is a prosecution with malice and without probable cause; "false imprisonment" is arrest and imprisonment without legal process; and "abuse of process" is misuse of legal process for ulterior purpose. *State, for Use of Little v. U. S. Fidelity & Guaranty Co.*, Miss., 64 So.2d 697, 704.

The essential elements of a "malicious prosecution" are the commencement of a criminal prosecution against plaintiff, its causation by defendant, its termination in favor of plaintiff, plaintiff's innocence of crime charged, absence of probable cause for such proceeding, presence of actual malice therein, and damages resulting to plaintiff by reason thereof. *Montgomery Ward & Co. v. Kirkland*, Tex.Civ.App., 225 S.W.2d 906, 907, 908.

"Malicious prosecution" is an action for the recovery of damages to person, property or reputation shown to have proximately resulted from a previous civil or criminal proceeding which was commenced or continued without probable cause, but with malice, and which has terminated unsuccessfully. *Riegel v. Hygrade Seed Co.*, D.C.N.Y., 47 F.Supp. 290, 293.

MALICIOUS PROSECUTION

In general—Cont'd

Unsuccessful efforts to secure the institution of proceedings, however malicious or unfounded, are not actionable as "malicious prosecution". *Melvin v. Pence*, 130 F.2d 423, 426, 76 U.S.App.D.C. 154, 143 A.L.R. 149.

A cause of action for "malicious prosecution" is complete when the prosecution is terminated in favor of plaintiff, and the statute of limitations begins to run at that time. *White v. Pacific Telephone & Telegraph Co.*, 123 P.2d 193, 195, 168 Or. 371.

The gravamen of "malicious prosecution" action is the wrongful institution or prosecution of action or proceeding without probable cause, to hurt and damage of complainant. *Manufacturers & Jobbers Finance Corp. v. Lane*, 19 S.E.2d 849, 853, 854, 221 N.C. 189.

Where plaintiff brings action or institutes process and prosecutes the same with malice and without probable cause, the defendant can obtain full relief by action for "malicious prosecution". *Manufacturers & Jobbers Finance Corp. v. Lane*, 19 S.E.2d 849, 853, 854, 221 N.C. 189.

Instituting a prosecution for the purpose of aiding in the collection of a debt is for an improper purpose and therefore a "malicious prosecution". *State Life Ins. Co. of Indianapolis, Ind., v. Hardy*, 195 So. 708, 713, 189 Miss. 266.

To create right of action for "malicious prosecution," there must exist malice on part of defendant in procuring or bringing about unfounded prosecution or other action. *Lexington Cab Co. v. Terrell*, 137 S.W.2d 721, 724, 282 Ky. 70.

One who does not swear out the warrant cannot be held liable for "malicious prosecution" unless he instigated a criminal action against plaintiff or caused one to be maintained or voluntarily aided or assisted in its prosecution. *Fertitta v. Herndon*, 3 A.2d 502, 504, 175 Md. 560, 120 A.L.R. 1317.

Defendant who did not advise, aid or abet prosecution of a criminal case could not be held for "malicious prosecution" because after learning of prosecution instituted by another defendant he did nothing to stop it. *Fertitta v. Herndon*, 3 A.2d 502, 504, 175 Md. 560, 120 A.L.R. 1317.

In general—Cont'd

Strictly speaking, the term "malicious prosecution" is applicable only to the carrying on of a criminal case, and is used in such sense only in the statute concerning rights of action for malicious prosecution. Code 1933, § 105-801 et seq. *Baldwin v. Davis*, 4 S.E.2d 458, 461, 188 Ga. 587.

Complaint which alleged that seizure was unlawful, because warrant of attachment was void, in that the papers on which it was granted were insufficient to confer jurisdiction, but which alleged no facts to show lack of probable cause existed, failed to state a cause of action for "malicious prosecution". *Hubbard v. Banker*, 24 N.Y. S.2d 289, 293, 295.

"Malicious prosecution" in law is a tort, and consists in defendant therein maliciously and without probable cause setting in motion the laws of particular jurisdiction whereby the plaintiff in such action is wrongfully and maliciously accused of committing some criminal offense, or committing some other wrong justifying the particular procedure taken against him, though it be a civil one, and by reason of which he sustains the damages he seeks to recover. *Lexington Cab Co. v. Terrell*, 137 S.W.2d 721, 724, 282 Ky. 70.

A petition for "malicious prosecution" will not lie unless it is alleged that prosecution has terminated in favor of petitioner. *Hughes v. Georgia Power Co.*, 15 S.E.2d 466, 468, 65 Ga.App. 163.

A petition did not state cause of action for "malicious prosecution" against street railroad whose officers caused the arrest of plaintiff for unlawfully smoking on street car, where petition alleged that judgment and sentence were still outstanding, and contention that judgment was void was untenable. Code, § 18-203. *Hughes v. Georgia Power Co.*, 15 S.E.2d 466, 468, 65 Ga.App. 163.

Evidence that surveyors who surveyed boundary between plaintiff's and defendant's lands thought that land from which plaintiff cut timber was within defendant's boundary warranted conclusion that defendant had "probable cause" to believe that defendant owned such land and that plaintiff was without color of title to it, and hence defendant was not liable to plaintiff for "malicious prosecution" as result of de-

Developer does not want downtown building

DUBOIS — Dr. Jeff Rice, executive director, said Wednesday he has led the renaissance of much of South Brady Street during the past few years, said Rice. The eminent downtown issue is now before the Clearfield County Court. The building had been up for sale, but had been up for a year, but some taxes have been paid by owner James Swartz. The building is also involved as an asset in a civil suit filed against Swartz. The authority seeks to acquire the building and have it renovated as part of the ongoing redevelopment of downtown Dubois. Rice said Wednesday he said, he will work with the Rice development Authority and assist in efforts to improve the area if the authority does acquire the building, but he himself won't buy it. Rice has renovated several buildings along South Brady Street. See RICE, Page A 11

DUBOIS



LOCK V. SCHREPPLER

Cite as, Del. Super., 426 A.2d 856

Del. 857

STIFTEL, President Judge.

John LOCK, Sr. and Ella G. Lock,
his wife, Plaintiffs,

v.

George B. SCHREPPLER, Defendant.

Superior Court of Delaware,
New Castle County.

Submitted Nov. 23, 1980.

Decided Jan. 28, 1981.

Purchasers of residence brought action
for statutory and common-law fraud

against seller's real estate agent and others. After extensive discovery, purchasers dismissed action against all defendants except real estate agent, who moved for summary judgment. The Superior Court, New Castle County, Stiftel, President Judge, held that: (1) fact issues precluded summary judgment as to portion of action based on common-law fraud, and (2) statutes providing regulatory powers to Real Estate Commission in order to protect public did not create private cause of action.

Motion granted in part, denied in part.

1. Fraud $\Leftarrow$ 4 1/2

A representation may be fraudulent, even if it is true, if defendant knows that because of facts not stated, statement is materially misleading.

2. Fraud $\Leftarrow$ 17

Where there is no general duty to speak, nevertheless, if person undertakes to speak, he then has duty to make full and fair disclosure as to matters about which he assumes to speak.

4. Fraud $\Leftarrow$ 30

Where broker engaged to sell induces third person to purchase property by means of fraud, broker may be liable to that person for loss suffered as a consequence.

5. Fraud $\Leftarrow$ 21

Where an ordinary investigation will not reveal a latent defect, purchaser of residence may rely upon representation of real estate agent as to defect.

6. Fraud $\Leftarrow$ 21

Where only partial investigation of thing to be purchased is made, under proper

circumstances, purchaser may rely on another's representations to his detriment, particularly where other person making said representations has superior knowledge.

7. Fraud $\Leftarrow$ 20

Justifiable reliance which plaintiffs in action for fraud must demonstrate requires that representation made by defendant and relied upon by plaintiff involve matters which reasonable person would consider important in determining his choice of action in transaction in question, but does not require that reasonable person would make choice solely on basis of that matter; the misrepresentations need merely be a substantial factor in inducing plaintiffs to act.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF	:	
THE CITY OF DUBOIS,	:	No. 00 - 591 - CD
Condemnor	:	
vs	:	IN CONDEMNATION
	:	
JAMES H. SWARTZ,	:	
Condemnee	:	

OBJECTION TO CONDEMNEE'S REQUEST FOR ANOTHER THIRTY DAY EXTENSION

COMES NOW, MICHAEL P. YEAGER, ESQUIRE, Attorney for the
Condemnor, and files the within Objection to the Request for a
Another Thirty Day Extension filed on behalf of Condemnee based
upon the following:

1. Condemnee has already sought and secured a thirty-day
extension within which to file a legal Brief.
2. The oral argument on this matter is still not scheduled
until September 28, 2000.
3. Accordingly, Condemnee has had sufficient time from the
filing of his Objection and Defense on June 19, 2000 to prepare.

WHEREFORE, Condemnor respectfully objects to the Request for
Thirty Day Extension as filed by Condemnee.



Michael P. Yeager, Esquire
Attorney for Condemnor

Unconsolidated Pennsylvania Statutes

EMINENT DOMAIN (Title 26)

ARTICLE I. SHORT TITLE

§ 1-101. Short title.

This act shall be known and may be cited as the "Eminent Domain Code."

[Note: The Eminent Domain Code is inapplicable to condemnations by public utilities. See, *Appeal of Giesler*, 154 Pa. Commonwealth Ct. 48, 622 A.2d 408 (1993). Further, the Rules of Civil Procedure {except rules 4001 and following per Pa.R.C.P.No.4001(a)(1)} do not apply to Eminent Domain Code proceedings. See, *Appeal of McCoy*, 153 Pa. Commonwealth Ct. 504, 621 A.2d 1163 (1993).]

The complete Pennsylvania Statutes are not yet available on the web. However, selected portions have been made available and can be accessed by [CLICKING HERE](#). These statutes, though available instantaneously over the web, may not be the current law. Court decisions overturning them, later statutes amending them, and a host of other factors come into play when interpreting them. They are provided here as a resource. They should provide some information about the state of the law. However, a competent lawyer, *who from other sources will research the law to insure what is current*, should always be employed in matters of importance.

Visit/Return to Home Page of Pennsylvania District Court 15-4-04.

Short Title / Judiciary@aol.com / last revised December 1999



NDOT MUST PAY

NDOT took Kenneth Barsy's land in Las Vegas for part of the new Spring Mountain Road and Interstate 15 Interchange. Before actually taking the property, though, NDOT announced the project. NDOT representatives visited Barsy's tenants and informed them of the project. This announcement caused Barsy's tenants, Decratrend Paints and another business, to move off the property. The effect on Barsy was devastating. Not only did he lose these tenants and the income stream from their rent payments, but other potential tenants would not move into the property because they knew the project was coming.

The department then made it harder on Barsy by not

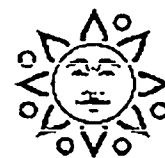
with property he could not rent. Barsy also alleged his property was made more difficult to sell.

When the condemnation finally came, he sought not only the value of the land but the amount of his lost rents. The trial court said "no" but the Supreme Court reversed. The Supreme Court said that when the government unreasonably delays a condemnation after making an official announcement of intent to condemn, the property owner may have whatever precondemnation damages he can prove. These damages can include lost rents. The Court sent the matter back to the trial court for a new trial where Barsy will be allowed a chance to prove his damages.

This decision is important because it is a departure from established Nevada law. Lost rents were previously not

land's market value. This decision creates a new class of damages, called pre-condemnation damages, which are now available to Nevada property owners under proper circumstances. In making its ruling, the Nevada Supreme court endorsed California law precondemnation damages.

This newsletter is published periodically by eminent domain attorney, Michael G. Chapman.



This newsletter is for general information only, and is not legal advice. The statements made herein should not be relied upon as legal advice. Please contact a competent eminent domain attorney for personal help and advice.

Eminent Domain 5

November 1999 • Issue Five

YOUR CASE: PART ONE

In a typical eminent domain case, the government first decides it wants to construct a public project. The project must be for a public purpose, such as a road or flood control basin. Almost any kind of project qualifies as a public project, including land

These planning activities can hurt land owners. For example, uncertainty over when the project will be built can cause tenants to vacate the premises, leaving the landowner with empty property on which he must still pay taxes and mortgage installments. In most cases, the government is not liable for the damage caused to

THIS NEWSLETTER

This newsletter is published periodically by Eminent Domain Attorney, Michael G. Chapman. This newsletter is for general information only, and is not legal advice. The statements made herein should not be relied upon as legal advice. Please contact our

may extend the time for filing preliminary objections. Preliminary objections shall be limited to and shall be the exclusive method of challenging

- (1) the power or right of the condemnor to appropriate the condemned property unless the same has been previously adjudicated;
- (2) the sufficiency of the security;
- (3) any other procedure followed by the condemnor; or
- (4) the declaration of taking.

Failure to raise these matters by preliminary objections shall constitute a waiver thereof.

(b) Preliminary objections shall state specifically the grounds relied upon.

(c) All preliminary objections shall be raised at one time and in one pleading. They may be inconsistent.

(d) The condemnee shall serve a copy of the preliminary objections on the condemnor within seventy-two hours after filing the same.

(e) The court shall determine promptly all preliminary objections and make such preliminary and final orders and decrees as justice shall require, including the revesting of title. If preliminary objections are finally sustained, which have the effect of finally terminating the condemnation, the condemnee shall be entitled to damages as if the condemnation had been revoked under section 408,1 to be assessed as therein provided. If an issue of fact is raised, the court shall take evidence by depositions or otherwise. The court may allow amendment or direct the filing of a more specific declaration of taking.

1964, Sp.Sess., June 22, P.L. 84, art. Iv, § 406. As amended 1969, Dec. 5, P.L. 316, § 1.

§ 407. Possession; entry; payment of compensation

(a) The condemnor, after the expiration of the time for filing preliminary objections by the condemnee to the declaration of taking, shall be entitled to possession or right of entry upon payment of, or a written offer to pay to the condemnee, the amount>

Transfer interrupted!

>

Transfer interrupted!

after refuses to deliver possession or permit right of entry, the prothonotary upon praecipe of the condemnor shall issue a nile, returnable in five days after service upon the condemnee, to show cause why a writ of possession should not issue, upon which the court, unless preliminary objections warranting delay are pending, may issue a writ of possession conditioned upon payment to the condemnee or into court of such estimated just compensation and on such other terms as the court may direct.

(b) If within sixty days from the filing of the declaration of taking, the condemnor has not paid just compensation as provided in subsection (a) of this section, the condemnee may tender possession or right of entry in writing and the condemnor shall thereupon make payment of the just compensation due such condemnee as estimated by the condemnor. If the condemnor fails to make such payment the court, upon petition of the condemnee, may compel the condemnor to file a declaration of estimated just compensation or, if the condemnor fails or refuses to file such declaration, may at the cost of the condemnor appoint an impartial expert appraiser to estimate such just

compensation. The court may, after hearing, enter judgment for the amount of the estimated just compensation.

(c) The compensation paid under subsections (a) and (b) of this section shall be without prejudice to the rights of either the condemnor or the condemnee to proceed to final determination of the just compensation and the payments heretofore made shall be considered only as payments pro tanto of the just compensation as finally determined. However, in no event shall the condemnee be compelled to pay back to the condemnor the compensation paid under subsections (a) and/or (b), even if the amount of just compensation as finally determined shall be less than the compensation so paid.

1964, Sp.Sess., June 22, P.L. 84, art. IV, § 407. As amended 1969, Dec. 5, P.L. 316, § 1.

§ 409. Right to enter property prior to condemnation

Prior to the filing of the declaration of taking, the condemnor or its employees or agents, shall have the right to enter upon any land or improvement which it has the power to condemn, in order to make studies, surveys, tests, soundings and appraisals, provided that the owner of the land or the party in whose name the property is assessed has been notified ten days prior to entry on the property. Any actual damages sustained by the owner of a property interest in the property entered upon by the condemnor shall be paid by the condemnor and shall be assessed by the court or viewers in the same manner as provided in section 408.1

1964, Sp.Sess., June 22, P.L. 84, art. IV, § 409.

§ 501. Agreement as to damages

At any stage of the proceedings, the condemnor and the condemnee may agree upon all or any part or item of the damages, and proceed to have those parts or items thereof not agreed upon assessed as herein provided. The condemnor may make payment of any part or item thereof so agreed upon.

1964, Sp.Sess., June 22, P.L. 84, art. V, § 501.



Municipal Authorities Act - index

Municipal Law Index

Gleason, DiFrancesco, Shahade, Barbin & Markovitz Home Page

Updated January 1999



acquisitions for downtown redevelopment and airport noise mitigation.

When word of an impending government project that may affect your property first reaches you, you should consider whether any pre-condemnation planning on your part would be worthwhile. Pre-condemnation planning can involve many things, for example, wording leases so the relative rights of the lessors and lessees in the event of condemnation are clearly spelled out. Other steps may be useful as well.

In addition to pre-condemnation planning, you should evaluate whether the actions of the government, before condemnation, are harming the market value of your property. (See newsletter Number 4, where we discuss the Barys case). The planning process can take a long time.

the land owner during the planning of a project; however, pre-condemnation damages are available when the government acts unreasonably or oppressively.

What you should do during later stages of eminent domain proceedings is covered in the next series of newsletters.

CHAPMAN FIRM NEWS

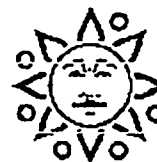
Our firm recently represented a land owner whose property was taken by the Nevada Department of Transportation for road widening in Reno. NDOT's original plan was to take only part of the property. We successfully proved to NDOT that the remainder land would be left in an uneconomical shape and size, and be of little value to the owner. We settled the case with NDOT agreeing to buy the entire parcel, at a substantially higher per square foot value than the department's initial offer.

office for help and advice pertinent to your particular situation.

Reno:
1575 Delucchi Lane, Suite 116A,
Reno, NV 89502. 775-827-1866,
(fax) 775-827-1872.

Las
Vegas: Hughes Center, 3753
Howard Hughes Parkway, Suite
200, Las Vegas, NV 89109, 702-
892-3706, (fax) 702-892-3950.

Email:
michael@chapman.reno.nv.us



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(Reno) 1575 Delucchi Lane, Suite 116-A, Reno NV 89502 Voice 775.827.1866 Fax 775.827.1872

(Las Vegas) Hughes Center 3753 Howard Hughes Pkwy #200 Las Vegas, NV Voice 702.892.3706 Fax 702.825.8002

email - michael@chapman.reno.nv.us **web -** <http://www.michaelchapman.com>

Johnstown Redevelopment Authority

Urban Redevelopment Law 53 P.S. Section 1719.1

Johnstown, Pennsylvania

§ 1719.1. Notice to displaced persons

- (a) A redevelopment authority in a city of the first class intending to alter or demolish property in furtherance of authority projects or programs shall give timely notice to all occupants required by such alteration or demolition to vacate the property.
- (b) Notice shall be given at the earliest practicable time prior to the dislocation of person affected, but no later than 30 days prior to the commencement of the alteration or demolition of the property.
- (c) The form of notice shall include, but not be limited to, posters or other graphic materials of sufficient size and design as will reasonably draw attention and which will reasonably inform the occupants of the property of the impending alteration or demolition and the date by which the occupants must vacate the property. Posters or other graphic materials shall be posted on and about the property in sufficient numbers as to reasonably draw the attention of all occupants of the property.
- (d) This section shall not be construed to relieve any authority of any duty to occupants of property as provided by law or regulation, including, but not limited to, the relocation assistance provisions of the act of June 22, 1964 (Sp.Sess., P.L. 84, No. 6), known as the "Eminent Domain Code," and regulations promulgated thereunder.

1945, May 24, P.L. 991, § 19.1, added 1978, April 18, P.L. 39, No. 21, §1, ind. effective.

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WPL USCODE

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January 27, 1999

officer or employee designated by any executive department or agency subject to this order may hold such hearings, public or private, as the Committee, department, or agency may deem advisable for compliance, enforcement, or educational purposes.

Sec. 302. If any executive department or agency subject to this order concludes that any person or firm (including but not limited to any individual, partnership, association, trust, or corporation) or any State or local public agency has violated any rule, regulation, or procedure issued or adopted pursuant to this order, or any nondiscrimination provision included in any agreement or contract pursuant to any such rule, regulation, or procedure, it shall endeavor to end and remedy such violation by informal means, including conference, conciliation, and persuasion unless similar efforts made by another Federal department or agency have been unsuccessful. In conformity with rules, regulations, procedures, or policies issued or adopted by it pursuant to Section 203 hereof, a department or agency may take such action as may be appropriate under its governing laws, including, but not limited to, the following:

It may -

(a) cancel or terminate in whole or in part any agreement or contract with such person, firm, or State or local public agency providing for a loan, grant, contribution, or other Federal aid, or for the payment of a commission or fee;

(b) refrain from extending any further aid under any program administered by it and affected by this order until it is satisfied that the affected person, firm, or State or local public agency will comply with the rules, regulations, and procedures issued or adopted pursuant to this order, and any nondiscrimination provisions included in any agreement or contract;

(c) refuse to approve a lending institution or any other lender as a beneficiary under any program administered by it which is affected by this order or revoke such approval if previously given.

Sec. 303. In appropriate cases executive departments and agencies shall refer to the Attorney General violations of any rules, regulations, or procedures issued or adopted pursuant to this order, or violations of any nondiscrimination provisions included in any agreement or contract, for such civil or criminal action as he may deem appropriate. The Attorney General is authorized to furnish legal advice concerning this order to the Committee and to any department or agency requesting such advice.

Sec. 304. Any executive department or agency affected by this

KNOW YOUR LAND RIGHTS!

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WPL USCODE

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January 27, 1999

feasible of the goal of a decent home and a suitable living environment for every American family; and

WHEREAS discriminatory policies and practices based upon race, color, creed, or national origin now operate to deny many Americans the benefits of housing financed through Federal assistance and as a consequence prevent such assistance from providing them with an alternative to substandard, unsafe, unsanitary, and overcrowded housing; and

WHEREAS such discriminatory policies and practices result in segregated patterns of housing and necessarily produce other forms of discrimination and segregation which deprive many Americans of equal opportunity in the exercise of their unalienable rights to life, liberty, and the pursuit of happiness; and

WHEREAS the executive branch of the Government, in faithfully executing the laws of the United States which authorize Federal financial assistance, directly or indirectly, for the provision, rehabilitation, and operation of housing and related facilities, is charged with an obligation and duty to assure that those laws are fairly administered and that benefits thereunder are made available to all Americans without regard to their race, color, creed, or national origin:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, it is ordered as follows:

PART I - PREVENTION OF DISCRIMINATION

Section 101. I hereby direct all departments and agencies in the executive branch of the Federal Government, insofar as their functions relate to the provision, rehabilitation, or operation of housing and related facilities, to take all action necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex or national origin -

(a) in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities are -

(i) owned or operated by the Federal Government, or
(ii) provided in whole or in part with the aid of loans, advances, grants, or contributions hereafter agreed to be made by the Federal Government, or

(iii) provided in whole or in part by loans hereafter insured, guaranteed, or otherwise secured by the credit of the Federal Government or

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<=BACK NEXT=>

Johnstown Redevelopment Authority

Urban Redevelopment Law 53 P.S. Section 1712.1

Johnstown, Pennsylvania

§ 1712.1. Blighted property removal

- (a) Notwithstanding any other provision of this act, any Redevelopment Authority shall have the power to acquire by purchase, gift, bequest, eminent domain or otherwise, any blighted property as defined in this section, either within or outside of a certified redevelopment area and, further, shall have the power to hold, clear, manage and/or dispose of said property for residential and related reuse and commercial or industrial reuse. This power shall be exercised in accord with the procedures set forth in this section.
- (b) Such power on the part of any Redevelopment Authority shall be conditioned upon the creation or existence of a vacant property review committee by ordinance of the governing body of the municipality. The committee shall be made up of members as determined in the said ordinance, but shall include at least one member of the governing body, a representative of the Redevelopment Authority, a representative of the appropriate planning commission, and a representative to be designated by the chief executive officer or officers from the executive branch of the government of the municipality.
- (c) Blighted property shall include:
 - (1) Any premises which because of physical condition or use is regarded as a public nuisance at common law or has been declared a public nuisance in accordance with the local housing, building, plumbing, fire and related codes.
 - (2) Any premises which because of physical condition, use or occupancy is considered an attractive nuisance to children, including but not limited to abandoned wells, shafts, basements, excavations, and unsafe fences or structures.
 - (3) Any dwelling which because it is dilapidated, unsanitary, unsafe, vermin-infested or lacking in the facilities and equipment required by the housing code of the municipality, has been designated by the department responsible

for enforcement of the code as unfit for human habitation.

-
- (4) Any structure which is a fire hazard, or is otherwise dangerous to the safety of persons or property.
-
- (5) Any structure from which the utilities, plumbing, heating, sewerage or other facilities have been disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use.
-
- (6) Any vacant or unimproved lot or parcel of ground in a predominantly built-up-neighborhood, which by reason of neglect or lack of maintenance has become a place for accumulation of trash and debris, or a haven for rodents or other vermin.
-
- (7) Any unoccupied property which has been tax delinquent for a period of two years prior to the effective date of this act, and those in the future having a two year tax delinquency.
-
- (8) Any property which is vacant but not tax delinquent, which has not been rehabilitated within one year of the receipt of notice to rehabilitate from the appropriate code enforcement agency.
- (d) Residential and related use shall include residential property for sale or rental and related uses, including, but not limited to, park and recreation areas, neighborhood community service, and neighborhood parking lots.
- (e) The blighted property review committee and the appropriate planning commission, upon making a determination that any property is blighted within the terms of this section, must certify said blighted property to the Redevelopment Authority, except that:
 -
 - ★ (1) No property shall be certified to the Redevelopment Authority unless it is vacant.
 -
 - (2) No property shall be certified to the Redevelopment Authority unless the owner of the property or an agent designated by him for receipt of service of notices within the municipality has been served with notice of the determination that the property is blighted, together with an appropriate order to eliminate the conditions causing the blight and notification that failure to do so may render the property subject to condemnation under this act. The notice shall be served upon the owner or his agent in accord with the provisions of a local ordinance pertaining to service of notice of determination of a public nuisance. The owner or his agent shall have the right of appeal from the determination in the same manner as an appeal from

the determination of public nuisance.

-
- (3) No blighted property shall be certified to the Redevelopment Authority until the time period for appeal has expired and no appeal has been taken, or, if taken, the appeal has been disposed of, and the owner or his agent has failed to comply with the order of the responsible department or other officer or agency.
- (f) Acquisition and disposition of blighted property under this section shall not require preparation, adoption or approval of a redevelopment area plan or redevelopment proposal as set forth in section 10, but at least thirty days prior to acquisition of any property under this section, the Redevelopment Authority shall transmit identification of the property to the planning commission of the municipality and shall request a recommendation as to the appropriate reuse of the property. The Redevelopment Authority shall not acquire the property where the planning commission certifies that disposition for residential or related use would not be in accord with the comprehensive plan of the municipality.
- (g) Power of eminent domain shall be exercised pursuant to a resolution of the Redevelopment Authority and the procedure set forth in the act of June 22, 1964 (Sp.Sess., P.L. 84, No. 6),² known as the "Eminent Domain Code," as amended.
- (h) Property disposed of within a redevelopment area shall be disposed of under a redevelopment contract in accordance with the provisions of this act.

Property disposed of outside an urban renewal project area shall be disposed of by deed in accordance with the provisions set forth in applicable law.

1945, May 24, P.L. 991, § 12.1, added 1978, June 23, P.L. 556, No. 94, § 2, effective in 60 days. Amended 1988, March 30, P.L. 304, No. 39, § 5, imd. effective.

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Paving projects post

By MARY JO YEBERNETSKY

Building owner: Condemnation plans in error

By MARY JO YEBERNETSKY
C-E Staff Writer

DuBois — James Swartz of 2 W. Long Ave. told the DuBois City Council Monday

DuBois

there is an error in the condemnation plans for his building. Swartz owns 2-4 W. Long Ave. the site of Used Hooks N Stuff and a tattoo shop.

The DuBois Redevelopment Authority is legally condemning the property to acquire it under the authority's right of eminent domain. Swartz will be paid the appraised value of the building when the condemnation process is completed, according to previously published reports.

The building is said to be key to the city's downtown revitalization, according to Lance Mar-

See BUILDING, Page A 11

—Graham A. Whalen, 6, is over his brother, Jude, with a baseball. The boys catch with their father in Y.Y. (AP Photo)

ng family
entally
t boy
ckstop

CH Miss (SHNS) On

There is a previous balance on your account. Your payment will be appreciated.

Register any question or complaint prior to the due date.

ACCOUNT NUMBER 4981-380-03
PA SM COMM/PUBLIC AUTH LL RATE

Name J & B TATTOO SHOP
Service address 10 W LONG AVE

Next Meter Reading on or about Jan 14 Meter 02839134

Billing Information

In 33 days you used 59 ccf of gas determined as follows:

This Reading Dec 13 8529 ESTIMATED
Last Reading Nov 10 8470 ESTIMATED

Amount of gas used 59

This is an estimated bill.

Basic service charge		\$16.25
Charge for first 50 ccf at .734390 per ccf		36.72
Charge for next 9 ccf at .717190 per ccf		6.45
State tax adjustment		-0.06
Sales tax		3.56
Gross receipts tax estimate	2.83	
Current Charges		\$62.92

Billing Summary	
Net credit posted	\$0.00
Late paymt. chrg.	0.67
Current charges	62.92
Previous balance	44.50
Total amount owed	108.09 62.92

Pd
Pd 1-25-00 #186
Your due date is DEC 31 99.
A 1.5% late charge will be added to any past due amount

To ask questions or for service call:
1-(800) 365-3234

Your local office address is:
1 RELIEF ST
OIL CITY PA 16301

Your current charges for this billing period include total State taxes of \$6.33.

National Fuel

10827

In the Superior Court of Pennsylvania

Sitting at Pittsburgh

No. 4 WDM 2001

Redevelopment Authority of the City of Dubois – Petitioner : Appeal from Order entered in this matter by the Hon. John K. Reilly, Jr., P.J., on October 11, 2000, Court of Common Pleas, Civil Action-Law

v.

At No. 00-591-CD

James H. Swartz, Respondent

CERTIFIED FROM THE RECORD

ORDER

"The above-captioned appeal and all outstanding motions are transferred sua sponte to Commonwealth Court. 42 Pa. C.S. 762(a) (6) (eminent domain).

Date: February 1, 2001 Per Curiam"

In Testimony Whereof, I have hereunto set my hand and the seal of said Court at Pittsburgh
Pa. this Second Day of February 2001

Eleanor R. Valecho
Deputy Prothonotary

FILED

FEB 15 2001
m/239
William A. Shaw
Prothonotary

#23

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

VS

JAMES H. SWARTZ,
Condemnee

: NO. 00-591-CD

: Counsel of Record for this Party:

: Michael P. Yeager, Esq.
: Supreme Court No.: 15587

: P.O. Box 752
: 110 North Second Street
: Clearfield, PA 16830

: (814) 765-9611

: Type of Case: Condemnation

: Type of Pleading: OBJECTIONS AND
: DEFENCE

: COMMONWEALTH COURT.
: 42 PA.C.S. 762 (A) (6)
: (EMINENT DOMAIN) ,PITTSBURGH

: Filed on Behalf of: Condemnee.

: Counsel of Record for this Party:
: James H. Swartz

: 2 West Long Avenue
: DuBois Pa 15801

: (814) 375-4453

FILED ON BEHALF OF

James Swartz
James Swartz

FILED

FEB 20 2001
01/104/105
William A. Shaw
Prothonotary

3 cert copies

#24

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

: NO. 00 - 591 - CD

:
: Type of Case: Condemnation

vs

JAMES H. SWARTZ,

Condemnee

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7. Malicious terms defined
8. Fraud defined
9. Failed to give defendant enought time to do own legal work
10. Eminent Domain Laws
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13. Prevention of discrimination
14. Point of issue : 53 PS section 1712.1 e-1 NO PROPERTY SHALL BE CERTIFIED TO REDEVELOPMENT AUTHORITY UNLESS VACANT!
15. Proof issue on public record still NO SETTLEMENT
16. Proof of prior refusal to let run a bussiness even when upgraded to code!
17. Proof of UTILITES ON STATE LAW.

CORRECTIONS AND ADDITIONS TO APPEAL

NOTED: NO court reporter was at the hearing for preliminary objections, the trial court judge was Honorable John K. Reilly, Jr. President Judge
Attached find copy of the trial court order,

AS MITIGATING CIRCUMSTANCES on in forma pauper order I wish to enter the following:

THE points in controversy here are willful disregard of STATE LAWS and

IN MY OPINION: Malicious abuse of process in legal matters by the city of DU BOIS

A. They already tried to take my building by sherrif sale and at the hearing gaveled down admissions of evidence, wittness were threatened and a gag order to my knowledge placed on MR. Raybuck who had found out other information

IN MY OPINION:

AT least some of the money redeveloping this 5 county area is Laundryed DRUG MONEY going through construction companies from Mafia DRUG LABS !!!!!

1. When the one motel was being built by sears at the du bois mall that contractor told me he had to fire over 40 of his workers in a 6 month period and hire others to met deadline because of drug related poor job performance problems. This INDICATES by hearsay that some of the other building contractors these young men worked for were paying them not only with money but partly in COKE!!

YOU want the other evidence on these matters you appoint the Attorney or its obstruction of justice. I lack the legal knowledge to show whats going on alone.

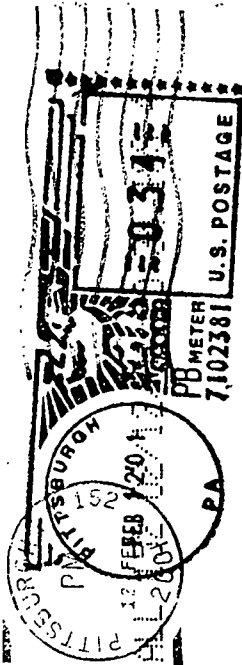
IN MY OPINION what is needed is EN CAMERA by the APPEAL JUDGE of suppressed information and wittness as to this malicious abuse of process so as not to put wittness or their families in jepardy. Once it is realized what is going on I believe the court will have NO choise but act with the state as plantive, the phone calls to the nation of Columbia ,NEW JERSY, and MAIMIA billed to the city of DU BOIS and one other key point force this.

I ASK FOR a restraining order on the Redevelopment Authority of DU BOIS not to enter the building at 2 west long ave Du Bois Pa., and motion for relief from judgement to take build until a hearing has been held

The Superior Court of Pennsylvania
Office of the Prothonotary

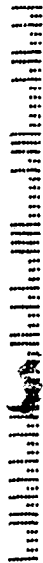
1015 GRANT BUILDING
PITTSBURGH, PA 15219

GENEVA COLLEGE BASKETBALL



MR. JAMES H. SWARTZ
2 WEST LONG STREET
DUBOIS, PA. 15801

15801X2102 01



The Superior Court of Pennsylvania
Office of the Prothonotary

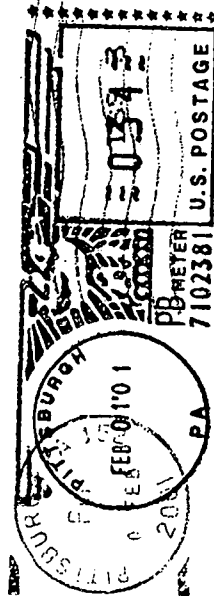
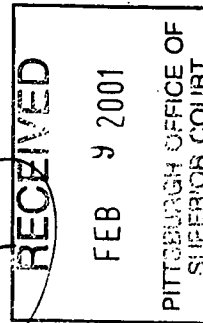
1015 GRANT BUILDING
PITTSBURGH, PA 15219

Westing St.
Swart002

Mr. James H. Swartz

[Redacted]

mmmm



SWAR002 15801X2102 IN 07 02/07/01
RETURN TO SENDER

NO FORWARD ORDER ON FILE
UNABLE TO FORWARD
RETURN TO SENDER

[Redacted]

1. I am the ~~(plaintiff)~~ (defendant) in the above matter and because of my financial condition am unable to pay the fees and costs of prosecuting or defending the action or proceeding.

2. I am unable to obtain funds from anyone, including my family and associates, to pay the costs of litigation.

3. I represent that the information below relating to my ability to pay the fees and costs is true and correct:

(a) Name: JAMES H. SWARTZ
Address: 2 West Long Ave.
Du Bois, Pa. 15801
Social Security Number: 195-40-9174

(b) Employment

If you are presently employed, state

Employer: Self Employed
Address: 2 West Long Ave
DuBois Pa. 15801

Salary or wages per month: _____

Type of work: SALES

If you are presently unemployed, state

Date of last employment: _____

Salary or wages per month: _____

Type of work: _____

(c) Other income within the past twelve months:

Business or profession: Rentals 1 At 175 per month

Other self-employment: 1 At 160 per month

Interest: less than \$2.00 Timberland Credit

Dividends: None UNION

Pension and annuities: None

Social security benefits: None

Support payments: None

Disability payments: None

Unemployment compensation and supply benefits: None

Workman's compensation: None

Public assistance: _____

Other: Applying for food stamps

(d) Other contributions to household support

(Wife) (~~Husband~~) Name: NONE

If your (wife) (~~husband~~) is employed, state Employer: _____

Salary or wages per month: _____

Type of work: _____

Contributions from children: None

Contributions from parents: None

Other contributions: _____

(e) Property owned Long Ave and 127 South BRady St. Du Bois.

Cash: _____

Checking account: less than 100.00 usually

Savings account: less than 40.00

Certificates of deposit: None

Real estate (including home): _____

Motor vehicle: Make _____, Year _____,

Cost _____, Amount Owed \$ _____

Stocks; bonds: _____

Other: Store Inventory

(f) Debts and obligations

Mortgage: None

Rent: None

Loans: Credit cards - About 2,500

Other: TAXES Buildings due -

About 4,000 Other About 2,600

(g) Persons dependent upon you for support

(Wife) (Husband) Name: None

Children, if any:

None

Name: _____

Age: _____

Other persons:

Name: None

Relationship: _____

4. I understand that I have a continuing obligation to inform the court of improvement in my financial circumstances which would permit me to pay the costs incurred herein.

5. I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: Nov 2000

Petitioner

James Swartz

(i) The praecipe required by subdivision (d) shall be substantially in the following form:

(Caption)

PRAECIPE TO PROCEED IN
FORMA PAUPERIS

To the Prothonotary:

Kindly allow _____, (Plaintiff) (Defendant), to proceed in forma pauperis.

I, _____, attorney for the party proceeding in forma pauperis, certify that I believe the party is unable to pay the costs and that I am providing free legal service to the party. The party's affidavit showing inability to pay the costs of litigation is attached hereto.

Attorney for

IN my opinion the Redevelopment Authority of Du Bois ,PA. ,has acted in bad faith in trying to take the building on 2 west long ave. DU BOIS for private not public use. This is ARBITRARILY UNFAIR DISCRIMINATORY PRACTICES BETWEEN BUSINESS and thus UNCONSTITUTIONALLY NOT FOLLOWING STATUTORY PROCEDURES!!!

UNDER 35 P S. 1709 #9 REDEVELOPMENT AUTHORITY HAS NO POWER TO CONDEM PROPERTY UNDER GUISE OF URBAN RENEWAL FOR A PRIVATE PURPOSE!!!

THE person they wanted to sell the property to wanted to use it for the same thing I now do STORES AND OFFICES, STATEMENT TO THIS EFFECT IS A MATTER OF PUBLIC RECORD IN THE DU BOIS NEWSPAPER!!

UNDER PA RULES OF COURT PART 5 MISCELLANEOUS RULE 150 DEFECTS IN FORM: I give note to THE COURT THAT APPEAL WAS ON LEGAL ERROR

REDEVELPPMENT Authority not obeying state laws which have right and control over local laws. IN MY OPINION BOTH THE REDEVELOPMENT AUTHORITY AND THE COURT ACTED WITH DEFECT BEING VERY PREJUDICIAL TO THE RIGHTS OF THE DEFENDANT AND WITH CLEAR TOTAL DISREGARD TO DAMAGES TO MY RENTAL BUSINESS, CREDIT RATE ING AND BUSINESS

MY ABILITY TO REMODLE THE REST OF THE BUILDING DUE TO THE REPEATED HARM OF BAD PRESS CONDEMNATION STATEMENTS, ALWAYS ON THE FRONT PAGE OF THE LOCAL NEWSPAPER RESULTED IN NOT BEING ABLE TO GET A LOAN ON THE BUILDING TO PROCEED WITH PLANS TO FIX UP THE 2 nd FLOOR OFFICE UNITS TO RENT, I LOST A LOT OF MONEY BECAUSE OF THIS!!!!

OBJECTIONS AND DEFENSE

Comes now, James Swartz and does hereby respectfully declare as follows.

1. The first floor of the building at 2 west long ave, Du Bois, Pa. is up to code and has utilities on in both Store fronts open to the public.

2. Repairs have been made to the building every year it is open PREJUDICE try to take this building when I am on public record at city council meeting as having a checking account to start up a Building and Construction Co. to fix up the building and make several office spaces AS the result of an ad right in the bookstore window one kid has agreed to help put baseball cards on the internet..

A Under third class city code section 913 City not to Engage in private Construction. clearly states ALL KINDS -TYPES OF CONSTRUCTION WORK BY LEGITIMATE PRIVATE ENTERPRISE!

B. When public records show that campaign funds according to MR. Logan went to the same city official who voted to give this property to DR. RICE I am denied FAIR MARKET VALUE. THEY are on public record in the Courier Express newspaper as trying to get the property at an unfair price, both buildings next to mine are smaller in size the true value is the building Lot not the building.

3. I believe State law says you cannot condemn a part of a building closed for repairs.

4. I believe STATE LAW says you can not condemn a building that is up for sale, I am gathering up the money to pay off the taxes to transfer the building ownership to the construction co

5. The building two down from mine had been listed on Coldwell for about 60,000 . IT is much smaller than mine Also these people know it is illegal to discriminate but according to Dave Logan the owner of Carpet corner Du Bois gave money to city official campaign funds and that building empty and several others that were for sale in the area did not get taken to redevelop.

6. No business or building always 100 percent rented out, I use part of the upstairs as storage for building repairs materials doors windows ect. Also I have been working to gather up goods for an additional internet site for toys to use up a second office space on the second floor for my own business.

7. My mail box for home address is on this building and my drivers lic. is to this address.

8. I request trial by jury and appeal.

9. I am unable to find any other building in the downtown near a parking lot that does not have a high price tag

10. The city with open Prejudice has twice passed well over twenty pages of city ordinance to try to hurt my business, most ADULT stores do 50,000 to 100,000 in business a year,

If this case against me is not dismissed in my opinion:

1. The city of Du Bois may lose some of its State and Federal Grant Money as a penalty for breaking several state laws
2. There is no amicable arrangement for trying to cheat people out of economic opportunity to have Business Rentals and make money
3. I will be forced to File Appeal to Superior Court of Pa., this is an UNdo delay in settling this matter causing additional business loss.
4. The city officials have made no effort to make an offer for the damages they have caused to me by statements to the newspaper, this resulted in loss of Business rental and loss of business!!!!
5. IN MY OPINION: AS AN ACT OF FRAUD THEY HAVE WITH HELD INFORMATION AS TO THE INCREASE IN THE VALUE OF THE PROPERTY THAT THE BUILDING SITS UPON. THEY WANT THE PROPERTY BEFORE THE NEW STATE ROAD GOES IN!
6. THE CITY OF DU BOIS officials have REpeated ACTS OF MALICIOUS ABUSE OF PROCESS IN PASSING CITY LAWS THAT SEEM TO EFFECT MAINLY ONLY ONE PERSON.
7. THE CITY OFFICIALS FAILED TO FORCE THE POLICE DEPT TO HANDLE POLICE COMPLAINTS OF VANDALISM AND ROBBERY. AS MALICIOUS ACTS OF MALICIOUS INJURY TO LOCAL BUSINESS TO LOWER PROPERTY VALUES.

Library References

Injunction § 89(3).
WESTLAW Topic No. 212.

C.J.S. Injunctions § 133.
P.L.E. Injunction § 25.

Notes of Decisions

In general 1

caster v. Shaub, 7 Lanc. 340, 1890;
Honesdale Borough v. Weaver, 2 Dist
344, 1893; Ellwood City v. Mani, 16 C.C.
474, 1895.

1. In general

An ordinance prohibiting the erection
of frame buildings will not be enforced by
injunction, unless the building constitutes
a nuisance per se. Williamsport v.
McFadden, 15 W.N.C. 269, 1884; Lan-

This section does not authorize re-
course to any proceedings other than the
usual and regular action at law or bill in
equity. City of Philadelphia v. Bartell, 11
A.2d 563, 139 Pa.Super. 319, Super.1940.

§ 4103. Regulations to supplement state laws

The ordinances enacted pursuant to this act shall not be inconsis-
tent with the provisions of any statute governing the same matter, but
all regulations prescribed by such ordinances which are additional or
supplementary to the statute law, and not inconsistent therewith, or
enacted for the purpose of carrying into effect the provisions of the
statute law, shall be valid and binding.

1937, April 14, P.L. 313, No. 87, § 3.

Library References

Municipal Corporations § 592(1) to
592(4).
WESTLAW Topic No. 268.

C.J.S. Municipal Corporations §§ 143
to 145.
P.L.E. Municipal Corporations § 412.

Notes of Decisions

In general 1

with provisions of any statute governing
the same matter relates to existing stat-
utes and is wholly prospective. City of
Philadelphia v. Bartell, 11 A.2d 563, 139
Pa.Super. 319, Super.1940.

1. In general

This section providing that zoning ordi-
nances to be enacted be not inconsistent

§ 4104. Building permits; time for approval; explanation for
disapproval; highway occupancy permits; "buildings,
structures or devices" defined

(a) A municipality which regulates the construction, erection,
maintenance, operation or repair of buildings, structures or devices
by means of an ordinance requiring the filing of an application, the
payment of a fee and the issuance of a permit shall render a decision
either approving or disapproving the application for a permit within
90 days after the application is filed unless the ordinance requires a
decision within a lesser period of time, provided that any disapproval

THE PROOF

Vol. 94—No. 22

Our 87th Year

Clearfield, Curwensville, Philipsburg, Moshannon Valley, Pa.,

Thursday, January 27, 20

Judge dismisses lawsuit agains

By Rebecca Koleno
Staff Writer

Clearfield County President Judge John K. Reilly Jr. has ruled in favor of the Clearfield County Commissioners in regards to the lawsuit filed against them by the Concerned Taxpayers of Clearfield County.

"We are very pleased with the decision," said Gene Lunsford, current commissioner chairman. "In my opinion, the accusations were frivolous and misleading from the beginning."

Theron Noble, attorney for CTCG, said, "It appears that Judge Reilly deferred working through

the various applicable statutes in this case of first impression, presenting the appellate courts with the opportunity to interpret the applicable law."

Tony Yankevich, one of the petitioners, said, "We will definitely appeal this as soon as Mr. Noble has the time. I am very disappointed in the ruling because the commissioners clearly violated the law." The next step would be to file an appeal with the Superior Court of the Western District in the state.

In its suit, CTCG claimed the former board of commissioners, composed of Michael Lytle, Mr. Lunsford and Gerry Hatcher, maintained a

budgetary surplus in excess of what is permitted by law. The taxpayers said this was the case in the 1997, 1998 and 1999 budgets and the audit and financial reports for fiscal years 1997 and 1998. The lawsuit was filed in October.

In November, the commissioners responded by filing preliminary objections to the suit and asked the judge to dismiss the case.

Kim Kesner, county solicitor, said the court lacks any jurisdiction on the allegations for any years before 1999. He said the concerned taxpayers failed to act within the statutes of time for 1997 and 1998.

"was something"

MALICIOUS INJURY

dict based on replies to questions submitted to jury without objection was that money was obtained without fraud, judgment against bankrupt was dischargeable, under Bankruptcy Act, § 17(2), 11 U.S.C.A. § 35(2), because not for a "willful and malicious" injury, which is a willful disregard of what one knows to be his duty, an act wrongful in itself, and necessarily causing injury and done intentionally. In re Burchfield, D.C. N.Y., 31 F.2d 118, 120.

The term "malicious injury," as used in Rev.St.1908, § 4460a, providing that if two or more persons, who shall combine, associate, agree, mutually undertake, or counsel together for the purpose of willfully or maliciously injuring another in his reputation, trade, business, or profession, by any means whatever, or for the purpose of maliciously compelling another to do or perform any act against his will, etc., is synonymous with that term at the common law. It refers to the infliction of a wrongful injury intentionally. The term is synonymous with that term in the law of conspiracy, independent of the statute. State v. Huegin, 85 N.W. 1040, 1067, 110 Wla. 180.

Injury which is intentional, wrongful, or without just cause is "malicious injury to person or property" within provision of Bankruptcy Act excepting certain claims from release by bankrupt's discharge. The word "willful" in Bankruptcy Act § 17, 11 U.S.C.A. § 35, excepting from release by bankrupt's discharge claims founded on liability for willful and malicious injury to person or property, means nothing more than intentional, while "malice" involved is merely disregard of duty which is apparent from the intentional doing of a willful act to the injury of another, and does not require hatred, spite, or ill will. Shabaz v. Henn, 173 S.E. 240, 251, 48 Ga.App. 441.

Under Bankruptcy Act, § 17, subd. 2, 11 U.S.C.A. § 35, excepting from discharge liabilities for obtaining property by false pretenses, or for willful and malicious injury to the person or property of another, a judgment in an action of replevin for the value of property obtained by the bankrupt by false representation that he was solvent and that his note for the property was good is not barred, though a judgment in replevin based on constructive fraud only would be barred, since "malicious," as used in the section, consists in the willful doing of an

act with knowledge it is liable to injure another and regardless of consequences, and does not include the malignant spirit or specific intention to injure the other. In re Kalk, D.C.N.Y., 270 F. 627, 629.

MALICIOUS INJURY TO BUSINESS

Action of "malicious interference with business" or "malicious injury to business" is based upon interference with right to pursue a lawful business, calling, or occupation, free from undue interference or molestation. French v. U. S. Fidelity & Guaranty Co., D.C.N.J., 88 F.Supp. 714, 721.

MALICIOUS INJURY TO PROPERTY

Wrongful sale of land which was subject to unrecorded deed given as mortgage held "malicious injury to property" of mortgagee, liability for which was unaffected by discharge in bankruptcy. Probst v. Jones, 247 N.W. 770, 780, 262 Mich. 678.

To constitute an offense under Rev.Pep. Code, § 712, punishing the "malicious injury or destruction of property," the act must not only be done willfully, but for the purpose of avenging some wrong sustained by the person charged with the offense. One who, on becoming angry without cause, destroyed without justification and in a spirit of wantonness the property of another, violated Rev.Pen.Code, § 712, punishing the malicious injury or destruction of property. State v. Tarlton, 118 N.W. 706, 708, 22 S.D. 495.

MALICIOUS INTENT

The phrases "malicious intent" and "malice aforethought" are not synonymous with "willful, deliberate, and premeditated" intent required as elements of first-degree murder. Pen.Code, § 190. People v. Thomas, 136 P.2d 7, 17, 18, 25 Cal.2d 880.

"Malicious intent" as used in the definition of murder in the first degree is not synonymous with "willful, deliberate and premeditated intent" and proof of malicious intent without the further proof that it was willful, deliberate and premeditated would establish "second degree murder" but not first degree murder. Pen.Code, § 189. People v. Holt, 153 P.2d 21, 27, 25 Cal.2d 59.

MALICIOUS ABUSE

Use for purpose not intended by law—C't'd probable cause, or that it terminated prior to the institution of the suit for damages." *Farrar Lumber Co. v. Hogan*, 103 S.E. 863, 25 Ga.App. 597; *McElreath v. Gross*, 98 S.E. 190, 191, 23 Ga.App. 287; *Scarborough v. J. W. Goldsmith, Grant Co.*, 103 S.E. 192, 25 Ga.App. 269.

A malicious abuse of legal process consists in the malicious misuse or misapplication of process to accomplish a purpose not warranted or commanded by the writ—the malicious perversion of a regularly issued process, whereby a result not lawfully or properly obtained on a writ is secured—and hence it does not include a case where the process was procured maliciously, but in which there was no abuse or misuse after its issuance. *Bartlett v. Christhill, Md.*, 14 A. 518, 521, citing *Grainger v. Hill*, 4 Bing. N.C. 212; *Sommer v. Wilt, Pa.*, 4 Serg. & R. 19.

A "malicious abuse of legal process" occurs where a party employs process for some unlawful object, not the purpose which it is intended by the law to effect, and, in action for such malicious abuse, it is not necessary to prove that action in which process issued has been determined, or to aver that it was sued out without reasonable or probable cause. *Fenton Storage Co. v. Feinstein*, 195 A. 176, 178, 179, 129 Pa.Super. 125.

MALICIOUS ACCUSATION

"Malicious accusation," within Comp.St. 1022, § 0379, denouncing blackmail, is to procure accusation or prosecution of another from improper motive and without probable cause, and is similar to malicious prosecution, and is not same as a "malicious threat to accuse of crime," which means that one acts with evil intent and with evil motive by threats of criminal prosecution, through fear of which will of individual threatened is intended to be overcome. *McKenzie v. State*, 204 N.W. 60, 63, 113 Neb. 576.

MALICIOUS ACT

A "malicious act" is an unlawful act done intentionally without just cause, legal justification or excuse. *Michels v. Boruta, Tex. Civ.App.*, 122 S.W.2d 216, 220.

A "malicious act" is one committed in a state of mind which shows a heart regardless

of social duty and fatally bent on mischief, a wrongful act intentionally done without legal justification nor excuse. *Rankin v. State*, 139 S.W.2d 811, 812, 139 Tex.Cr.R. 247.

The act of persuading a person to break his contract for the indirect purpose of injuring the other contracting party or benefiting the person inducing such breach at the expense of the other contracting party is a "malicious act" which is wrongful and therefore actionable if injury issues therefrom. *Wilkinson v. Powe*, 1 N.W.2d 539, 542, 300 Mich. 275.

"A malicious act" is an unlawful act done intentionally, without just cause or excuse. *Tucker v. Bartlett*, 153 P. 1, 2, 97 Kan. 163.

A malicious act is one done without just cause, or one done with a wrongful purpose. *Morrison v. Press Pub. Co.*, 14 N.Y.S., 131, 132, 59 N.Y.Super.Ct.(29 Jones & S.) 216.

In an action for assault, there must be a wrongful act done intentionally without just cause or excuse, and such an act is "malicious" in the statutory sense. In re *Smyser*, 182 Ill.App. 208, 209.

Bouvier defines a malicious act as "a wrongful act, intentionally done, without cause or excuse"—the definition of Bayley, J., in *Bromage v. Prosser*, 4 Barn. & C. 247. *Brandt v. Morning Journal Ass'n*, 80 N.Y.S. 1002, 1004, 81 App.Div. 133.

In general a malicious act involves all that is usually understood by the term "willful," and is further marked by either hatred or ill will toward the party injured, or by such utter recklessness and disregard of the rights of others as denotes a corrupt or malevolent disposition. *State v. Willing*, 105 N.W. 355, 356, 129 Iowa, 72.

A malicious act is one committed in a state of mind which shows a heart regardless of social duty and fatally bent on mischief—a wrongful act intentionally done, without legal justification or excuse. *Bowers v. State*, 7 S.W. 247, 24 Tex.App. 542, 5 Am.St.Rep. 901; *High v. State*, 10 S.W. 238, 241, 26 Tex.App. 545, 8 Am.St.Rep. 488.

In a legal sense, any unlawful act done willfully to the injury of another is, as against that person, malicious, and it is not necessary that the perpetrator of such act should be influenced by ill will towards such

MALICIOUS PROSECUTION

In order to give the injured employee the option of either suing for damages at common law or proceeding under the Workmen's Compensation Act is a conscious and deliberate intent directed to the purpose of inflicting an injury and such intent may not be inferred from mere negligence although it is gross. *Breimhorst v. Beckman*, 35 N. W.2d 719, 730, 227 Minn. 409.

MALICIOUS PROSECUTION

In general—p. 303

Abuse of process distinguished—p. 308

Civil litigation—p. 308

Essential elements—p. 309

False imprisonment distinguished—p. 314

Malice and want of probable cause—p. 318

Malice imputed to attorney—p. 322

Malicious arrest synonymous—p. 322

Cross References

Abuse of Legal Process

Abuse of Process

False Imprisonment

Malice

In general

In a "malicious prosecution," the proceedings are had in pursuance of legal process, maliciously and wrongfully obtained. *Barfield v. Marron*, 62 So.2d 270, 280, 222 La. 210.

"Malicious prosecution" is the putting of the processes of law into operation maliciously and without probable cause leading on in due course to the arrest of the victim. *Huffstutler v. Edge*, 47 So.2d 101, 103, 35 Ala.App. 276.

To state a cause of action for "malicious prosecution" it must be alleged and proved that action upon which the suit is based shall have been terminated in favor of defendant therein. *Simpkins v. Brooks*, D.C.Mun.App., 49 A.2d 549, 551.

Malicious prosecution is not limited to criminal suits. *Hayes v. Union Mercantile Co.*, 70 P. 975, 979, 27 Mont. 204.

Prosecution instituted for purpose of collecting debt or other private motive is "malicious prosecution" in legal sense. *Pritchett v. Northwestern Mut. Life Ins. Co.*, 73 S.W.2d 815, 819, 223 Mo.App. 661.

The mere fact of an acquittal or termination of criminal proceedings in favor of

In general—Cont'd

accused does not make out a prima facie case of "malicious prosecution" against person who instituted those proceedings. *Stinson v. Smith*, 196 A. 843, 329 Pa. 177.

"Malicious prosecution" is criminal prosecution instituted upon no or such slight grounds of suspicion as to indicate general disregard of rights of others directed by chance against individual. *Freezer v. Miller*, 176 S.E. 159, 170, 103 Va. 180.

A complaint which alleged that tenant left leased premises as result of stipulation signed by himself and his attorney and in compliance with resulting judgment in landlord's action under Emergency Rent Act to secure possession, and which further alleged that landlord's statement in regard to his intention to immediately occupy designated premises as a dwelling were fraudulent, could not be upheld as stating a cause of action for "malicious prosecution," where it appeared that the action upon which suit was based terminated in landlord's favor. *Simpkins v. Brooks*, D.C.Mun.App., 49 A.2d 549, 551.

A "malicious prosecution" is a prosecution with malice and without probable cause; "false imprisonment" is arrest and imprisonment without legal process; and "abuse of process" is misuse of legal process for ulterior purpose. *State, for Use of Little v. U. S. Fidelity & Guaranty Co.*, Miss., 64 So.2d 697, 704.

The essential elements of a "malicious prosecution" are the commencement of a criminal prosecution against plaintiff, its causation by defendant, its termination in favor of plaintiff, plaintiff's innocence of crime charged, absence of probable cause for such proceeding, presence of actual malice therein, and damages resulting to plaintiff by reason thereof. *Montgomery Ward & Co. v. Kirkland*, Tex.Civ.App., 225 S.W. 2d 900, 907, 908.

"Malicious prosecution" is an action for the recovery of damages to person, property or reputation shown to have proximately resulted from a previous civil or criminal proceeding which was commenced or continued without probable cause, but with malice, and which has terminated unsuccessfully. *Riegel v. Hygrade Seed Co.*, D.C.N.Y., 47 F.Supp. 290, 293.

MALICIOUS PROSECUTION

In general—Cont'd

Unsuccessful efforts to secure the institution of proceedings, however malicious or unfounded, are not actionable as "malicious prosecution". *Melvin v. Pence*, 130 F.2d 423, 428, 76 U.S.App.D.C. 154, 143 A.L.R. 149.

A cause of action for "malicious prosecution" is complete when the prosecution is terminated in favor of plaintiff, and the statute of limitations begins to run at that time. *White v. Pacific Telephone & Telegraph Co.*, 123 P.2d 193, 195, 168 Or. 371.

The gravamen of "malicious prosecution" action is the wrongful institution or prosecution of action or proceeding without probable cause, to hurt and damage of complainant. *Manufacturers & Jobbers Finance Corp. v. Lane*, 10 S.E.2d 849, 853, 854, 221 N.C. 189.

Where plaintiff brings action or institutes process and prosecutes the same with malice and without probable cause, the defendant can obtain full relief by action for "malicious prosecution". *Manufacturers & Jobbers Finance Corp. v. Lane*, 19 S.E.2d 849, 853, 854, 221 N.C. 189.

Instituting a prosecution for the purpose of aiding in the collection of a debt is for an improper purpose and therefore a "malicious prosecution". *State Life Ins. Co. of Indianapolis, Ind., v. Hardy*, 195 So. 708, 713, 189 Miss. 266.

To create right of action for "malicious prosecution," there must exist malice on part of defendant in procuring or bringing about unfounded prosecution or other action. *Lexington Cab Co. v. Terrell*, 137 S.W.2d 721, 724, 282 Ky. 70.

One who does not swear out the warrant cannot be held liable for "malicious prosecution" unless he instigated a criminal action against plaintiff or caused one to be maintained or voluntarily aided or assisted in its prosecution. *Fertitta v. Herndon*, 3 A.2d 502, 504, 175 Md. 560, 120 A.L.R. 1317.

Defendant who did not advise, aid or abet prosecution of a criminal case could not be held for "malicious prosecution" because after learning of prosecution instituted by another defendant he did nothing to stop it. *Fertitta v. Herndon*, 3 A.2d 502, 504, 175 Md. 560, 120 A.L.R. 1317.

In general—Cont'd

Strictly speaking, the term "malicious prosecution" is applicable only to the carrying on of a criminal case, and is used in such sense only in the statute concerning rights of action for malicious prosecution. Code 1933, § 105-801 et seq. *Baldwin v. Davis*, 4 S.E.2d 458, 461, 188 Ga. 587.

Complaint which alleged that seizure was unlawful, because warrant of attachment was void, in that the papers on which it was granted were insufficient to confer jurisdiction, but which alleged no facts to show lack of probable cause existed, failed to state a cause of action for "malicious prosecution". *Hubbard v. Banker*, 24 N.Y.S.2d 239, 293, 295.

"Malicious prosecution" in law is a tort, and consists in defendant therein maliciously and without probable cause setting in motion the laws of particular jurisdiction whereby the plaintiff in such action is wrongfully and maliciously accused of committing some criminal offense, or committing some other wrong justifying the particular procedure taken against him, though it be a civil one, and by reason of which he sustains the damages he seeks to recover. *Lexington Cab Co. v. Terrell*, 137 S.W.2d 721, 724, 282 Ky. 70.

A petition for "malicious prosecution" will not lie unless it is alleged that prosecution has terminated in favor of petitioner. *Hughes v. Georgia Power Co.*, 15 S.E.2d 466, 468, 65 Ga.App. 163.

A petition did not state cause of action for "malicious prosecution" against street railroad whose officers caused the arrest of plaintiff for unlawfully smoking on street car, where petition alleged that judgment and sentence were still outstanding, and contention that judgment was void was untenable. Code, § 18-203. *Hughes v. Georgia Power Co.*, 15 S.E.2d 466, 468, 65 Ga.App. 163.

Evidence that surveyors who surveyed boundary between plaintiff's and defendant's lands thought that land from which plaintiff cut timber was within defendant's boundary warranted conclusion that defendant had "probable cause" to believe that defendant owned such land and that plaintiff was without color of title to it, and hence defendant was not liable to plaintiff for "malicious prosecution" as result of de-

Developer does not want downtown building

DUBOIS. Dr. Jeff Bratt, acquiring the property through who has led the realisation of its power of condemning it.

reported as part of the pending redevelopment of downtown Dallas. Rice said Wednesday he would not go forward with any more steps. At the time, Rice had said the authority is going to be



Boisjard

The intent to buy the Used Books 'N' Stuff building at the northwest corner of Brady Street and Long Avenue even if the DuBois Redevelopment authority does acquire the building and have it re-

Rice has renovated several buildings along South Brady See RICE, Page A II

1



LOCK V. SCHREPPLER

Cite as, Del. Super., 426 A.2d 856

Del. 857

STIFTEL, President Judge.

John LOCK, Sr. and Ella G. Lock,
his wife, Plaintiffs,

v.

George B. SCHREPPLER, Defendant.

Superior Court of Delaware,
New Castle County.

Submitted Nov. 23, 1980.

Decided Jan. 28, 1981.

Purchasers of residence brought action
for statutory and common-law fraud

against seller's real estate agent and others. After extensive discovery, purchasers dismissed action against all defendants except real estate agent, who moved for summary judgment. The Superior Court, New Castle County, Stiftel, President Judge, held that: (1) fact issues precluded summary judgment as to portion of action based on common-law fraud, and (2) statutes providing regulatory powers to Real Estate Commission in order to protect public did not create private cause of action.

Motion granted in part, denied in part.

1. Fraud ⇐ 4½

A representation may be fraudulent, even if it is true, if defendant knows that because of facts not stated, statement is materially misleading.

2. Fraud ⇐ 17

Where there is no general duty to speak, nevertheless, if person undertakes to speak, he then has duty to make full and fair disclosure as to matters about which he assumes to speak.

4. Fraud ⇐ 30

Where broker engaged to sell induces third person to purchase property by means of fraud, broker may be liable to that person for loss suffered as a consequence.

5. Fraud ⇐ 21

Where an ordinary investigation will not reveal a latent defect, purchaser of residence may rely upon representation of real estate agent as to defect.

6. Fraud ⇐ 21

Where only partial investigation of thing to be purchased is made, under proper

circumstances, purchaser may rely on another's representations to his detriment, particularly where other person making said representations has superior knowledge.

7. Fraud ⇐ 20

Justifiable reliance which plaintiffs in action for fraud must demonstrate requires that representation made by defendant and relied upon by plaintiff involve matters which reasonable person would consider important in determining his choice of action in transaction in question, but does not require that reasonable person would make choice solely on basis of that matter; the misrepresentations need merely be a substantial factor in inducing plaintiffs to act.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,

Condemnor

vs

JAMES H. SWARTZ,

Condemnee

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:
:
:
:
:

No. 00 - 591 - CD

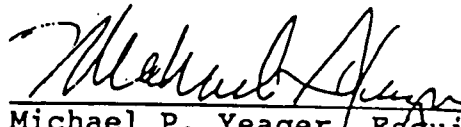
IN CONDEMNATION

OBJECTION TO CONDEMNEE'S REQUEST FOR ANOTHER THIRTY DAY EXTENSION

COMES NOW, MICHAEL P. YEAGER, ESQUIRE, Attorney for the
Condemnor, and files the within Objection to the Request for a
Another Thirty Day Extension filed on behalf of Condemnee based
upon the following:

1. Condemnee has already sought and secured a thirty-day
extension within which to file a legal Brief.
2. The oral argument on this matter is still not scheduled
until September 28, 2000.
3. Accordingly, Condemnee has had sufficient time from the
filing of his Objection and Defense on June 19, 2000 to prepare.

WHEREFORE, Condemnor respectfully objects to the Request for
Thirty Day Extension as filed by Condemnee.



Michael P. Yeager Esquire
Attorney for Condemnor

Unconsolidated Pennsylvania Statutes

EMINENT DOMAIN (Title 26)

ARTICLE I. SHORT TITLE

§ 1-101. Short title.

This act shall be known and may be cited as the "Eminent Domain Code."

[Note: The Eminent Domain Code is inapplicable to condemnations by public utilities. See, *Appeal of Giesler*, 154 Pa. Commonwealth Ct. 48, 622 A.2d 408 (1993). Further, the Rules of Civil Procedure {except rules 4001 and following per Pa.R.C.P.No.4001(a)(1)} do not apply to Eminent Domain Code proceedings. See, *Appeal of McCoy*, 153 Pa. Commonwealth Ct. 504, 621 A.2d 1163 (1993).]

The complete Pennsylvania Statutes are not yet available on the web. However, selected portions have been made available and can be accessed by [CLICKING HERE](#). These statutes, though available instantaneously over the web, may not be the current law. Court decisions overturning them, later statutes amending them, and a host of other factors come into play when interpreting them. They are provided here as a resource. They should provide some information about the state of the law. However, a competent lawyer, *who from other sources will research the law to insure what is current*, should always be employed in matters of importance.

Visit/Return to Home Page of Pennsylvania District Court 15-4-04.

Short Title / Judiciary@aol.com / last revised December 1999

NDOT MUST PAY

NDOT took Kenneth Barsy's land in Las Vegas for part of the new Spring Mountain Road and Interstate 15 Interchange. Before actually taking the property, though, NDOT announced the project. NDOT representatives visited Barsy's tenants and informed them of the project. This announcement caused Barsy's tenants, Decratrend Paints and another business, to move off the property. The effect on Barsy was devastating. Not only did he lose these tenants and the income stream from their rent payments, but other potential tenants would not move into the property because they knew the project was coming.

The department then made it harder on Barsy by not

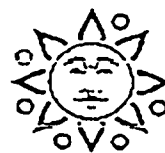
with property he could not rent. Barsy also alleged his property was made more difficult to sell.

When the condemnation finally came, he sought not only the value of the land but the amount of his lost rents. The trial court said "no" but the Supreme Court reversed. The Supreme Court said that when the government unreasonably delays a condemnation after making an official announcement of intent to condemn, the property owner may have whatever precondemnation damages he can prove. These damages can include lost rents. The Court sent the matter back to the trial court for a new trial where Barsy will be allowed a chance to prove his damages.

This decision is important because it is a departure from established Nevada law. Lost rents were previously not

land's market value. This decision creates a new class of damages, called pre-condemnation damages, which are now available to Nevada property owners under proper circumstances. In making its ruling, the Nevada Supreme court endorsed California law precondemnation damages.

This newsletter is published periodically by eminent domain attorney, Michael G. Chapman



This newsletter is for general information only, and is not legal advice. The statements made herein should not be relied upon as legal advice. Please contact a competent eminent domain attorney for personal help and advice.

Eminent Domain 5

November 1999 • Issue Five

YOUR CASE: PART ONE

In a typical eminent domain case, the government first decides it wants to construct a public project. The project must be for a public purpose, such as a road or flood control basin. Almost any kind of project qualifies as a public project, including land

These planning activities can hurt land owners. For example, uncertainty over when the project will be built can cause tenants to vacate the premises, leaving the landowner with empty property on which he must still pay taxes and mortgage installments. In most cases, the government is not liable for the damage caused to

THIS NEWSLETTER

This newsletter is published periodically by Eminent Domain Attorney, Michael G. Chapman. This newsletter is for general information only, and is not legal advice. The statements made herein should not be relied upon as legal advice. Please contact our

may extend the time for filing preliminary objections. Preliminary objections shall be limited to and shall be the exclusive method of challenging

- (1) the power or right of the condemnor to appropriate the condemned property unless the same has been previously adjudicated;
- (2) the sufficiency of the security;
- (3) any other procedure followed by the condemnor; or
- (4) the declaration of taking.

Failure to raise these matters by preliminary objections shall constitute a waiver thereof.

(b) Preliminary objections shall state specifically the grounds relied upon.

(c) All preliminary objections shall be raised at one time and in one pleading. They may be inconsistent.

(d) The condemnee shall serve a copy of the preliminary objections on the condemnor within seventy-two hours after filing the same.

(e) The court shall determine promptly all preliminary objections and make such preliminary and final orders and decrees as justice shall require, including the revesting of title. If preliminary objections are finally sustained, which have the effect of finally terminating the condemnation, the condemnee shall be entitled to damages as if the condemnation had been revoked under section 408,1 to be assessed as therein provided. If an issue of fact is raised, the court shall take evidence by depositions or otherwise. The court may allow amendment or direct the filing of a more specific declaration of taking.

1964, Sp.Sess., June 22, P.L. 84, art. Iv, § 406. As amended 1969, Dec. 5, P.L. 316, § 1.

§ 407. Possession; entry; payment of compensation

(a) The condemnor, after the expiration of the time for filing preliminary objections by the condemnee to the declaration of taking, shall be entitled to possession or right of entry upon payment of, or a written offer to pay to the condemnee, the amount>

Transfer interrupted!

>

Transfer interrupted!

after refuses to deliver possession or permit right of entry, the prothonotary upon praecipe of the condemnor shall issue a nile, returnable in five days after service upon the condemnee, to show cause why a writ of possession should not issue, upon which the court, unless preliminary objections warranting delay are pending, may issue a writ of possession conditioned upon payment to the condemnee or into court of such estimated just compensation and on such other terms as the court may direct.

(b) If within sixty days from the filing of the declaration of taking, the condemnor has not paid just compensation as provided in subsection (a) of this section, the condemnee may tender possession or right of entry in writing and the condemnor shall thereupon make payment of the just compensation due such condemnee as estimated by the condemnor. If the condemnor fails to make such payment the court, upon petition of the condemnee, may compel the condemnor to file a declaration of estimated just compensation or, if the condemnor fails or refuses to file such declaration, may at the cost of the condemnor appoint an impartial expert appraiser to estimate such just

Johnstown Redevelopment Authority

Urban Redevelopment Law 53 P.S. Section 1719.1

Johnstown, Pennsylvania

§ 1719.1. Notice to displaced persons

- (a) A redevelopment authority in a city of the first class intending to alter or demolish property in furtherance of authority projects or programs shall give timely notice to all occupants required by such alteration or demolition to vacate the property.
- (b) Notice shall be given at the earliest practicable time prior to the dislocation of person affected, but no later than 30 days prior to the commencement of the alteration or demolition of the property.
- (c) The form of notice shall include, but not be limited to, posters or other graphic materials of sufficient size and design as will reasonably draw attention and which will reasonably inform the occupants of the property of the impending alteration or demolition and the date by which the occupants must vacate the property. Posters or other graphic materials shall be posted on and about the property in sufficient numbers as to reasonably draw the attention of all occupants of the property.
- (d) This section shall not be construed to relieve any authority of any duty to occupants of property as provided by law or regulation, including, but not limited to, the relocation assistance provisions of the act of June 22, 1964 (Sp.Sess., P.L. 84, No. 6), known as the "Eminent Domain Code," and regulations promulgated thereunder.

1945, May 24, P.L. 991, § 19.1, added 1978, April 18, P.L. 39, No. 21, §1, imd. effective.

Urban Redevelopment Law - Table of Contents

Johnstown Redevelopment Authority Home Page

WPL USCODE

Search: "42 w/3 1982:cite" rank 1

Page 4
January 27, 1999

officer or employee designated by any executive department or agency subject to this order may hold such hearings, public or private, as the Committee, department, or agency may deem advisable for compliance, enforcement, or educational purposes.

Sec. 302. If any executive department or agency subject to this order concludes that any person or firm (including but not limited to any individual, partnership, association, trust, or corporation) or any State or local public agency has violated any rule, regulation, or procedure issued or adopted pursuant to this order, or any nondiscrimination provision included in any agreement or contract pursuant to any such rule, regulation, or procedure, it shall endeavor to end and remedy such violation by informal means, including conference, conciliation, and persuasion unless similar efforts made by another Federal department or agency have been unsuccessful. In conformity with rules, regulations, procedures, or policies issued or adopted by it pursuant to Section 203 hereof, a department or agency may take such action as may be appropriate under its governing laws, including, but not limited to, the following:

It may -

(a) cancel or terminate in whole or in part any agreement or contract with such person, firm, or State or local public agency providing for a loan, grant, contribution, or other Federal aid, or for the payment of a commission or fee;

(b) refrain from extending any further aid under any program administered by it and affected by this order until it is satisfied that the affected person, firm, or State or local public agency will comply with the rules, regulations, and procedures issued or adopted pursuant to this order, and any nondiscrimination provisions included in any agreement or contract;

(c) refuse to approve a lending institution or any other lender as a beneficiary under any program administered by it which is affected by this order or revoke such approval if previously given.

Sec. 303. In appropriate cases, executive departments and agencies shall refer to the Attorney General violations of any rules, regulations, or procedures issued or adopted pursuant to this order, or violations of any nondiscrimination provisions included in any agreement or contract, for such civil or criminal action as he may deem appropriate. The Attorney General is authorized to furnish legal advice concerning this order to the Committee and to any department or agency requesting such advice.

Sec. 304. Any executive department or agency affected by this

KNOW YOUR LAND RIGHTS!

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<=BACK NEXT=>

WPL USCODE

Search: "42 w/3 1982:cite" rank 1

Page 2
January 27, 1999

feasible of the goal of a decent home and a suitable living environment for every American family; and

WHEREAS discriminatory policies and practices based upon race, color, creed, or national origin now operate to deny many Americans the benefits of housing financed through Federal assistance and as a consequence prevent such assistance from providing them with an alternative to substandard, unsafe, unsanitary, and overcrowded housing; and

WHEREAS such discriminatory policies and practices result in segregated patterns of housing and necessarily produce other forms of discrimination and segregation which deprive many Americans of equal opportunity in the exercise of their unalienable rights to life, liberty, and the pursuit of happiness; and

WHEREAS the executive branch of the Government, in faithfully executing the laws of the United States which authorize Federal financial assistance, directly or indirectly, for the provision, rehabilitation, and operation of housing and related facilities, is charged with an obligation and duty to assure that those laws are fairly administered and that benefits thereunder are made available to all Americans without regard to their race, color, creed, or national origin:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, it is ordered as follows:

PART I - PREVENTION OF DISCRIMINATION

Section 101. I hereby direct all departments and agencies in the executive branch of the Federal Government, insofar as their functions relate to the provision, rehabilitation, or operation of housing and related facilities, to take all action necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex or national origin -

(a) in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities are -

(i) owned or operated by the Federal Government, or
(ii) provided in whole or in part with the aid of loans, advances, grants, or contributions hereafter agreed to be made by the Federal Government, or

(iii) provided in whole or in part by loans hereafter insured, guaranteed, or otherwise secured by the credit of the Federal Government or

KNOW YOUR LAND RIGHTS!

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<=BACK NEXT=>

Johnstown Redevelopment Authority

Urban Redevelopment Law 53 P.S. Section 1712.1

Johnstown, Pennsylvania

§ 1712.1. Blighted property removal

- (a) Notwithstanding any other provision of this act, any Redevelopment Authority shall have the power to acquire by purchase, gift, bequest, eminent domain or otherwise, any blighted property as defined in this section, either within or outside of a certified redevelopment area and, further, shall have the power to hold, clear, manage and/or dispose of said property for residential and related reuse and commercial or industrial reuse. This power shall be exercised in accord with the procedures set forth in this section.
- (b) Such power on the part of any Redevelopment Authority shall be conditioned upon the creation or existence of a vacant property review committee by ordinance of the governing body of the municipality. The committee shall be made up of members as determined in the said ordinance, but shall include at least one member of the governing body, a representative of the Redevelopment Authority, a representative of the appropriate planning commission, and a representative to be designated by the chief executive officer or officers from the executive branch of the government of the municipality.
- (c) Blighted property shall include:
 - (1) Any premises which because of physical condition or use is regarded as a public nuisance at common law or has been declared a public nuisance in accordance with the local housing, building, plumbing, fire and related codes.
 - (2) Any premises which because of physical condition, use or occupancy is considered an attractive nuisance to children, including but not limited to abandoned wells, shafts, basements, excavations, and unsafe fences or structures.
 - (3) Any dwelling which because it is dilapidated, unsanitary, unsafe, vermin-infested or lacking in the facilities and equipment required by the housing code of the municipality, has been designated by the department responsible

for enforcement of the code as unfit for human habitation.

-
- (4) Any structure which is a fire hazard, or is otherwise dangerous to the safety of persons or property.
-
- (5) Any structure from which the utilities, plumbing, heating, sewerage or other facilities have been disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use.
-
- (6) Any vacant or unimproved lot or parcel of ground in a predominantly built-up-neighborhood, which by reason of neglect or lack of maintenance has become a place for accumulation of trash and debris, or a haven for rodents or other vermin.
-
- (7) Any unoccupied property which has been tax delinquent for a period of two years prior to the effective date of this act, and those in the future having a two year tax delinquency.
-
- (8) Any property which is vacant but not tax delinquent, which has not been rehabilitated within one year of the receipt of notice to rehabilitate from the appropriate code enforcement agency.
- (d) Residential and related use shall include residential property for sale or rental and related uses, including, but not limited to, park and recreation areas, neighborhood community service, and neighborhood parking lots.
- (e) The blighted property review committee and the appropriate planning commission, upon making a determination that any property is blighted within the terms of this section, must certify said blighted property to the Redevelopment Authority, except that:
 -
 - ★ ○ (1) No property shall be certified to the Redevelopment Authority unless it is vacant.
 -
 - (2) No property shall be certified to the Redevelopment Authority unless the owner of the property or an agent designated by him for receipt of service of notices within the municipality has been served with notice of the determination that the property is blighted, together with an appropriate order to eliminate the conditions causing the blight and notification that failure to do so may render the property subject to condemnation under this act. The notice shall be served upon the owner or his agent in accord with the provisions of a local ordinance pertaining to service of notice of determination of a public nuisance. The owner or his agent shall have the right of appeal from the determination in the same manner as an appeal from

the determination of public nuisance.

-
- (3 No blighted property shall be certified to the Redevelopment Authority until the time period for appeal has expired and no appeal has been taken, or, if taken, the appeal has been disposed of, and the owner or his agent has failed to comply with the order of the responsible department or other officer or agency.
- (f) Acquisition and disposition of blighted property under this section shall not require preparation, adoption or approval of a redevelopment area plan or redevelopment proposal as set forth in section 10, but at least thirty days prior to acquisition of any property under this section, the Redevelopment Authority shall transmit identification of the property to the planning commission of the municipality and shall request a recommendation as to the appropriate reuse of the property. The Redevelopment Authority shall not acquire the property where the planning commission certifies that disposition for residential or related use would not be in accord with the comprehensive plan of the municipality.
- (g) Power of eminent domain shall be exercised pursuant to a resolution of the Redevelopment Authority and the procedure set forth in the act of June 22, 1964 (Sp.Sess., P.L. 84, No. 6), 2 known as the "Eminent Domain Code," as amended.
- (h) Property disposed of within a redevelopment area shall be disposed of under a redevelopment contract in accordance with the provisions of this act.

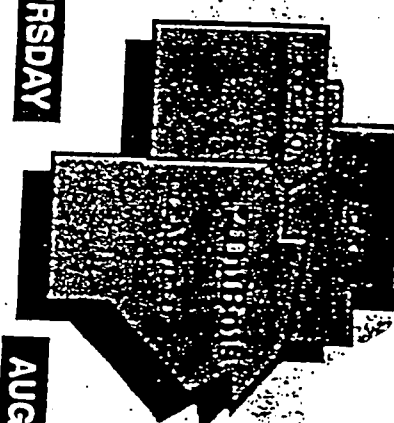
Property disposed of outside an urban renewal project area shall be disposed of by deed in accordance with the provisions set forth in applicable law.

1945, May 24, P.L. 991, § 12.1, added 1978, June 23, P.L. 556, No. 94, § 2, effective in 60 days. Amended 1988, March 30, P.L. 304, No. 39, § 5, imd. effective.

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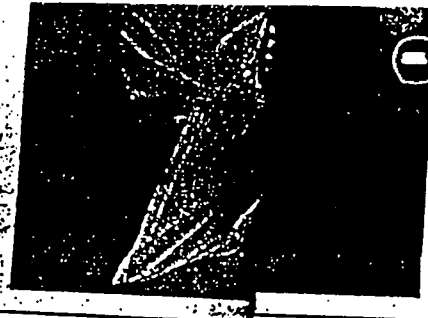
NO. 172

THURSDAY

AUGUST 31, 2000

Paving projects post

BY MARY JO YEBERNETSKY



—Graham A. Whalen, 6, over his brother, Jude, with a baseball. The boys call with their father in I.Y. (AP Photo)

Building owner: Condemnation plans in error

BY MARY JO YEBERNETSKY

C-E Staff Writer

DUBOIS — James Swartz of 2 W. Long Ave. told the DuBois City Council Monday there is an error in the condemnation plans for his building.



DUBOIS

The DuBois Redevelopment Authority is legally condemning the property to acquire it under the authority's right of eminent domain. Swartz will be paid the appraised value of the building when the condemnation process is completed, according to previously published reports.

Swartz owns 2-4 W. Long Ave. the site of Uced Hooks N Stuff and a tattoo shop.

The building is said to be key to the city's downtown revitalization, according to Lance Mar-

See BUILDING, Page A 11

ing family entally t boy

ckstop

CH. M. SHINSL. On

WELCH, GOLD & SIEGEL, P.C.

ATTORNEYS AT LAW

SUITE 1240, LAWYERS BUILDING • 428 FORBES AVENUE • PITTSBURGH, PENNSYLVANIA 15219
TELEPHONE: 1-800-375-3089 • FAX: (412) 391-8232

COPY

PHILADELPHIA OFFICE
ASSOCIATED WITH
MATTHEMAN, WEINROTH & MILLER
ATTORNEYS AT LAW
PHILADELPHIA, PA 19110

October 9, 1997

Ms. Essie Quinn
Code Enforcement Officer
City of DuBois
16 West Scribner Avenue
DuBois, PA 15801

Re: James Swartz
Our Intake No. 15755

Dear Ms. Quinn:

Please be advised that this office has recently been contacted by James H. Swartz, 2 West Long Avenue, DuBois, PA 15801. According to Mr. Swartz, you inspected his bookstore and notified him of electrical code violations. You then gave him ninety (90) days to correct these violations. Mr. Swartz informs us that although he has made the requisite corrections, you have not inspected the property.

We are therefore requesting that you inspect Mr. Swartz's bookstore to confirm that he is in compliance with the DuBois Electric Code. We would further appreciate if you would be able to furnish Mr. Swartz a copy of your certification to conduct inspections of this type. Thank you for your courtesy and cooperation in this matter.

Very truly yours,

WELCH, GOLD & SIEGEL, P.C.


S. JOSEPH SCHRAMM, ESQUIRE

SJS/klp

cc: James W. Swartz

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

VS

JAMES H. SWARTZ,
Condemnee

: NO. 00-591-CD

:
: Counsel of Record for this Party:

:
: Michael P. Yeager, Esq.
: Supreme Court No.: 15587

:
: P.O. Box 752
: 110 North Second Street
: Clearfield, PA 16830

:
: (814) 765-9611

: Type of Case: Condemnation

:
: Filed on Behalf of: Condemnee.

:
: Counsel of Record for this Party:
: James H. Swartz

:
: 2 West Long Avenue
: DuBois Pa 15801

:
: (814) 375-4453

NOTICE OF APPEAL

Notice is hereby given that James H. Swartz ,Condemnee Defendant herein,
hereby appeals to the COMMONWEALTH COURT 42 PA.C.S. 762 (A) (6), on
(EMINENT DOMAIN) ,HARRISBURG from the final judgment entered in this
action on 11 th day of October, 2000

Respectfully submitted,

BY

Counsel of Record for this Party

James H. Swartz
2 WEST LONG AVE.

DU BOIS ,PA.15801 phone 814 375 4453

FILED

FEB 20 2001

073:25/441

William A. Shaw
Prothonotary

1 cent to Comm Court.

5 * cent to Swartz

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

REDEVELOPMENT AUTHORITY OF :

THE CITY OF DUBOIS :

-vs- : No. 00 - 591 - CD

JAMES H. SWARTZ: :

ORDER

NOW, this 11th day of October, 2000, the Court having considered
Condemnee's pro se captioned Objections and Defense and treating it as preliminary
objections, it is the ORDER of this Court that said preliminary objections shall be and are
hereby denied.

BY THE COURT,

/s/ JOHN K. REILLY, JR.

Honorable John K. Reilly, Jr.
President Judge

FILED

OCT 11 2000

William A. Shaw
Prothonotary

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

NOV 27 2000

Attest.

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

VS

JAMES H. SWARTZ,
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: Type of Case: Condemnation

: Type of Pleading: COMMONWEALTH COURT.

: 42 PA.C.S. 762 (A) (6)
: (EMINENT DOMAIN)

: Filed on Behalf of: Condemnee.

: Counsel of Record for this Party:
: James H. Swartz

: 2 West Long Avenue
: DuBois Pa 15801

: (814) 375-4453

RULE 904 NOTICE OF APPEAL

FILED

FEB 22 2001

William A. Shaw
Prothonotary

#26

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,

Appellant

v.

JAMES J. SWARTZ

No. 300 C.D. 2001

PER CURIAM

O R D E R

NOW, February 12, 2001, appellant is directed to file a proper notice of appeal in the form provided in Pa. R.A.P. 904, no later than February 23, 2001. The notice of appeal shall be filed with the Court of Common Pleas of Clearfield County, accompanied by the filing fee of \$55.00 payable to Commonwealth Court and a certificate of service on opposing counsel and the Honorable John K. Reilly.

If appellant fails to comply with this order by February 23, 2001, the Chief Clerk shall mark the docket for this matter discontinued.

FILED

FEB 22 2001

9/10:55 AM

William A. Shaw
Prothonotary

6 cc to *Blawie* ~~Shaw~~

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

: NO. 00-591-CD

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: Michael P. Yeager, Esq.
: Supreme Court No.: 15587

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: P.O. Box 752
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: (814) 765-9611

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: Type of Case: Condemnation

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: Type of Pleading: COMMONWEALTH COURT.
: 42 PA.C.S. 762 (A) (6)
: (EMINENT DOMAIN)

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: Filed on Behalf of: Condemnee.

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: Counsel of Record for this Party:
: James H. Swartz

:
: 2 West Long Avenue
: DuBois Pa 15801

:
: (814) 375-4453

VS

JAMES H. SWARTZ,
Condemnee

CERTIFICATES OF SERVICE

FILED

FEB 22 2001

William A. Shaw
Prothonotary

#22

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

VS

JAMES H. SWARTZ,
Condemnee

: NO. 00-591-CD

: Counsel of Record for this Party:

: Michael P. Yeager, Esq.
: Supreme Court No.: 15587

: P.O. Box 752
: 110 North Second Street
: Clearfield, PA 16830

: (814) 765-9611

: Type of Case: Condemnation

RESPECTFULLY SUBMITTED.

BY

James Swartz
COUNSEL OF RECORD FOR THIS PARTY
CONDEMNEE, APPELLANT

James H. Swartz
2 West Long Ave.
DU BOIS, PA. 15801

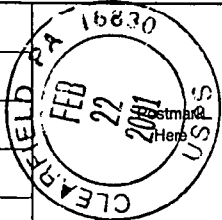
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Notice of APPEAL has been sent by certified mail to Michael P. Yeager, Esq P.O. Box 752 110 North Second Street ,Clearfield,PA., 16830 ON this 22 th day of February , 2001.

BY ----- *James Swartz* ----- James Swartz
Counsel of Record for this party
Condemnee, Appellant

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$



Recipient's Name (Please Print/Clearly) (To be completed by mailer)	
MICHAEL YEAGER ESQ	
Street/Apt. No.; or PO Box No.	
PO Box 752	
City, State, ZIP+4	
CLEARFIELD PA	16830

PS Form 3800, February 2000

See Reverse for Instructions

7000 0520 0021 4258 8796

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

V3

JAMES H. SWARTZ,
Condemnee

: NO. 00-591-CD

: Counsel of Record for this Party:

: Michael P. Yeager, Esq.
: Supreme Court No.: 15587

: P.O. Box 752
: 110 North Second Street
: Clearfield, PA 16830

: (814) 765-9611

: Type of Case: Condemnation

: RESPECTFULLY SUBMITTED

: BY

: COUNSEL OF RECORD FOR THIS PARTY
: CONDEMNEE, APPELLANT

: James H. Swartz
: 2 West Long Ave.
: DU BOIS, PA. 15801

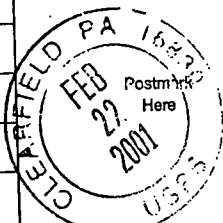
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Notice of APPEAL
has been sent by certified mail to Judge John K. Reilly, JR., Clearfield
Courthouse, Clearfield, Pa., 16830 ON this 22nd day of February 2001

BY James Swartz James Swartz
Counsel of Record for this party
Condemnee, Appellant

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Judge J-K Reilly
Street, Apt. No. or PO Box No.
CLPD Co Courthouse
City, State, ZIP+4
CLPD Pa 16830

PS Form 3800, February 2000

See Reverse for Instructions

7000 0520 0021 4259 6517

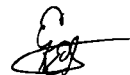
FILED

FEB 22 2001

0/1:00/WS
William A. Shaw
Prothonotary

2 CERT TO SWARTZ

1 CERT TO COMM. COURT



Commonwealth Court of Pennsylvania

March 1, 2001

RE: Redevelopment Auth of Dubois v Swartz
No.: 300 CD 2001
Agency Docket Number: No. 00-591-CD
Filed Date: November 13, 2000

FILED

MAR 05 2001

12:16pm

William A. Shaw

Prothonotary

kes

Notice of Docketing Appeal

A Notice of Appeal, a copy of which is enclosed, from an order of your court has been docketed in the Commonwealth Court of Pennsylvania. The docket number in the Commonwealth Court is endorsed on this notice. The Commonwealth Court docket number must be on all correspondence and documents filed with the court.

Under Chapter 19 of the Pennsylvania Rules of Appellate Procedure, the Notice of Appeal has the effect of directing the Court to transmit the certified record in the matter to the Prothonotary of the Commonwealth Court.

The complete record, including the opinion of the trial judge, should be forwarded to the Commonwealth Court within forty (40) days of the date of filing of the Notice of Appeal. Do not transmit a partial record.

Pa.R.A.P. 1921 to 1933 provides the standards for preparation, certification and transmission of the record.

The address to which the Court is to transmit the record is set forth on Page 2 of this notice.

Notice to Counsel

A copy of this notice is being sent to all parties or their counsel indicated on the proof of service accompanying the Notice of Appeal. The appearance of all counsel has been entered on the record in the Commonwealth Court. Counsel has thirty (30) days from the date of filing of the Notice of Appeal to file a praecipe to withdraw their appearance pursuant to Pa. R.A.P. 907 (b).

Appellant or Appellant's attorney should review the record of the trial court, in order to insure that it is complete, prior to certification to this Court. (Note: A copy of the Zoning Ordinance must accompany records in Zoning Appeal cases).

The addresses to which you are to transmit documents to this Court are set forth on Page 2 of this Notice.

If you have special needs, please contact this court in writing as soon as possible.

Attorney Name	Party Name	Party Type
James H Swartz	James H. Swartz	Appellee
Michael P. Yeager, Esq.	Redevelopment Authority Of The City Of	Appellant

#28

Address all written communications to:

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
P.O. Box 11730
Harrisburg, PA 17108
(717) 255-1650

Filings may be made in person at the following address (except on Saturdays, Sundays and holidays observed by Pennsylvania Courts) between 9:00 a.m. and 4:00 p.m.

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Room 624
Sixth Floor
South Office Building
Harrisburg, PA 17120
(717) 255-1650

Pleadings and similar papers (but not paperbooks or certified records) may also be filed in person only at:

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Filing Office
Suite 990
The Widener Building
One South Penn Square
Philadelphia, PA 19107
(215) 560-5742

The hours of the Philadelphia Filing Office are 9:00 a.m. to 4:00 p.m.

Under Pa.R.A.P. 3702, writs or other process issuing out of the Commonwealth Court shall exit only from the Harrisburg Office.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

REDEVELOPMENT AUTHORITY OF :
THE CITY OF DUBOIS :

-vs- :

No. 00 – 591 – CD

JAMES H. SWARTZ :

OPINION AND ORDER

From the record it appears that City of DuBois Redevelopment Authority (Authority) proposed a City of DuBois Redevelopment Plan in May of 1996 to "...remove blight and carry out planning for the City of DuBois...". This plan was approved by the Planning Commission of the City of DuBois on June 4, 1996, and by the DuBois City Counsel on June 10 of that year. The plan limited its area of concern to the traditional downtown area of the City of DuBois. In this area, Condemnee James H. Swartz is the owner of a building at one of the corners of the central intersection. On May 18, 2000, the Authority filed a Declaration of Taking seeking to acquire Condemnee's building through Eminent Domain proceedings. (26 P.S. §1-101 et seq.) On June 19, pro se Condemnee filed a document titled "Objections and Defense" and on August 3, a document titled "Objection and Defense to Motion to Strike". This Court elected to treat said filings as Preliminary Objections and on October 11, 2000, entered an Order denying said Objections.

It is from this Order that Condemnee now appeals.

It appears that two issues have been raised. First, whether the Authority has the power to acquire Condemnee's building under the Eminent Domain Code and second, whether the legal state or condition of Condemnee's property has any effect on the right of the Authority to acquire his property through Eminent Domain Proceedings.

FILED

MAR 09 2001

William A. Shaw
Prothonotary

#30

With regards to the first issue, it is clear that the Authority was created pursuant to the Urban Redevelopment Law, Act of May 24, 1945, P.L. 991, §1, et seq. (35 P.S. §1701, et seq.) ("Act"). In connection therewith, the Authority developed and is now implementing the Redevelopment Plan.

Section 1709 of the Act and its various subparts describe the powers of a redevelopment authority. In addition to having "...all powers necessary or appropriate to carry out and effectuate the purposes and provisions..." of the Act; it specifically has the power to:

"(i) To acquire by eminent domain any real property, including improvements and fixtures for the public purposes set forth in this act, in the manner hereinafter provided, except real property located outside a redevelopment area." (35 P.S. §1709(I))

Under the provisions of this Act and solely for the Redevelopment Area/Downtown, the Authority is required to first operate pursuant to a properly approved Redevelopment Plan after declaration of the area to be blighted; second, to be doing so for public purposes; and third, to acquire property inside the redevelopment area.

As set forth above, the Authority did create the Redevelopment Plan and determined the limits of the blighted area within the City of DuBois. The plan was duly approved and the Authority is proceeding thereunder with a public purpose in mind; specifically to remove blight from a designated area within the City. The Planning Committee and the Authority are presumed to have acted in good faith and the burden of proving otherwise is on the Condemnee as he alleges fraud and abuse of discretion. In Re: Condemnation of Premises, 130 Court Street in the City of Reading, Berks County, 388 A.2d 1108, 36 Pa. Cmwlth. 394 (1978).

The Act itself, other than as contained in 35 P.S. §1712.1 does not define "blight". It appears that the Authority, Planning Commission and City are free to make that

determination. (35 P.S. §1702). In the instant case, the Condemnee's property is clearly within the redevelopment area and its acquisition does not violate the Act. (35 P.S. §1709(i)). Therefore, acquisition through Eminent Domain proceedings is authorized by the Act.

With regards to the second issue raised, as set forth above, Condemnee argues that because the premises are up to code, repaired, up for sale, rented out and not vacant for one year, the proceedings are improper. This argument may have merit if indeed his property was "condemned". However, in the instant matter, the Authority is only claiming that his property is a centerpiece in the blighted area and as such is central to the redevelopment efforts within the City of DuBois. Therefore, the Eminent Domain Code is being utilized to acquire the property. The mere fact that the premises may be otherwise structurally sound is not sufficient to prevent a taking of the same provided that the property is located in an area determined to be blighted and designated for redevelopment. In Re: City of Harrisburg, 373 A.2d 774, 30 Pa. Cmwlth. 273 (1977). Appellee may be confusing the Section of the Act dealing with blighted removal (35 P.S. §1712.1) which was added well after the passage of the initial Act in 1945 (Act 94 added in 1978).

Although this Act does describe blighted property, it does so only for the purposes of this specific Section which was added to enable the Redevelopment Authority to acquire any specified blighted property "as defined in this Section" either within or outside of a certified redevelopment area.

This Section was added to give redevelopment authorities the ability and authority to act outside of designated redevelopment areas. It is specifically limited to specified blighted properties and is not aimed at redevelopment areas. It was meant to deal with a specified blighted structure which indeed might have been in an otherwise acceptable

neighborhood. Under this Act, redevelopment authorities were empowered to acquire through Eminent Domain specific blighted properties outside of redevelopment acts as well as within for residential and related uses. (35 P.S. §1712.1(a)).

This Act requires a municipal governing body to create a property review committee which is separate and distinct from a redevelopment authority which must, together with the local planning commission, determine and certify to the redevelopment authority that a specific property is blighted. (35 P.S. §1712.1(e)).

It further specifically states that:

“...[a]cquisition and disposition of blighted property under this Section shall not require preparation, adoption or approval of a redevelopment area plan or redevelopment proposal as set forth in Section 10(s) (35 P.S. §1710)...”. See Also In Re: City of Scranton, 132 Pa. Cmwlth. 175, 572 A.2d 250 (1990).

Clearly the mere fact that Condemnee's property is structurally sound, up to code, sufficiently repaired, available for sale, fully or partially rented out, or otherwise not vacant, has no effect on the power of the Authority to condemn the property within the Redevelopment Act/Downtown.

This section is not applicable to Condemnee's property and the requirements thereof do not limit the Authority's power to acquire the property through Eminent Domain proceedings under the act. (35 P.S. §1709(i). For the above reasons, this court entered its Order of October 11, 2000, denying Condemnee's Preliminary Objections.

By the Court,

President Judge

Dated: March 8, 2001

FILED

MAR 09 2001

0/8:30/vas
William A. Shaw
Prothonotary

sent to YEAGER
+

E. Swann
[Signature]

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW
PROTHONOTARY
AND
CLERK OF COURT

CLEARFIELD COUNTY



P.O. Box 549
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641 Ext. 1330

clerk
DAVID S. AMMERMAN
SOLICITOR

JACQUELINE KENDRICK
DEPUTY PROTHONOTARY

MARCH 12, 2001

COMMONWEALTH COURT OF PENNSYLVANIA
OFFICE OF THE PROTHONOTARY
P.O. BOX 11730
HARRISBURG, PA 17108

IN RE: REDEVELOPMENT AUTHORITY OF THE CITY OF DUBOIS

VS
JAMES H. SWARTZ
CASE # 300CD 2001

DEAR PROTHONOTARY:

ENCLOSED YOU WILL FIND THE ABOVE REFERENCED COMPLETE RECORD
APPEALED TO YOUR OFFICE.

SINCERELY,


WILLIAM A. SHAW
PROTHONOTARY

WAS
ENCLOSURES

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

CLEARFIELD COUNTY



DAVID S. AMMERMAN

SOLICITOR

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

P.O. Box 549
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641 Ext. 1330

MARCH 12, 2001

COMMONWEALTH COURT OF PENNSYLVANIA
OFFICE OF THE PROTHONOTARY
P O BOX 11730
HARRISBURG, PA 17108

IN RE: REDEVELOPMENT AUTHORITY OF THE CITY OF DUBOIS

VS

JAMES H. SWARTZ
CASE # 300CD 2001

DEAR PROTHONOTARY:

ENCLOSED YOU WILL FIND THE ABOVE REFERENCED COMPLETE RECORD
APPEALED TO YOUR OFFICE.

SINCERELY,

A handwritten signature in black ink, appearing to read 'W. A. Shaw', written over a horizontal line.

WILLIAM A. SHAW
PROTHONOTARY

WAS
ENCLOSURES

00-591-CD

DuBois
vs

Swartz

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

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COMMONWEALTH COURT OF PENNSYLVANIA

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00-591-CD

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Street, Apt. No., or PO Box No.
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City, State, ZIP+4
HARRISBURG, PA 17108

PS Form 3800, July 1999 See Reverse for Instructions

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MAR 12 2004

0/4:30/WR
William A. Shaw
Prothonotary

00-591-00

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Received by (Please Print Clearly) <u>W. A. Shaw</u> B. Date of Delivery <u>MAR 14 2001</u>	
1. Article Addressed to: COMMONWEALTH COURT OF PENNSYLVANIA OFFICE OF THE PROTHONOTARY P.O. BOX 11730 HARRISBURG, PA 17108 00-591-CD		C. Signature <u>[Signature]</u> ☒ Agent ☐ Addressee	
2. Article Number (Copy from service label) 7000 0600 0023 6399 4265		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
PS Form 3811, July 1999		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
Domestic Return Receipt		4. Restricted Delivery? (Extra Fee) ☐ Yes	
102595-99-M-1789			

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MAR 19 2001

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William A. Shaw
Prothonotary
[Signature]

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

CLEARFIELD COUNTY



P.O. Box 549
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641 Ext. 1330

DAVID S. AMMERMAN

SOLICITOR

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

March 19, 2001
Corrected Notice

JOHN K. REILLY, JR. P.J.
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

Mr. Michael Yeager, Esq.
P. O. Box 752
Clearfield, PA 16830

Mr. James H. Swartz
2 W. Long Ave.
DuBois, PA 15801

RE:

Redevelopment Authority of the City of DuBois,
Vs.

James H. Swartz ,
2000-00591-CD
300CD 2001

DEAR COUNSEL:

PLEASE BE ADVISED THAT THE ABOVE REFERENCED RECORD WAS FORWARDED
TO SUPERIOR COURT OF PENNSYLVANIA ON MARCH 12, 2001

SINCERELY,

WILLIAM A. SHAW
PROTHONOTARY/CLERK OF COURTS

FILED

MAR 19 2001

0/11:00/6
William A. Shaw
Prothonotary

MAILED TO SWARTZ.

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

CLEARFIELD COUNTY



DAVID S. AMMERMAN

SOLICITOR

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

P.O. Box 549

CLEARFIELD, PENNSYLVANIA 16830

(814) 765-2641 Ext. 1330

JOHN K. REILLY JR., P.J.
Court Of Common Pleas
2nd & Market Street
Clearfield, PA 16830

Mr. Michael Yeager, Esq.
P.O. Box 752
110 N. 2nd Street
Clearfield, PA 16830

Mr. James H. Swartz
2 E. Long Street
DuBois, PA 15801

RE: REDEVELOPMENT AUTHORITY OF THE CITY OF DUBOIS VS. JAMES H.
SWARTZ
2000-591-CD
300CD 2001

DEAR COUNSEL:

PLEASE BE ADVISED THAT THE ABOVE REFERENCED RECORD WAS
FORWARDED TO COMMONWEALTH COURT OF PENNSYLVANIA ON
MARCH 12, 2001.

SINCERELY,

WILLIAM A. SHAW
PROTHONOTARY/CLERK OF COURTS

FILED

MAR 19 2001

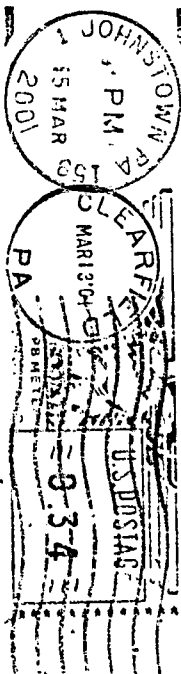
m/10:30am
William A. Shaw
Prothonotary

[Handwritten initials]

WILLIAM A. SHAW
PROTHONOTARY
and CLERK of COURTS
P.O. BOX 549
CLEARFIELD, PENNSYLVANIA 16830

MR. JAMES H. SWARTZ
2 E. LONG STREET
CLEARFIELD, PA 16801

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Redevelopment Authority Of
the City of Dubois

v.

James H. Swartz,

Appellant

No. 300 C.D. 2001

Submitted: July 27, 2001

BEFORE: HONORABLE DORIS A. SMITH, Judge
HONORABLE JAMES R. KELLEY, Judge
HONORABLE JESS S. JULIANTE, Senior Judge

FILED

SEP 14 2001

William A. Shaw
Prothonotary

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE JULIANTE

FILED: September 11, 2001

James H. Swartz (Swartz), acting pro se, appeals from the October 11, 2000 order of the Court of Common Pleas of Clearfield County (trial court) that denied Swartz's preliminary objections. We affirm.¹

In May of 1996, the City of DuBois Redevelopment Authority (Authority) proposed a City of DuBois Redevelopment Plan (Plan) to remove blight and carry out planning for the City of DuBois (City). On June 4 and 10, 1996, the City's Planning Commission and City Counsel, respectively, approved the Plan.

Swartz is the owner of a building in downtown DuBois on one the corners of the central intersection. On May 18, 2000, the Authority filed a

¹ Swartz's brief, in most respects, does not conform to the applicable Pennsylvania Rules of Appellate Procedure. Because, however, we can easily dispose of this case on the merits, we will overlook the brief's deficiencies.

declaration of taking seeking to acquire Swartz's building through eminent domain proceedings.

On June 19, 2000, Swartz filed a document entitled "Objections and Defense," which the trial court elected to treat as preliminary objections. In an October 11, 2000 order, the trial court denied Swartz's preliminary objections and granted the Authority's Motion for Right of Entry for Purposes of Performing Studies, Surveys, Tests, Soundings and Appraisals. On November 9, 2000, Swartz filed a motion for judgment notwithstanding the verdict, which the trial court dismissed. On November 13, 2000, Swartz filed a pleading entitled Appeal to Trial Court, which the Superior Court rejected. After Swartz filed a second Appeal to Trial Court, the Superior Court ultimately transferred the appeal to the Commonwealth Court.

There are essentially two issues before us on appeal: (1) whether the Authority has the power under Section 9(i) of the Urban Redevelopment Law (URL)² to acquire Swartz's building under the Eminent Domain Code;³ and (2) whether the condition of the property has any effect on the power of the Authority to acquire the property through eminent domain proceedings. On review, we are limited to determining whether the trial court abused its discretion or committed an error of law. *Redevelopment Auth. of the City of Scranton v. Kameronoski*, 616 A.2d 1102 (Pa. Cmwlth. 1992).

In general, Swartz contends that the Authority has no power to condemn his property. His primary argument is that the Authority's actions are an

² Act of May 24, 1945, P.L. 991, *as amended*, 35 P.S. §1709(i).

³ Act of June 22, 1964, Special Sess., P.L. 84, *as amended*, 26 P.S. §§1-101 – 1-903.

illegal taking of property from one person in order to give it to another for a private use. He contends that such a taking violates his civil rights.

As a threshold matter, the Authority maintains that its acquisition of Swartz's property is clearly authorized by the URL. It notes that it was created pursuant to the URL and is now undertaking its responsibility to redevelop the property pursuant to the approved Plan. It points out that, in addition to having "all powers necessary or appropriate to carry out and effectuate the purposes and provisions of [the URL],⁴ it has the power specifically to

acquire by eminent domain any real property, including improvements and fixtures for the public purposes set forth in this act, in the manner hereinafter provided, except real property located outside a redevelopment area. . . .

35 P.S. §1709(i).

As for a public purpose, the Authority notes that the Plan was created to remove blight from a designated area of the City and that the Planning Commission and the Authority are presumed to act in good faith in declaring an area blighted. *See In re Condemnation of Premises 130 Court St.*, 388 A.2d 1108 (Pa. Cmwlth. 1978). The burden of proving otherwise through fraud and abuse of discretion is a heavy one. *Id.* It is not for the trial court to determine whether an area is blighted. That determination is left to the condemnor, the Planning Commission and the City. *See Crawford v. Redevelopment Auth. of the County of Fayette*, 418 Pa. 549, 211 A.2d 866 (1965).

As for the location of the property, the Authority asserts that Swartz's property is clearly within the redevelopment area as it is located at the corner of

⁴ 35 P.S. §1709.

Finally, the Authority opines that perhaps Swartz is confused by Section 12.1 of the UDL,⁵ which the General Assembly added after the passage of the initial act to enable the Authority to acquire a specified blighted property either within or outside of a certified development area. It notes that Section 12.1 was specifically limited to specified blighted properties, such as an obsolete industrial plant or a burned-out house, and was not aimed at redevelopment areas. Further, it points out that Section 12.1 requires a municipal governing body to create a vacant property review committee, which would be entirely distinct and separate from a redevelopment authority.⁶ Thus, the Authority contends that the status of Swartz's property, e.g. whether it was up to code, sufficiently repaired, available for sale, fully or partially rented out or otherwise not vacant, did not limit its power to acquire the property via eminent domain proceedings.

The trial court agreed with the Authority that the structural soundness of the property was not sufficient to prevent a taking, given the fact that it is located in an area determined to be blighted and designated for redevelopment. The trial court also opined that perhaps Swartz was confused by Section 12.1 of the UDL. Thus, it concluded that the status of Swartz's property did not preclude the Authority from acquiring the property via eminent domain proceedings.

This Court agrees that the physical state of Swartz's property has no effect on the Authority's power to condemn the property. It is well established that each property condemned as part of a redevelopment plan need not be blighted. It

⁵ This section was added by Section 2 of the Act of June 23, 1978, P.L. 556, 35 P.S. §1712.1.

⁶ E.g. *In re Condemnation by Redevelopment Auth. of the City of Lancaster* (City condemned property as unfit for human habitation and subsequently issued a notice of blight pursuant to the URL.)

is sufficient that the area in which the property is located be blighted and designated for redevelopment. *Harford Tp. v. Bandurick*, 660 A.2d 189 (Pa. Cmwlth. 1995); *White v. Redevelopment Auth. of the County of Washington*, 607 A.2d 314 (Pa. Cmwlth. 1992).

Accordingly, for the above reasons, we affirm the trial court's order.


JESS S. JULIANTE, Senior Judge

Judge Smith dissents.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Redevelopment Authority Of
the City of Dubois

v.

James H. Swartz,

Appellant

No. 300 C.D. 2001

ORDER

AND NOW, this **11th** day of **September**, 2001, the
October 11, 2000 order of the Court of Common Pleas of Clearfield County is
hereby affirmed.


JESS S. JULIANTE, Senior Judge

Certified from the Record

SEP 11 2001
and Order Exit



Supreme Court of Pennsylvania

Western District

January 15, 2002

John A. Vaskov, Esq.
Deputy Prothonotary
Patricia A. Honard
Chief Clerk

801 City-County Building
Pittsburgh, PA 15219
412-565-2816
www.aopc.org

Mr. William A. Shaw
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

RE: Redevelopment Authority Of the City of Dubois, Respondent
 v.
 James H. Swartz, Petitioner
 Commonwealth Docket Number - 300 CD 2001

Trial Court/Agency Dkt. Number: No. 00-591-CD

No. 25 WAL 2002

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: December 21, 2001

Disposition:

Date:

Reargument/Reconsideration Disposition:

Reargument/Reconsideration

Disposition Date:

/dal

FILED

JAN 17 2002

m/ 1:15/445
William A. Shaw
Prothonotary

A handwritten signature in cursive script, appearing to read "Eun" or "Eun", enclosed in a circle.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

REDEVELOPMENT AUTHORITY OF :
THE CITY OF DUBOIS, :
Condemnor : No. 00-591-CD
vs. :
JAMES H. SWARTZ, :
Condemnee :

RULE RETURNABLE

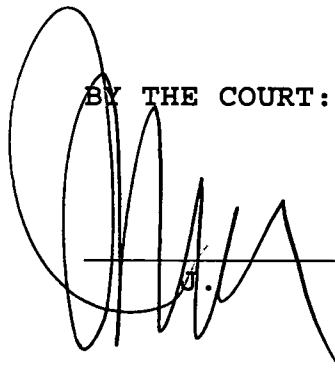
AND NOW, this 21st day of June, 2002, upon
consideration of the foregoing Petition for Access for Appraisal
Purposes, a Rule is hereby issued upon James H. Swartz to Show
Cause why the prayer of the Petition should not be granted.

Rule Returnable by appearance and hearing on the 4 day of
September, 2002 at 3:00 o'clock P.M. in Courtroom No.

1.

Service may be made upon James H. Swartz Condemnee by first
class mail.

BY THE COURT:



FILED

JUN 21 2002

William A. Shaw
Prothonotary

FILED

01018-30
JUN 21 2002

icc
Amy Yeager



William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF	:	NO. 00 - 591 - CD
THE CITY OF DUBOIS,	:	
Condemnor	:	Type of Case: Condemnation
	:	
vs	:	Type of Pleading: Petition for
	:	Access for Appraisal Purposes
	:	
JAMES H. SWARTZ,	:	
Condemnee	:	Filed on Behalf of: Condemnor
	:	
	:	Counsel of Record for this Party:
	:	
	:	Michael P. Yeager, Esq.
	:	Supreme Court No.: 15587
	:	
	:	P.O. Box 752
	:	110 North Second Street
	:	Clearfield, PA 16830
	:	
	:	(814) 765-9611

FILED

JUN 10 2002

6/2:55/MS

William A. Shaw
Prothonotary

1 CENT TO ATTY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

REDEVELOPMENT AUTHORITY OF	:	
THE CITY OF DUBOIS,	:	
Condemnor	:	
	:	No. 00-591-CD
vs.	:	
	:	
JAMES H. SWARTZ,	:	
Condemnee	:	

PETITION FOR ACCESS FOR APPRAISAL PURPOSES

COMES NOW, the Condemnor, Redevelopment Authority of the City of DuBois, by and through its counsel, Michael P. Yeager, Esquire, and files the within Petition whereof the following is a statement:

1. On May 18, 2000, Condemnor filed a Declaration of Taking seeking to acquire property of the Condemnee located in the City of DuBois, Clearfield County, Pennsylvania.

2. On June 19, 2000, Condemnee filed "Objections and Defense" pro se. The Court heard argument on October 11, 2002, treated the "Objections and Defense" as Preliminary Objections and denied the same. This Order was supplemented by Opinion and Order dated March 8, 2001.

3. Also on October 11, 2000, the Court granted the Condemor the right of entry for purposes of performing various studies, surveys, tests, soundings and appraisals. A copy of that order is attached hereto, made part hereof and incorporated herein as "Exhibit A".

4. Condemnee has filed various appeals relative to the

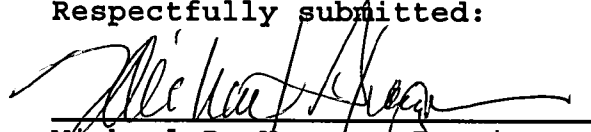
denial of his "Objections and Defense" initially to the Superior and Commonwealth Courts, all of which have been unsuccessful. The latest appeal was filed to the Pennsylvania Supreme Court where the matter awaits a decision as to whether that Court will entertain the appeal. A copy of the latest Supreme Court schedule relative to this case is attached hereto, made part hereof and incorporated herein as "Exhibit B".

5. By letter dated May 15, 2002, a copy of which is attached hereto as "Exhibit C", Condemnor requested access to the property for the purposes of exercising its rights of entry for the purpose of conducting an appraisal. To date, Condemnee has not responded with regard to this request.

6. This request on the part of the Condemnor to access the property for purposes of conducting an appraisal will not delay this case; and in fact, hopefully will result in a more timely disposition.

WHEREFORE, Condemnor requests that the Court enforce its Order of October 11, 2000 and direct the Condemnee to cooperate with regard to this inspection request.

Respectfully submitted:



Michael P. Yeager, Esquire
Attorney for Condemnor

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

REDEVELOPMENT AUTHORITY OF :

THE CITY OF DUBOIS :

-vs-

: No. 00 - 591 - CD

JAMES H. SWARTZ: :

ORDER

NOW, this 11th day of October, 2000, the Court having considered
Condemnee's pro se captioned Objections and Defense and treating it as preliminary
objections, it is the ORDER of this Court that said preliminary objections shall be and are
hereby denied.

By the Court,

/s/JOHN K. REILLY, JR.

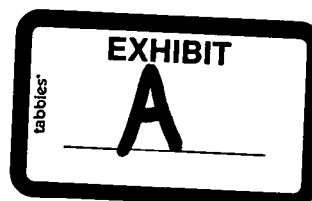
President Judge

John K. Reilly, Jr.
I, the undersigned, do hereby certify
that this is a true and correct copy of the original
statement filed in this case.

OCT 11 2000

Attest.

William L. Reilly
Prothonotary





June 19, 2002

Redevelopment Authority Of the City of Dubois, Respondent

v.

James H. Swartz, Petitioner

Initiating Document: Petition for Allowance of Appeal

Case Status: Active

Journal Number:

Date Listed Submitted:

Case Category: Civil

Case Type: Eminent Domain

Consolidated Docket Nos.:

Related Docket Nos.:

COUNSEL INFORMATION

Attorney: James H Swartz
Address: 2 West Long Avenue
Dubois, PA 15801
Phone No.:
Representing: James H. Swartz, Petitioner
Pro Se: ProSe
IFP Status:

Attorney: Michael P. Yeager, Esq.
Address: P.O. Box 752
110 N. Second Street
Clearfield, PA 16830-2253
Phone No.: (814)765-9611
Representing: Redevelopment Authority Of The City Of DuBois, Respondent
Pro Se: No
IFP Status:

SUPREME COURT INFORMATION

Appeal From:

Notice of Appeal Filed Below:

Probable Jurisdiction

Noted:

Docketed Date: January 15, 2002

Allocatur Grant Date:

Allocatur Docket No.:

Allocatur Grant Order:





June 19, 2002

Court Name:	Commonwealth	Docket Number:	300 CD 2001
Date of Order:	September 11, 2001	Reargument Denied:	November 21, 2001
Judge(s):	Jiuliente, Jess S. Kelley, James R. Smith-Ribner, Doris A.		

Intermediate Appellate Court Action: Order affirmed
Referring Court:

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas
Lower Court Docket Number: No. 00-591-CD

County: Clearfield Division: Civil
Date of Trial Court/Agency Order: October 11, 2000 OTN:
Order Type: Order
Judge: Reilly, Jr., John K., President Judge

ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
----------------------	------------	---------------------

Record Remittal:

BRIEFS

:

REARGUMENT/RECONSIDERATION REMITTAL

Reargument/Reconsideration Filed Date:
Reargument Disposition: Date:
Reargument Order:
Record Remitted:

SESSION INFORMATION

Consideration Type:
Date Listed/Submitted:

DOCKET ENTRIES

PACMS Web Docket Sheet

Recent entries made in the appellate court filing offices may not be immediately reflected on web generated docket sheets.
Neither the Appellate Courts nor the Administrative Office of Pennsylvania Courts assumes any liability for inaccurate or delayed data, errors
or omissions on these web docket sheets



June 19, 2002

Filed Date	Docket Entry/Document Name	Party Type	Filed By
December 21, 2001	Petition for Allowance of Appeal Filed		
		Petitioner	Swartz, James H.
January 15, 2002	Case was transferred from 187 WT 2001		
			Office of the Prothonotary
January 15, 2002	Application to Proceed In Forma Pauperis		
		Petitioner	Swartz, James H.
January 15, 2002	Order Granting Application to Proceed In Forma Pauperis		
			Johns, Charles W.
January 24, 2002	No Brief in Opposition Letter Filed		
		Respondent	Redevelopment Authority Of The City Of DuBois

PACMS Web Docket Sheet

Recent entries made in the appellate court filing offices may not be immediately reflected on web generated docket sheets.
Neither the Appellate Courts nor the Administrative Office of Pennsylvania Courts assumes any liability for inaccurate or delayed data, errors
or omissions on these web docket sheets



CITY OF DUBOIS, PENNSYLVANIA

P.O. BOX 711

16 W. SCRIBNER AVE.

DUBOIS, PENNSYLVANIA 15801

TELEPHONE: (814) 371-2000

FAX: (814) 371-1290

Office of Director
Redevelopment Authority/Economic Development

May 15, 2002

Mr. James H. Swartz
2 West Long Avenue
DuBois, PA 15801

Re: Redevelopment Authority of the City of DuBois
v. James H. Swartz
No. 300 CD 2001

Dear Mr. Swartz:

Even though you have continued to file documents in Court, the Authority nevertheless wishes to exercise its rights pursuant to Judge Reilly's ruling of October 11, 2000 granting the Redevelopment Authority the right of entry for the purpose of conducting an appraisal.

Please contact me at 16 West Scribner Avenue or by phone at 371-2000 Ext. 119 to arrange for an appraiser to access the property.

As noted in my letter to you of September 21, 2001, if you fail to do so we will be forced to gain access without your help. Please contact me by Friday, May 31, 2002 to avoid entry without your cooperation. If you fail to cooperate we would anticipate the filing of a Petition for Contempt, which will also request counsel fees.

Securing an appraisal will enable the Redevelopment Authority to at least move that much more forward with regard to this action pending disposition of your latest document filings.

Sincerely,

Lance Marshall
Executive Director

LM:sjh

cc: File



"Gateway To Big Game Country"

Post-It™ brand fax transmittal memo 7671

of pages 1

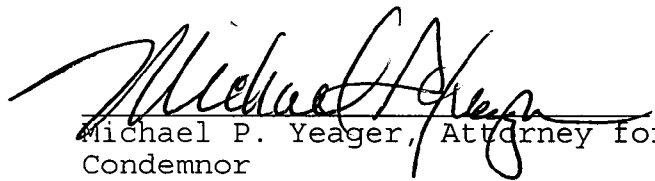
To	Mike Yeager	From	Lance Marshall
Co.		Co.	
Dept.		Phone #	
Fax #	765-9503	Fax #	

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

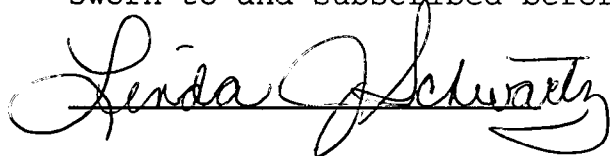
DUBOIS REDEVELOPMENT AUTHORITY:
OF THE CITY OF DUBOIS, : No. 00 - 591 - CD
Condemnor :
vs : IN CONDEMNATION
JAMES H. SWARTZ, :
Condemnee :

AFFIDAVIT OF SERVICE

I, MICHAEL P. YEAGER, attorney for Redevelopment Authority of the City of DuBois, depose and say that I forwarded a certified copy of the Petition for Access for Appraisal Purposes with Rule Returnable to the Condemnee, James H. Swartz, at his address of 2 West Long Avenue, DuBois, PA 15801. Said forwarding was by certified mail dated June 25, 2002. The original receipt and return receipt card are also attached hereto, made part hereof and incorporated herein by reference.


Michael P. Yeager, Attorney for
Condemnor

Sworn to and subscribed before me this 2nd day of July, 2002.





FILED

JUL 02 2002

William A. Shaw
Prothonotary

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

Article Sent To:

James H. Swartz

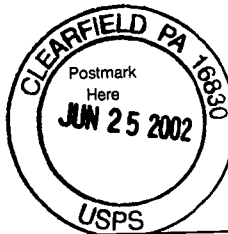
Postage \$.57

Certified Fee 2.10

Return Receipt Fee
(Endorsement Required) 1.50

Restricted Delivery Fee
(Endorsement Required)

Total Postage & Fees \$ 4.17



Name (Please Print Clearly) (to be completed by mailer)

James H. Swartz

Street, Apt. No., or PO Box No.

2 West Long Avenue

City, State, ZIP+4
 DuBois, PA 15801

PS Form 3800, July 1999

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

James H. Swartz
 2 West Long Avenue
 DuBois, PA 15801

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

JAMES Swartz

C. Signature

X

James Swartz

☐ Agent
☒ Addressee

D. Is delivery address different from item 1? ☒ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type

- ☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)

7000 0600 0023 6401 1855

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1789

FILED

P/3:06-84
JUL 02 2002

NO
CC
C/100

William A. Shaw
Prothonotary

00-591-CD



Supreme Court of Pennsylvania

Western District

July 26, 2002

John A. Vaskov, Esq.
Deputy Prothonotary
Patricia A. Honard
Chief Clerk

801 City-County Building
Pittsburgh, PA 15219
412-565-2816
www.aopc.org

Mr. William A. Shaw
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

RE: Redevelopment Authority Of the City of Dubois, Respondent
 v.
 James H. Swartz, Petitioner
 Commonwealth Docket Number - 300 CD 2001

Trial Court/Agency Dkt. Number: No. 00-591-CD
No. 25 WAL 2002

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: December 21, 2001

Disposition: Order Denying Petition for Allowance of Appeal
Date: July 9, 2002

Reargument/Reconsideration Disposition:

Reargument/Reconsideration
Disposition Date:

/kao

FILED

m/3:08 PM NO CC
JUL 29 2002
[Signature]

William A. Shaw
Prothonotary

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,

Respondent

v.

JAMES H. SWARTZ,

Petitioner

: No. 25 WAL 2002
:
:
:
: Petition for Allowance of Appeal from the
: Order of the Commonwealth Court
:
:
:
:
:
:
:
:
:

ORDER

PER CURIAM

AND NOW, this 9th day of July 2002, the Petition for Allowance of Appeal is denied.

A True Copy John A. Vaskov
As of: July 9, 2002
Attest: *John A. Vaskov*
Deputy Prothonotary
Supreme Court of Pennsylvania

FILED

m308-10
JUL 29 2002 *cc*
9/20

William A. Shaw
Prothonotary

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

: NO. 00 - 591 - CD
:
: Counsel of Record for this Party:
:
: Michael P. Yeager, Esq.
: Supreme Court No.: 15587
:
: P.O. Box 752
: 110 North Second Street
: Clearfield, PA 16830
:
: (814) 765-9611
:
: Type of Case: Condemnation

VS

JAMES H. SWARTZ,
Condemnee

RESPECTFULLY SUBMITTED.

BY

James H. Swartz
COUNSEL OF RECORD FOR THIS PARTY
CONDEMNEE, APPELLANT

James H. Swartz
2 West Long Ave.
DU BOIS, PA. 15801

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the legal brief
has been sent by certified mail to Michael P. Yeager, Esq P.O. Box 752
110 North Second Street ,Clearfield,PA., 16830 ON this 3rd day of august
, 2002

BY ----- *James H. Swartz*
Counsel of Record for this party
Condemnee, Appellant

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

7001 1940 0006 2175 1903

Clearfield, Pa. 16830

Postage	\$ 1.29
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 3.59

Sent To *Michael Yeager*
Street, Apt. No.,
or PO Box No. *P.O. B. 752*
City, State, ZIP+ 4

PS Form 3800, January 2001 See Reverse for Instructions

FILED

AUG 05 2002

11330
William A. Shaw
Prothonotary

E. Shaw

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

VS

JAMES H. SWARTZ,
Condemnee

: NO. 00-591-CD

: Counsel of Record for this Party:

: Michael P. Yeager, Esq.
: Supreme Court No.: 15587

: P.O. Box 752
: 110 North Second Street
: Clearfield, PA 16830

: (814) 765-9611

: Type of Case: Condemnation

: RESPECTFULLY SUBMITTED

: BY

: COUNSEL OF RECORD FOR THIS PARTY
: CONDEMNEE, APPELLANT

: James H. Swartz
: 2 West Long Ave.
: DU BOIS, PA. 15801

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the legal brief
has been sent by certified mail to Judge John K. Reilly, JR., Clearfield
Courthouse, Clearfield, Pa., 16830 ON this

3rd day of August, 2002

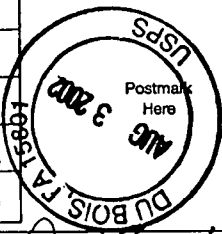
BY

Counsel of Record for this party
Condemnee, Appellant

U.S. Postal Service
CERTIFIED MAIL RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

O F Clearfield, Pa. 16830	
Postage	\$ 1.29
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 3.59
Sent To John K. Reilly Jr. Clearfield Courthouse Clearfield, Pa. 16830	



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Redevelopment Authority Of
the City of Dubois

v.

James H. Swartz,

Appellant

No. 300 C.D. 2001

Submitted: July 27, 2001

BEFORE: HONORABLE DORIS A. SMITH, Judge
HONORABLE JAMES R. KELLEY, Judge
HONORABLE JESS S. JIULIANTE, Senior Judge

FILED

AUG 06 2002

m / 11:40 am
William A. Shaw
Prothonotary

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE JIULIANTE

FILED: September 11, 2001

James H. Swartz (Swartz), acting pro se, appeals from the October 11, 2000 order of the Court of Common Pleas of Clearfield County (trial court) that denied Swartz's preliminary objections. We affirm.¹

In May of 1996, the City of DuBois Redevelopment Authority (Authority) proposed a City of DuBois Redevelopment Plan (Plan) to remove blight and carry out planning for the City of DuBois (City). On June 4 and 10, 1996, the City's Planning Commission and City Counsel, respectively, approved the Plan.

Swartz is the owner of a building in downtown DuBois on one the corners of the central intersection. On May 18, 2000, the Authority filed a

¹ Swartz's brief, in most respects, does not conform to the applicable Pennsylvania Rules of Appellate Procedure. Because, however, we can easily dispose of this case on the merits, we will overlook the brief's deficiencies.

declaration of taking seeking to acquire Swartz's building through eminent domain proceedings.

On June 19, 2000, Swartz filed a document entitled "Objections and Defense," which the trial court elected to treat as preliminary objections. In an October 11, 2000 order, the trial court denied Swartz's preliminary objections and granted the Authority's Motion for Right of Entry for Purposes of Performing Studies, Surveys, Tests, Soundings and Appraisals. On November 9, 2000, Swartz filed a motion for judgment notwithstanding the verdict, which the trial court dismissed. On November 13, 2000, Swartz filed a pleading entitled Appeal to Trial Court, which the Superior Court rejected. After Swartz filed a second Appeal to Trial Court, the Superior Court ultimately transferred the appeal to the Commonwealth Court.

There are essentially two issues before us on appeal: (1) whether the Authority has the power under Section 9(i) of the Urban Redevelopment Law (URL)² to acquire Swartz's building under the Eminent Domain Code;³ and (2) whether the condition of the property has any effect on the power of the Authority to acquire the property through eminent domain proceedings. On review, we are limited to determining whether the trial court abused its discretion or committed an error of law. *Redevelopment Auth. of the City of Scranton v. Kameronoski*, 616 A.2d 1102 (Pa. Cmwlth. 1992).

In general, Swartz contends that the Authority has no power to condemn his property. His primary argument is that the Authority's actions are an

² Act of May 24, 1945, P.L. 991, *as amended*, 35 P.S. §1709(i).

³ Act of June 22, 1964, Special Sess., P.L. 84, *as amended*, 26 P.S. §§1-101 – 1-903.

illegal taking of property from one person in order to give it to another for a private use. He contends that such a taking violates his civil rights.

As a threshold matter, the Authority maintains that its acquisition of Swartz's property is clearly authorized by the URL. It notes that it was created pursuant to the URL and is now undertaking its responsibility to redevelop the property pursuant to the approved Plan. It points out that, in addition to having "all powers necessary or appropriate to carry out and effectuate the purposes and provisions of [the URL],⁴ it has the power specifically to

acquire by eminent domain any real property, including improvements and fixtures for the public purposes set forth in this act, in the manner hereinafter provided, except real property located outside a redevelopment area. . . .

35 P.S. §1709(i).

As for a public purpose, the Authority notes that the Plan was created to remove blight from a designated area of the City and that the Planning Commission and the Authority are presumed to act in good faith in declaring an area blighted. *See In re Condemnation of Premises 130 Court St.*, 388 A.2d 1108 (Pa. Cmwlth. 1978). The burden of proving otherwise through fraud and abuse of discretion is a heavy one. *Id.* It is not for the trial court to determine whether an area is blighted. That determination is left to the condemnor, the Planning Commission and the City. *See Crawford v. Redevelopment Auth. of the County of Fayette*, 418 Pa. 549, 211 A.2d 866 (1965).

As for the location of the property, the Authority asserts that Swartz's property is clearly within the redevelopment area as it is located at the corner of

⁴ 35 P.S. §1709.

one of the most prominent intersections within the City's downtown area. It avers that the property has long been considered to be the centerpiece for the redevelopment effort.

As for Swartz's specific argument that the Authority improperly condemned his property to benefit a private interest, we point out that although Swartz is correct in his assertion that the property must be condemned for a public purpose, "the exercise of the right of eminent domain does not lose its public character because there may exist in the process some measure of private gain." *Fleet v. Redevelopment Auth. of the County of Washington*, 607 A.2d 311, 313 (Pa. Cmwlth. 1992) (citation omitted). "Private interests are encouraged and expected to take over the development of the condemned blighted area" because "[t]hat is the whole purpose of the redevelopment plan." *Id.* In addition, a city redevelopment authority can condemn property in a blighted area and designate it for private residential, institutional or recreational use. *See In re City of Harrisburg*, 373 A.2d 774 (Pa. Cmwlth. 1977); *Taking in Eminent Domain of Certain Parcels of Real Estate by the Redevelopment Auth. of the City of Bethlehem*, 349 A.2d 781 (Pa. Cmwlth. 1976).

Moreover, we note that a party attempting to prove that the governmental authority acted in palpable bad faith in exercising its eminent domain power must prove it by clear, precise and indubitable evidence. *Fleet*. A condemnee cannot prove bad faith "merely by bald assertions. Bad faith must be described by clear averments of act in the pleadings and proved by clear, precise and indubitable evidence." *In re Condemnation by Redevelopment Auth. of the City of Lancaster*, 682 A.2d 1369, 1372 (Pa. Cmwlth. 1996).

In the present case, there is simply no evidence that the Authority condemned one man's property solely to satisfy another man's needs, which is not permitted. *See Redevelopment Auth. of City of Erie v. Owners*, 274 A.2d 244 (Pa. Cmwlth. 1971). Therefore, this Court concludes that the trial court did not err in determining that the Authority had the power to condemn Swartz's property pursuant to the URL. As noted by the trial court, the Plan was duly approved and the Authority was proceeding thereunder with the public purpose of removing blight from a designated area within the City.

Swartz's second argument is that the Authority has no power to condemn his property where it is not vacant and he has electric and gas bills to show that both sides of the structure are currently in use. In other words, he contends that the Authority has no right to take his property, absent some defect.

In response, the Authority contends that Swartz must be confusing terminology to the extent that he believes that it has somehow declared his property to be "condemned." It asserts that such is not the case in that it is only stating that Swartz's property is a centerpiece within its effort to redevelop a blighted area within the City and that it is using the Eminent Domain Code to acquire the property through various condemnation proceedings.

Moreover, the Authority contends that the mere fact that the condemned property is structurally sound is not enough to prevent a taking, provided that the property is located in an area determined to be blighted and designated for redevelopment. *In re City of Harrisburg*. It notes that certification for blight is not even limited to improved properties in that properties can also be open, vacant and unimproved. *See Oliver v. Clairton*, 374 Pa. 333, 98 A.2d 47 (1953).

Finally, the Authority opines that perhaps Swartz is confused by Section 12.1 of the UDL,⁵ which the General Assembly added after the passage of the initial act to enable the Authority to acquire a specified blighted property either within or outside of a certified development area. It notes that Section 12.1 was specifically limited to specified blighted properties, such as an obsolete industrial plant or a burned-out house, and was not aimed at redevelopment areas. Further, it points out that Section 12.1 requires a municipal governing body to create a vacant property review committee, which would be entirely distinct and separate from a redevelopment authority.⁶ Thus, the Authority contends that the status of Swartz's property, e.g. whether it was up to code, sufficiently repaired, available for sale, fully or partially rented out or otherwise not vacant, did not limit its power to acquire the property via eminent domain proceedings.

The trial court agreed with the Authority that the structural soundness of the property was not sufficient to prevent a taking, given the fact that it is located in an area determined to be blighted and designated for redevelopment. The trial court also opined that perhaps Swartz was confused by Section 12.1 of the UDL. Thus, it concluded that the status of Swartz's property did not preclude the Authority from acquiring the property via eminent domain proceedings.

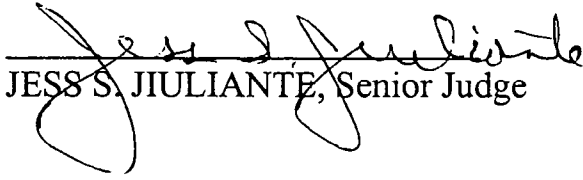
This Court agrees that the physical state of Swartz's property has no effect on the Authority's power to condemn the property. It is well established that each property condemned as part of a redevelopment plan need not be blighted. It

⁵ This section was added by Section 2 of the Act of June 23, 1978, P.L. 556, 35 P.S. §1712.1.

⁶ *E.g. In re Condemnation by Redevelopment Auth. of the City of Lancaster* (City condemned property as unfit for human habitation and subsequently issued a notice of blight pursuant to the URL.)

is sufficient that the area in which the property is located be blighted and designated for redevelopment. *Harford Tp. v. Bandurick*, 660 A.2d 189 (Pa. Cmwlth. 1995); *White v. Redevelopment Auth. of the County of Washington*, 607 A.2d 314 (Pa. Cmwlth. 1992).

Accordingly, for the above reasons, we affirm the trial court's order.


JESS S. JULIANTE, Senior Judge

Judge Smith dissents.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Redevelopment Authority Of
the City of Dubois

v.

James H. Swartz,

Appellant

No. 300 C.D. 2001

ORDER

AND NOW, this 11th day of September, 2001, the
October 11, 2000 order of the Court of Common Pleas of Clearfield County is
hereby affirmed.


JESS S. JULIANTE, Senior Judge

Certified from the Record

SEP 11 2001

and Order Exit

FILED

AUG 06 2002

8/11:40/12
William A. Shaw
Prothonotary

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Redevelopment Authority of the
City of Dubois

v.

NO. 300 C.D. 2001

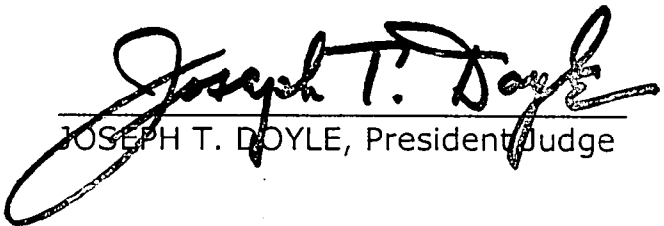
James H. Swartz,

Appellant

ORDER

NOW, November 21, 2001, having considered appellant's application
for reconsideration, and appellee's answer, the application is denied.

BY THE COURT:


JOSEPH T. DOYLE, President Judge

FILED

AUG 06 2002
m/11:40/uc
William A. Shaw
Prothonotary

Certified from the Record

NOV 21 2001
and Order Entered

AUG 06 2002
11:40 AM
William A. Shaw
Prothonotary



Supreme Court of Pennsylvania

Western District

July 26, 2002

John A. Vaskov, Esq.
Deputy Prothonotary
Patricia A. Honard
Chief Clerk

801 City-County Building
Pittsburgh, PA 15219
412-565-2816
www.aopc.org

Mr. Charles R. Hostutler
Room 624, Sixth Floor
South Office Building
Harrisburg, PA 17120

RE: Redevelopment Authority Of the City of Dubois, Respondent
 v.
 James H. Swartz, Petitioner
 Commonwealth Docket Number - 300 CD 2001

Trial Court/Agency Dkt. Number: No. 00-591-CD

No. 25 WAL 2002

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: December 21, 2001

Disposition: Order Denying Petition for Allowance of Appeal

Date: July 9, 2002

Reargument/Reconsideration Disposition:

Reargument/Reconsideration

Disposition Date:

/kao

RECEIVED & FILED
COMMONWEALTH COURT
OF PENNSYLVANIA
2002 AUG -1 A 9:14



Commonwealth Court of Pennsylvania

Charles R. Hostutler
Deputy Prothonotary/Chief Clerk

August 1, 2002

Room 624, Sixth Floor
Harrisburg, PA 17120
717-255-1650

TO:

RE: Redevelopment Auth of Dubois v Swartz

No.300 CD 2001

Trial Court/Agency Dkt. Number: No. 00-591-CD

Trial Court/Agency Name: ~~Cleanfield County Court of Common Pleas~~

Intermediate Appellate Court Number:

Annexed hereto pursuant to Pennsylvania Rules of Appellate Procedure 2571 and 2572
is the entire record for the above matter.

Contents of Original Record:

Original Record Item	Filed Date	Description
original record	March 14, 2001	1
Date of Remand of Record:		

Enclosed is an additional copy of the certificate. Please acknowledge receipt by signing, dating, and returning the enclosed copy to the Prothonotary Office or the Chief Clerk's office.

Commonwealth Court Filing Office

Signature

William A. Shaw

Printed Name

8-6-02

Date

FILED

AUG 06 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

REDEVELOPMENT AUTHORITY OF	:	
THE CITY OF DUBOIS,	:	
Condemnor	:	
vs.	:	No. 00-591-CD
JAMES H. SWARTZ,	:	
Condemnee	:	

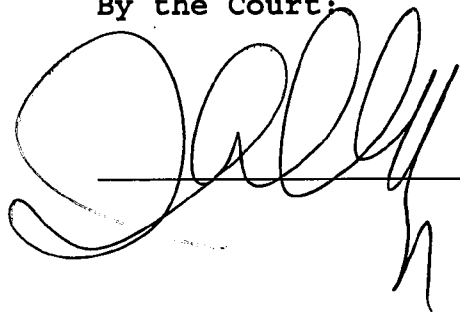
ORDER OF COURT

AND NOW, this 17th day of September, 2002, upon consideration of the foregoing Petition for Access for Appraisal Purposes, it is hereby

ORDERED, ADJUDGED AND DECREED that the Condemnee, James H. Swartz, is to grant access to the Condemnor, Redevelopment Authority of the City of DuBois to the property located at 2 West Long Avenue, DuBois, PA 15801 for purposes of conducting an appraisal.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this inspection is to take place within ten (10) days of the date of service of this Order.

By the Court:



FILED

SEP 17 2002

0132011CC atty U
William A. Shaw
Prothonotary

3 cc Amy Yeager 9/18/02

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DUBOIS REDEVELOPMENT AUTHORITY:
OF THE CITY OF DUBOIS,
Condemnor

vs

JAMES H. SWARTZ,
Condemnee

No. 00 - 591 - CD

IN CONDEMNATION

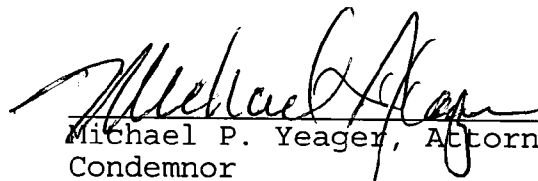
FILED

SEP 27 2002

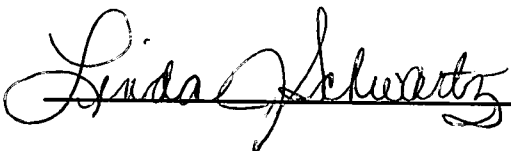
William A. Shaw
Prothonotary

AFFIDAVIT OF SERVICE

I, MICHAEL P. YEAGER, attorney for Redevelopment Authority of the City of DuBois, depose and say that I forwarded the Order of Court granting the Petition for Access for Appraisal Purposes dated September 17, 2002 to the Condemnee, James H. Swartz, at his address of 2 West Long Avenue, DuBois, PA 15801. Said forwarding was by first class mail and certified mail on September 18, 2002. The original receipt and return receipt card are also attached hereto, made part hereof and incorporated herein by reference.


Michael P. Yeager, Attorney for
Condemnor

Sworn to and subscribed before me this 26th day of September, 2002.



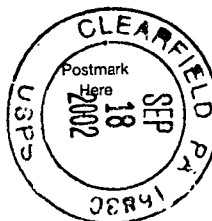


U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

Article Sent To:

James H. Swartz

Postage	\$.37
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.42



Name (Please Print Clearly) (to be completed by mailer)

James H. Swartz

Street, Apt. No., or PO Box No.

2 West Long Avenue

City, State, ZIP+4

DuBois, PA 15801

PS Form 3800, July 1999

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

James H. Swartz
2 West Long Avenue
DuBois, PA 15801

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

James Swartz

B. Date of Delivery

9-25-02

C. Signature

X James Swartz

☐ Agent

☐ Addressee

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number (Copy from service label)

7000 0600 0023 6401 1787

FILED

SEP 27 2002

03:10-~~601~~

NO
CC

William A. Shaw
Prothonotary

~~CC~~

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

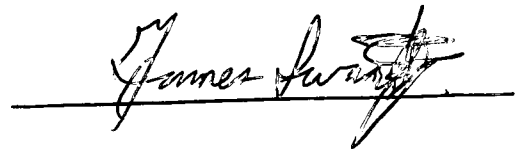
vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD
:
: Type of Case: Condemnation
:
: Type of Pleading:
:
: REFUSE OFFER AS
NOT REPLACEMENT COST

:
: Filed on Behalf of: Condemnee.
:
: Counsel of Record for this Party:
: James H. Swartz
:
: 2 West Long Avenue
: DuBois Pa 15801
:
: (814) 375-4453

filed on behalf of



FILED

JAN 13 2003
m/2:00/m
William A. Shaw
Prothonotary/Clerk of Courts

3 CEN T U SWARTZ

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD

:

: Type of Case: Condemnation

:

:

:

:

:

CONTENTS LISTING

1. Grounds for request: unfair market value of the
SITE OF THE PROPERTY
2. Copy yeager offer
3. hunting for attorney to counter sue
4. time needed to do a credible appraisal
5. COPIES OF 3 other buildings all at higher prices in
the downtown DuBois area.

REASON FOR REQUEST FOR MOTION TO STOP SALE IS AS
follow:

Adequacy of the Sale Price

however, the rule is well-settled, at least in normal times, that a court will not refuse to confirm a sale or set it aside unless the price obtained was "grossly inadequate"²⁵ or the inadequacy was "so gross as to shock the conscience or raise a presumption of fraud or unfairness."²⁶

... courts have set aside as "inequitably less than the real value of the property" a sale price of approximately one-seventh of the fair market value.²⁹ Moreover, where the disparity is substantial, courts will seize upon any other irregularity or misconduct to provide the additional basis for setting aside the sale.

1. enclosed find copy of sale pending building in area for 39,000 plus and it is not one-third the size of mine
2. copies of other buildings at price range of about one hundred thousand dollars and size compare to the one you want
- 3 IN my opinion you broke my civil rights, no public use private gain, refused to talk about the REAL GRANT MONEY, like rice got

Reference note adequacy of sale information is from west law books real estate finance law 2nd edition west publishing.

Law Office
MICHAEL P. YEAGER
P. O. Box 752
110 NORTH SECOND STREET
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-9611
FAX (814) 765-9503
December 23, 2002

CERTIFIED MAIL & 1ST CLASS MAIL

James H. Swartz
2 W. Long Avenue
DuBois, PA 15801

**Re: Offer of "Just Compensation"
Right of Possession & Entry
RACD v. Swartz
No. 00-591-CD
My File No. Y-2152**

Dear Mr. Swartz:

Please know that the Redevelopment Authority of the City of DuBois has secured an appraisal and is now in a position to make a written offer to you as to the amount of just compensation estimated by the RACD to be due to you as a result of the Eminent Domain Proceeding described above. In that regard, it is the intention of the Authority to take possession and exercise its right of entry on the property located at 2-4 West Long Avenue, DuBois, PA 15801 at 10:00 A.M. on January 13, 2003. If you refuse to deliver possession or permit the right of entry on that date, the Authority will have no choice but to issue a Rule upon you to show cause why a Writ of Possession should not be issued to the Authority to grant it the right of entry.

The Authority's estimate as to just compensation has been set at the amount of \$16,500.00. However, please note that the provisions of the Eminent Domain Code (§1-521) indicate that the amount payable to you shall be subject to a lien for all taxes and municipal claims assessed against the property as well as all mortgages, judgments and other liens of record against the property existing at the date of the filing of the Declaration of Taking (May 18, 2000). Those liens, claims and taxes set forth above are to be paid or reimbursed out of the estimate as to just compensation in the order of priority before any payment will ultimately be made to you.

WELCH, GOLD & SIEGEL, P.C.

ATTORNEYS AT LAW

SUITE 1240, LAWYERS BUILDING • 428 FORBES AVENUE • PITTSBURGH, PENNSYLVANIA 15219

TELEPHONE: 1-800-375-3089 • FAX: (412) 391-8232

PHILADELPHIA OFFICE

ASSOCIATED WITH

MATTHEMAN, WEINROTH & MILLER

ATTORNEYS AT LAW

PHILADELPHIA, PA 19110

January 3, 2003

JAMES H SWARTZ
2 W LONG AVE
DU BOIS, PA 15801-2102

Membership #: 10041836882
File #: 191009
Phone #: 1-814-375-4453
Subject Matter: CIVIL LITIGATION
Attorney Name: TROY HARPER
DENNISON & DENNISON
293 MAIN ST.
BROOKVILLE, PA 15825
Attorney Phone #: 1-814-849-8316

Dear JAMES H SWARTZ:

Thank you for using your Pre-Paid Legal Services membership. We were happy to be of service with your initial toll-free consultation.

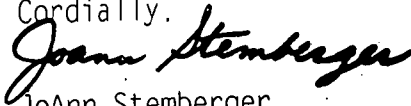
Your legal matter is being referred to the above referenced attorney. This attorney is experienced with the type of situation you're facing and will assist you with the additional legal services you have requested.

Please call the attorney as soon as possible to set an appointment or time to talk by phone. The sooner the attorney hears from you, the sooner you will have the help you need and the peace of mind you deserve.

Under your Pre-Paid Legal Services, Inc. benefits, we have located the above referenced attorney, who has agreed to discount the standard hourly rate for you by twenty-five percent (25%). You will be responsible for all attorney fees and no billings should be submitted to this firm or Pre-Paid Legal Services, Inc.

If you have any questions about your referral, please call us toll free at 1-800-375-3089. We'll be pleased to assist you.

Cordially,



JoAnn Stemberger
Referral Consultant

cc: TROY HARPER

Provost Real Estate Appraisers

Residential - Commercial - Industrial
State Certified General and Residential Appraisers
302 East Pine Street - Clearfield, Pa. 16830
(814) 765 5252 - Fax (814) 765 2425

Richard J. Provost, IFAS
General
Senior Certified Appraiser

Nancy M. Jacobson
General
Certified Appraiser

Sonya L. Flanagan
Residential
Certified Appraiser

January 6, 2003

James Swartz
2 West Long Ave.
DuBois, PA 15801

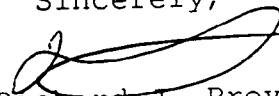
RE: Appraisal of commercial property
2 West Long Ave.
DuBois, PA.
Clearfield County, PA.

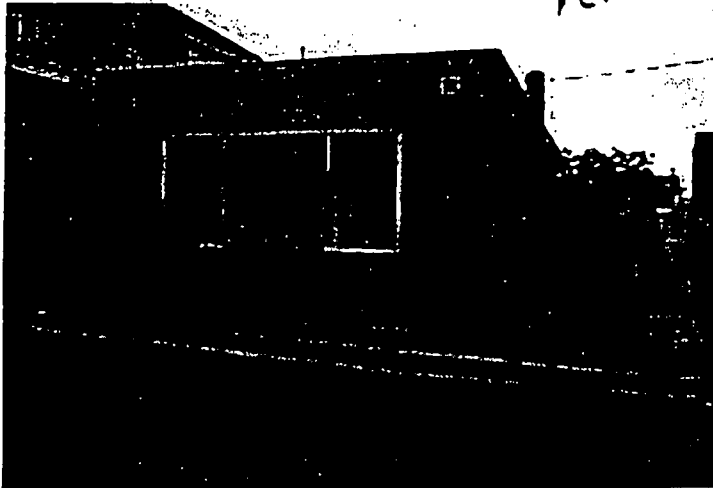
Dear Mr. Swartz:

Please be advised I would need two to four weeks to complete a credible appraisal on the above property.

The estimated cost for the appraisal is \$1,500.00 to \$2,000.00.
This does not include expert testimony if and when it is necessary.

Sincerely,


Richard J. Provost, IFAS



PENDING
11-22-02
Sale

**COLDWELL
BANKER**

DEVELOPAC REALTY

998 Beaver Drive, DuBois, PA 15801
PH: 814-375-1167 FAX: 814-375-9842

WEBSITE: www.developac.com

EMAIL: devpac@key-net.net

EACH OFFICE IS INDEPENDENTLY OWNED AND OPERATED

PRICE: \$39,900.00

MLS#: 04-7744
OWNER: Hibbert
ADDRESS: 27 W. Washington Ave.
DuBois

Nice location. Close to downtown. Can be used for a variety of businesses. Nat. Gas HW Radiator heat, rubber roof, 24x60 building, 3/4 bath lower level.

GENERAL PROPERTY INFORMATION

Commercial Building	
Lot Size:	27x113x36x112
GLA:	1440
Total Basement:	1440
Bath:	3/4 LL
Inst. Number:	200115897
Map:	7.2-1-245
Taxes:	\$954.18
County:	Clearfield
Municipality:	DuBois
Zoning:	Commercial

Listing Agent: G. Gruda

BA	2.8
SA	2.8
TL	

TO SHOW: Call Lockbox

DIRECTIONS: Tommy D's T/R, across from CW Graphics



Address:
134-136 West Long Avenue, DuBois, PA 15801

Price: 98,500

Property Type: MultiFamily
Area: 04 DuBois
Apx. GLA (Incl BLA): 0 00

List #04-7850

Lots of Income with this 2 story multi-unit property. Six apartments and 2 store fronts. Off street parking + patio's for apartments, gas forced air, seperate electric.

Contract Information

Listing Agent	TERESA BALL Home (814) 371.3233 Office (814) 375.0722 ext. 15 www.hhlook.com	Listing Agency	HOWARD HANNA SHIPPEN Office (814) 375 0722 Fax 375 4101
Status	Active	Owner	Bloom
How To Show	Call Office		

General Property Description

Book Section	Multi-Family	Realtor.COM Type	Multi-Family
# of Units	4	Basement Living Area	0
Total Basement Area	0	Style	See Remarks

Location, Tax and Legal Information

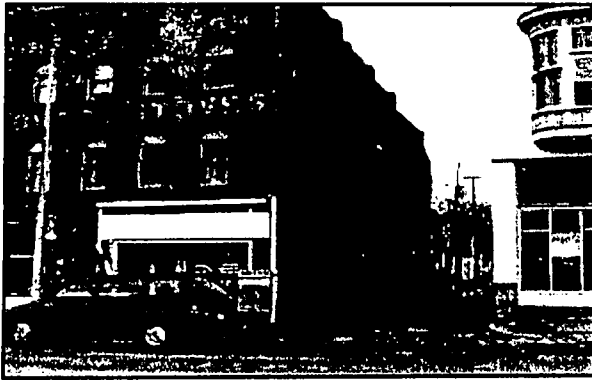
County	Clearfield	Zoning	Commercial
Taxes	1,244.17	Tax Year	2002
Map	7 2-1-00081-80	DB	1822
Page	24	Municipality	DuBois

	Remarks
--	---------

Permanent Book Msg	Great Income
--------------------	--------------

Details		Units									
		No.	Bed	Bath	Rent	SqFt	Parking	Lease	Furnish	Stories	Rem.
Unit 1:	Range; Refrigerator; Electricity Paid By: Tenant;										
	Garbage Paid By: Owner; Heat Paid By: Owner;	1	1	1	200.00		yes				Efficiency
	Sewer Paid By: Owner; Water Paid By: Owner										New
Income/Expenses:	Yearly Expenses: 6,849.00; Electricity Expense:	2	1	1	260.00		yes				Kitchen
	282.01; Heat Expense: 2,444.81; Water Expense:										Lots of
	1,130.21; Sewer Expense: 269.20; Lawn/Snow	3	1	1	225.00		yes				storage
	Expense: 682.00; Insurance Expense: 1,300.00;	4	1	1	212.00		yes				
	Garbage Expense: 264.20; Maintenance Expense: 5	5	1	1	180.00		yes				
	482.00; Yearly Income: 23,724.00	6	1	1	300.00		yes				1st Floor
											over 600
		Store			400.00		yes				sq ft
		add.store			200.00		yes				

Information is deemed to be reliable, but is not guaranteed. See copyright notice Prepared Friday, December 27, 2002 12:49 PM
The information on this sheet has been made available by the MLS and may not be the listing of the provider



Address:
327-329 West Long Avenue, DuBois, PA 15801

Price: 119,000

Property Type: MultiFamily
Area: 04 DuBois
Apx. GLA (Incl BLA): 0.00

List #04-7849

Three Story Apartment building, 8 Units, 7 Apartments, 1 Commercial. 2 stall storage building out back.

Contract Information

Listing Agent	TERESA BALL Home (814) 371.3233 Office (814) 375.0722 ext. 15 www.hhlook.com	Listing Agency	HOWARD HANNA SHIPPEN Office (814) 375 0722 Fax 375.4101
Status	Active	Owner	Bloom
How To Show	Call Office		

General Property Description

Book Section	Multi-Family	Realtor.COM Type	Multi-Family
# of Units	4	Basement Living Area	0
Total Basement Area	0	Year Built	1920
Style	See Remarks		

Location, Tax and Legal Information

County	Clearfield	Zoning	Commercial
Taxes	2,301	Tax Year	2002
Map	7.1-2-00399	DB	1999
Page	8238	Municipality	DuBois

Details

Unit 1:		Refrigerator; Electricity Paid By: Tenant; Garbage		No.	Bed	Bath	Rent	SqFt	Parking	Lease	Furnish	Stories	Rem.
		Paid By: Owner; Heat Paid By: Owner; Sewer Paid		Store			300.00		side/2				
		By Owner; Water Paid By: Owner							car				
Income/Expenses:	Yearly Expenses: 6,288.00; Electricity Expense:	A	1	1	250.00				yes				
	538.26; Heat Expense: 1,025.15; Water Expense:	B	1	1	200.00				yes				
	1,001.03; Tax Expense: 2,384.79; Insurance	C	1	1	300.00				yes				
	Expense: 840.00; Garbage Expense: 262.40;	D	2	1	350.00				yes				
	Maintenance Expense: 498.00; Other Expense:	E	1	1	245.00				yes				
	360.00; Yearly Income: 24,480.00	F	2	1	195.00				yes			New in	2001
		G	2	1	200.00				yes			New in	2001

Information is deemed to be reliable, but is not guaranteed. See copyright notice. Prepared Friday, December 27, 2002 12:49 PM

The information on this sheet has been made available by the MLS and may not be the listing of the provider

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

VS

JAMES H. SWARTZ,
Condemnee

Case NO. 00-591-CD

Counsel of Record for this Party:

Michael P. Yeager, Esq.
Supreme Court No.: 15587

P.O. Box 752
110 North Second Street
Clearfield, PA 16830

(814) 765-9611

Type of Case: Condemnation

RESPECTFULLY SUBMITTED
BY

COUNSEL OF RECORD FOR THIS PARTY
CONDEMNEE, APPELLANT

James H. Swartz
2 West Long Ave.
DU BOIS, PA. 15801

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the
pleading refuse offer has been sent to Michael
P. Yeager, Esq P.O/ box 752 110 North Second Street, Clear
field, PA. 16830 ON this 13th day of January 2003

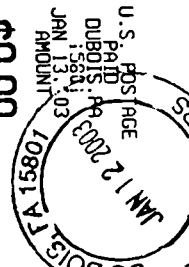
U.S. POSTAL SERVICE	CERTIFICATE OF MAILING
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER	
Received From:	
JAMES SWARTZ	
2 West Long Ave	
DuBois Pa 15801	
One piece of ordinary mail addressed to:	
Michael Yeager	
110 North Second St.	
Clearfield Pa	
16830	

PS Form 3817, Mar. 1989

0000



\$0.90
00067413-02



BY *James Swartz*
Counsel of Record for
this party Condemnee,
Appellant

FILED

JAN 21 2003

m/10:30am
William A. Shaw

Prothonotary/Clerk of Courts

3 Cent to Swartz

Handwritten initials

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Condemnor

vs.

JAMES H. SWARTZ,
Condemnee

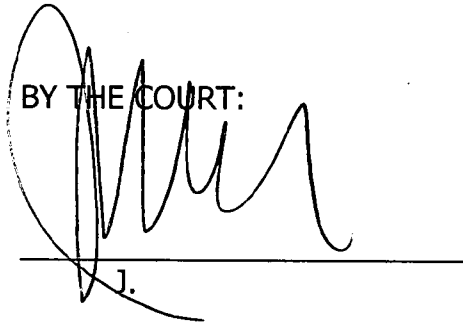
No. 00-591-CD

RULE RETURNABLE

AND NOW, this 7th day of February 2003, upon consideration of the foregoing Petition for Payment into Court and Distribution, a Rule is hereby issued upon James H. Swartz to Show Cause why the prayer of the Petitioner should not be granted. Rule Returnable by appearance and hearing on the 3 day of March, 2003 at 1:30 o'clock P.M. in Courtroom No. 1.

Service will be made upon Condemnee and the parties listed in the Schedule of Proposed Distribution, attached hereto, by certified mail, return receipt requested and by first class mail.

BY THE COURT:



FILED

FEB 07 2003

William A. Shaw
Prothonotary

FILED

10cc

019:36:81
FEB 07 2003

Amy Rogers

William A. Shaw
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Condemnor

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD
:
: Type of Case: Condemnation
:
: Type of Pleading: Petition for
: Payment into Court and Distribution
:
:
: Filed on Behalf of: Condemnor
:
: Counsel of Record for this Party:
:
: Michael P. Yeager, Esq.
: Supreme Court No.: 15587
:
: P.O. Box 752
: 110 North Second Street
: Clearfield, PA 16830
:
: (814) 765-9611

FILED

FILED

W. H. Shaw
Clerk

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

REDEVELOPMENT AUTHORITY OF	:	
THE CITY OF DUBOIS,	:	
Condemnor	:	
	:	No. 00-591-CD
vs.	:	
	:	
JAMES H. SWARTZ,	:	
Condemnee	:	

PETITION FOR PAYMENT INTO COURT AND DISTRIBUTION

COMES NOW, the Condemnor, Redevelopment Authority of the City of DuBois, by and through its attorney, Michael P. Yeager, Esquire, and files the within Petition whereof the following is a statement:

1. The Petitioner is the Redevelopment Authority of the City of Dubois with its principal place of business located at P.O. Box 171, DuBois, PA 15801 ("Petitioner").
2. The Petitioner initiated the above-captioned Eminent Domain Proceeding with the filing of a Declaration of Taking on May 18, 2000, all pursuant to the Eminent Domain Code of 1964, 26 P.S. §1-101 et seq. Notices of that filing were duly recorded and forwarded as prescribed by law.
3. The Condemnee is James H. Swartz with a principal place of business located at 2 West Long Avenue, DuBois, PA 15801 ("Condemnee").
4. On June 19, 2000, Condemnee filed "Objections and Defense" pro se. Condemnor responded with an Answer and various Motions to Strike.
5. On October 11, 2000, the Honorable John K. Reilly, President Judge of Clearfield County, after review of the Objections and Defense, determined to treat the same as Preliminary Objections and accordingly denied the same by an Order issued that date. Subsequently, Judge Reilly issued a Supplemental Opinion and Order dated

March 8, 2001.

6. Condemnee filed a Motion for Judgment Notwithstanding the Verdict on November 9, 2000; which was denied on November 14, 2000.

7. Condemnee filed defective Notices of Appeal in the Superior Court of Pennsylvania dated November 13, 2000 and November 27, 2000 to which Condemnor filed a Motion to Transfer and Quash.

8. The Superior Court, by Order dated February 1, 2001, transferred the matter sui sponte to the Commonwealth Court.

9. The Commonwealth Court issued an Order dated February 12, 2001 directing the proper refiled Notice of Appeal no later than February 23, 2001. A Notice of Appeal was then filed by Condemnee on February 22, 2001.

10. Subsequently, by Opinion (not reported) and Order dated September 11, 2001, the Commonwealth Court affirmed the October 11, 2000 order of the Court of Common Pleas of Clearfield County.

11. The Condemnee then filed an Application for Reconsideration with the Commonwealth Court; to which the Commonwealth Court responded by denying that application on November 21, 2001.

12. The Condemnee filed a Petition for Allowance to Appeal to the Pennsylvania Supreme Court on December 21, 2001.

13. Finally, by Order dated July 9, 2002, the Pennsylvania Supreme Court denied the Petition for Allowance of Appeal.

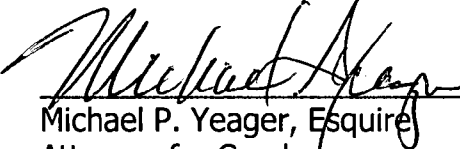
14. By letter dated December 23, 2002, the Condemnor made its offer for just compensation relative to the condemnation that it is the subject matter of this proceeding. A copy of that offer is attached hereto, made part hereof and incorporated herein as "Exhibit A".

15. By document filed on January 13, 2003, Condemnee refused to accept the "offer of fair compensation".

16. Although the Condemnor has requested possession from the Condemnee as to the subject matter of the Eminent Domain Proceeding, that request has repeatedly been denied.

17. The Condemnor accordingly proposes to pay its "estimate of just compensation" into Court pursuant to the provisions of the Eminent Domain Code of 1964 26 P.S. §1-522 and includes therewith a Schedule of Proposed Distribution relative to liens and encumbrances.

Respectfully submitted:


Michael P. Yeager, Esquire
Attorney for Condemnor

Law Office
MICHAEL P. YEAGER
P. O. Box 752
110 NORTH SECOND STREET
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-9611
FAX (814) 765-9503
December 23, 2002

CERTIFIED MAIL & 1ST CLASS MAIL

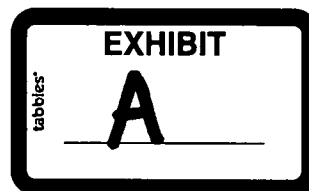
James H. Swartz
2 W. Long Avenue
DuBois, PA 15801

**Re: Offer of "Just Compensation"
Right of Possession & Entry
RACD v. Swartz
No. 00-591-CD
My File No. Y-2152**

Dear Mr. Swartz:

Please know that the Redevelopment Authority of the City of DuBois has secured an appraisal and is now in a position to make a written offer to you as to the amount of just compensation estimated by the RACD to be due to you as a result of the Eminent Domain Proceeding described above. In that regard, it is the intention of the Authority to take possession and exercise its right of entry on the property located at 2-4 West Long Avenue, DuBois, PA 15801 at 10:00 A.M. on January 13, 2003. If you refuse to deliver possession or permit the right of entry on that date, the Authority will have no choice but to issue a Rule upon you to show cause why a Writ of Possession should not be issued to the Authority to grant it the right of entry.

The Authority's estimate as to just compensation has been set at the amount of \$16,500.00. However, please note that the provisions of the Eminent Domain Code (§1-521) indicate that the amount payable to you shall be subject to a lien for all taxes and municipal claims assessed against the property as well as all mortgages, judgments and other liens of record against the property existing at the date of the filing of the Declaration of Taking (May 18, 2000). Those liens, claims and taxes set forth above are to be paid or reimbursed out of the estimate as to just compensation in the order of priority before any payment will ultimately be made to you.



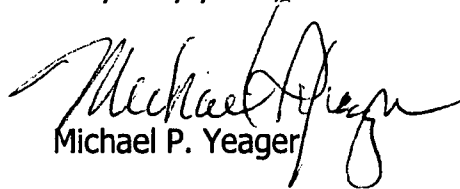
We are therefore currently in the process of determining the specific amounts as to liens or claims that need to be paid. Preliminarily, we are aware of the following amounts (all of which are estimates only):

1. Tax Claim Bureau – tax payment – 9/26/02 - \$3,434.09
2. Liens:
 - (a) National Fuel Gas - No. 97-1174 - \$3,193.27 (to 9/16/02)
 - (b) Commonwealth of PA - No. 97-1324 - \$996.79 (to 10/22/97)
 - (c) Commonwealth of PA - No. 98-156 - \$143.64 (to 2/5/98)

The Authority hopes that you will work with it to effect a smooth transition as to transfer of this property to the Authority. In this regard, please contact Mr. Lance Marshall at the Authority offices in the City Building in DuBois (371-2000, ext. 119) in order to accommodate any needs you might have with regard to the removal of personal items you may yet have in the property.

Of course, should you have any questions you feel I may be able to answer, please feel free to call me as well.

Very truly yours,


Michael P. Yeager

MPY/ljs

pc: RACD

FILED

10 CC

01249821
FEB 05 2003

Atty. General

61
K21

William A. Shaw
Prattbury

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Condemnor

vs.

JAMES H. SWARTZ,
Condemnee

No. 00-591-CD

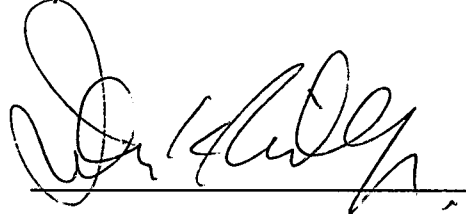
ORDER OF COURT

AND NOW, this 25 day of March, 2003, upon consideration of
the foregoing Petition for Payment into Court and Distribution, it is hereby

ORDERED, ADJUDGED AND DECREED that in view of Condemnee's refusal to
accept Condemnor's estimate of just compensation, the Condemnor is granted
permission to pay its estimate of just compensation in the above Eminent Domain
action into court through the Clearfield County Prothonotary,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Condemnor shall
make payment in the amount of \$16,500 to the Clearfield County Prothonotary, with
the same to be distributed in accordance with the attached Condemnor's Schedule of
Proposed Distribution as provided in applicable Pennsylvania law.

By the Court:



FILED

MAR 25 2003

William A. Shaw
Prothonotary

FILED

9:15 AM
MAR 25 2003

10 CC
Atty Reages
w/ attached schedule

William A. Shaw
Prothonotary

10 CC
National Fuel, Commonwealth,
Redevelopment Auth., Tax Claim Bureau,
James Swartz - all
Schedule

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,

Condemnor

vs.

JAMES H. SWARTZ,

Condemnee

No. 00-591-CD

SCHEDULE OF PROPOSED DISTRIBUTION

Upon approval of the Court, Condemnor proposes to pay its estimate of just compensation in the above matter into Court with the same to be distributed as follows:

Estimated just compensation **\$16,500.00**
(based on appraisal)

Less: Liens & encumbrances

1. **National Fuel Gas**
c/o Lawrence C. Bolla
2222 W. Grandview Blvd.
Erie, PA 16506-4508
No. 1997-1174 CD
Default judgment & interest through 4/21/03 - 4,085.28
2. **Commonwealth of PA**
No. 1997-1324 Judgment
No. 1998-156 Judgment
With penalties and interest through 3/15/03 - 1,980.16
3. **Redevelopment Authority of the City of DuBois**
Reimbursement for 9/16/02 advance to
Clearfield County Tax Claim Bureau for
payment of delinquent taxes - 3,434.09
4. **Clearfield County Tax Claim Bureau**
2002 Unpaid Real Estate Taxes through 3/31/03 - 1,202.36

Less total deductions for liens & encumbrances **10,701.89**

Estimated Amount Remaining for distribution to Condemnee **\$ 5,798.11**

18

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Condemnor

vs.

JAMES H. SWARTZ,
Condemnee

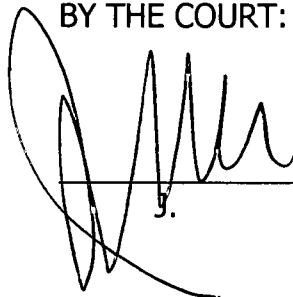
No. 00-591-CD

RULE RETURNABLE

AND NOW, this 7th day of February, 2003, upon consideration of the foregoing Petition for Reimbursement of Advance of Real Estate Taxes, Penalties and Interest, a Rule is hereby issued upon James H. Swartz to Show Cause why the prayer of the Petitioner should not be granted. Rule Returnable by appearance and hearing on the 3 day of March, 2003 at 1:30 o'clock P.M. in Courtroom No. 1.

Service will be made upon Condemnee and the parties listed in the Schedule of Proposed Distribution attached to Petitioner's Petition for Reimbursement of Advance of Real Estate Taxes, Penalties and Interest, by certified mail, return receipt requested and by first class mail.

BY THE COURT:



3.

FILED

FEB 07 2003

William A. Shaw
Prothonotary

FILED

0/9:04 AM
FEB 07 2003

10 CC

Atty Yeager

W

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Condemnor

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD
:
: Type of Case: Condemnation
:
: Type of Pleading: Petition for Reimbursement
: of Real Estate Taxes, Penalties and Interest
:
: Filed on Behalf of: Condemnor
:
: Counsel of Record for this Party:
:
: Michael P. Yeager, Esq.
: Supreme Court No.: 15587
:
: P.O. Box 752
: 110 North Second Street
: Clearfield, PA 16830
:
: (814) 765-9611

FILED

FEB 05 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,

Condemnor

VS.

JAMES H. SWARTZ,

Condemnee

No. 00-591-CD

**PETITION FOR REIMBURSEMENT OF ADVANCE OF
REAL ESTATE TAXES, PENALTIES AND INTEREST**

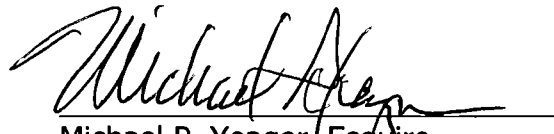
COMES NOW, the Condemnor, Redevelopment Authority of the City of DuBois, by and through its attorney, Michael P. Yeager, Esquire, and files the within Petition whereof the following is a statement:

1. The Petitioner is the Redevelopment Authority of the City of Dubois with its principal place of business located at P.O. Box 171, DuBois, PA 15801 ("Petitioner").
2. The Petitioner initiated the above-captioned Eminent Domain Proceeding with the filing of a Declaration of Taking on May 18, 2000, all pursuant to the Eminent Domain Code of 1964, 26 P.S. §1-101 et seq. (the "Code". Notices of that filing were duly recorded and forwarded as prescribed by law.
3. The Condemnee is James H. Swartz with a principal place of business located at 2 West Long Avenue, DuBois, PA 15801 ("Condemnee").
4. Contemporaneously with the filing of the within Petition, Condemnor also filed a Petition for Payment into Court and Distribution together with a Schedule of Proposed Distribution all of the same being incorporated herein by reference.
5. On September 16, 2002, the Condemnor, in order to prevent the real estate that is the subject matter of the within Eminent Domain Action from being sold for nonpayment of real estate taxes, penalties and interest, paid the sum of \$3,434.09 to

the Clearfield County Tax Claim Bureau as is evidenced by a Receipt relative to said payment attached hereto, made part hereof and incorporated herein as "Exhibit A".

6. Petitioner accordingly requests reimbursement in the amount of \$3,434.09 from the amount paid by Condemnor in the above-captioned action into court as estimated just compensation and as listed on the Condemnor's Schedule of Proposed Distribution, all in accordance with the Code and particularly Section 1-521 thereof.

Respectfully submitted:



Michael P. Yeager, Esquire
Attorney for Condemnor

-Customer Copy-

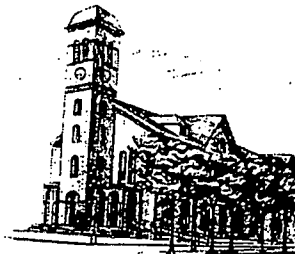
Clearfield County Tax Claim Bureau

230 East Market Street - Suite 121

Clearfield, Pennsylvania 16830

Phone: (814) 765-2641 Ext. 5998

Thursday, September 26, 2002



Receipt # 158942

Received Of SWARTZ, JAMES H.

Control # 007216275

Claim # 1999-000870

REDEVELOPMENT AUTHORITY OF DUBOIS

Map # 001-000-00065

In The Amount Of: \$1,039.83

Property Desc BLDG. & L

2-10 W. LONG AVE.

	<u>County</u>	<u>District</u>	<u>School</u>
TAX	108.90	258.46	586.47
INTEREST	0.00	0.00	0.00
COST / PENALTY	86.00		

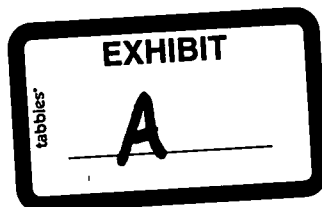
TOTAL **\$1,039.83**

MaryAnne Kerdock

Director of Tax Claim Bureau

RECEIPT VALID ONLY UPON PAYMENT OF LEGAL TENDER

ANY CHECK RETURN UNPAID BY YOUR BANK WILL BE SUBJECT TO A TWENTY DOLLAR (\$20.00) RETURNED CHECK FEE



Clearfield County Tax Claim Bureau

230 East Market Street - Suite 121

Clearfield, Pennsylvania 16830

Phone: (814) 765-2641 Ext. 5998

Thursday, September 26, 2002



-Customer Copy-

Receipt # 158942

Received Of SWARTZ, JAMES H.

Control # 007216275

Claim # 2000-000839

REDEVELOPMENT AUTHORITY OF DUBOIS

Map # 001-000-00065

In The Amount Of:

\$1,155.61

Property Desc BLDG. & L

2-10 W. LONG AVE.

	<u>County</u>	<u>District</u>	<u>School</u>
TAX	108.90	267.09	586.47
INTEREST	15.52	38.06	83.57
COST / PENALTY	56.00		
TOTAL	<u>\$1,155.61</u>		

MaryAnne Kerdock

Director of Tax Claim Bureau

RECEIPT VALID ONLY UPON PAYMENT OF LEGAL TENDER

ANY CHECK RETURN UNPAID BY YOUR BANK WILL BE SUBJECT TO A TWENTY DOLLAR (\$20.00) RETURNED CHECK FEE

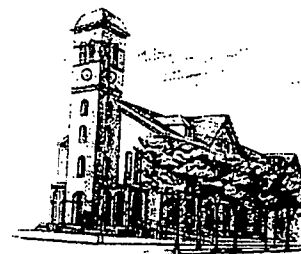
Clearfield County Tax Claim Bureau

230 East Market Street - Suite 121

Clearfield, Pennsylvania 16830

Phone: (814) 765-2641 Ext. 5998

Thursday, September 26, 2002



Receipt # 158942

Received Of SWARTZ, JAMES H.

Control # 007216275

Claim # 2001-000863

REDEVELOPMENT AUTHORITY OF DUBOIS

Map # 001-000-00065

In The Amount Of:

\$1,238.65

Property Desc BLDG. & L

2-10 W. LONG AVE.

	<u>County</u>	<u>District</u>	<u>School</u>
TAX	108.90	423.40	620.81
INTEREST	5.72	22.23	32.59
COST / PENALTY	25.00		
TOTAL	<u>\$1,238.65</u>		

MaryAnne Kerdock

Director of Tax Claim Bureau

RECEIPT VALID ONLY UPON PAYMENT OF LEGAL TENDER

ANY CHECK RETURN UNPAID BY YOUR BANK WILL BE SUBJECT TO A TWENTY DOLLAR (\$20.00) RETURNED CHECK FEE

Total Received On All Claims For 00721627 On 9/26/02 \$3,434.09

FILED

10 cc

012:46:811
FEB 05 2003

Atty Reager
or
[Signature]

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Condemnor

vs.

JAMES H. SWARTZ,
Condemnee

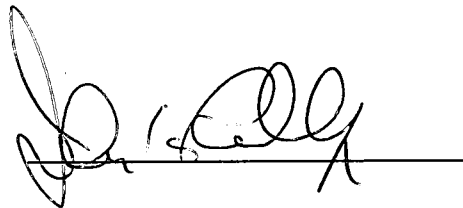
No. 00-591-CD

ORDER OF COURT

AND NOW, this 25 day of March, 2003, upon consideration of the foregoing Petition for Reimbursement of Advance of Real Estate Taxes, Penalties and Interest, it is hereby

ORDERED, ADJUDGED AND DECREED that the Prothonotary shall reimburse the Redevelopment Authority of the City of DuBois in the amount of \$3,434.09; said sum to be deducted from the payment of estimated just compensation in the above-captioned matter and as listed on the Schedule of Proposed Distribution previously filed by Condemnor.

By the Court:



FILED

MAR 25 2003

William A. Shaw
Prothonotary

FILED

9/9:21:26
MAR 25 2003

10cc
C
444

Atty Heager

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Condemnor

vs.

JAMES H. SWARTZ,
Condemnee

No. 00-591-CD

FILED

FEB 12 2003

SCHEDULE OF PROPOSED DISTRIBUTION

William A. Shaw
Prothonotary

Upon approval of the Court, Condemnor proposes to pay its estimate of just
compensation in the above matter into Court with the same to be distributed as follows:

Estimated just compensation **\$16,500.00**
(based on appraisal)

Less: Liens & encumbrances

1. **National Fuel Gas**
c/o Lawrence C. Bolla
2222 W. Grandview Blvd.
Erie, PA 16506-4508
No. 1997-1174 CD
Default judgment & interest through 4/21/03 - 4,085.28
2. **Commonwealth of PA**
No. 1997-1324 Judgment
No. 1998-156 Judgment
With penalties and interest through 3/15/03 - 1,980.16
3. **Redevelopment Authority of the City of DuBois**
Reimbursement for 9/16/02 advance to
Clearfield County Tax Claim Bureau for
payment of delinquent taxes - 3,434.09
4. **Clearfield County Tax Claim Bureau**
2002 Unpaid Real Estate Taxes through 3/31/03 - 1,202.36

Less total deductions for liens & encumbrances **10,701.89**

Estimated Amount Remaining for distribution to Condemnee **\$ 5,798.11**

FILED

01:30 PM
FEB 12 2003

NO
cc

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,

Condemnor

vs.

JAMES H. SWARTZ,

Condemnee

No. 00-591-CD

RULE RETURNABLE

AND NOW, this 12 day of February, 2003, upon consideration of the foregoing Petition for Reimbursement of Advance of Real Estate Taxes, Penalties and Interest, a Rule is hereby issued upon James H. Swartz to Show Cause why the prayer of the Petitioner should not be granted. Rule Returnable by appearance and hearing on the 25 day of March, 2003 at 9:00 o'clock A.M. in Courtroom No. 1.

Service will be made upon Condemnee and the parties listed in the Schedule of Proposed Distribution attached to Petitioner's Petition for Reimbursement of Advance of Real Estate Taxes, Penalties and Interest, by certified mail, return receipt requested and by first class mail.

BY THE COURT:

John K. Reilly, Jr.
J.

FILED

FEB 12 2003

William A. Shaw
Prothonotary

FILED

012:30 ~~84~~
FEB 12 2003

WAS

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,

Condemnor

vs.

JAMES H. SWARTZ,

Condemnee

No. 00-591-CD

RULE RETURNABLE

AND NOW, this 12 day of February, 2003, upon consideration of the foregoing Petition for Payment into Court and Distribution, a Rule is hereby issued upon James H. Swartz to Show Cause why the prayer of the Petitioner should not be granted. Rule Returnable by appearance and hearing on the 25 day of March, 2003 at 9:00 o'clock A.M. in Courtroom No. 1.

Service will be made upon Condemnee and the parties listed in the Schedule of Proposed Distribution, attached hereto, by certified mail, return receipt requested and by first class mail.

BY THE COURT:

John K. Reilly, Jr.
J.

FILED

FEB 12 2003

William A. Shaw
Prothonotary

FILED

012:25:24
FEB 12 2003

William A. Shaw
Prothonotary

10 CC

Atty Yeager
C-24

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Condemnor

vs.

JAMES H. SWARTZ,
Condemnee

No. 00-591-CD

AFFIDAVIT OF SERVICE

I, MICHAEL P. YEAGER, attorney for Redevelopment Authority of the City of DuBois, depose and say that I forwarded the Petition for Payment into Court and Distribution as well as the Petition for Reimbursement of Advance of Real Estate Taxes, Penalties and Interest with Rules Returnable for both Petitions by Certified Mail, Return Receipt Requested and First Class Mail on February 13, 2003 to the following:

James H. Swartz, Condemnee
2 West Long Avenue
DuBois, PA 15801.

Clearfield County Tax Claim Bureau
230 E. Market St., Suite 121
Clearfield, Pa 16830

Lance Marshall, Director
REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS
P.O. Box 711
DuBois, PA 15801

National Fuel Gas
c/o Lawrence C. Bolla
2222 W. Grandview Blvd.
Erie, PA 16506-4508

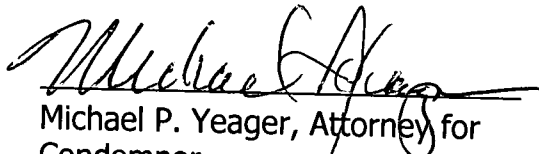
Richard Kunkle
COMMONWEALTH OF PA
DEPT. OF REVENUE
State Office Bldg.
300 Liberty Avenue
Pittsburgh, PA 15222

FILED

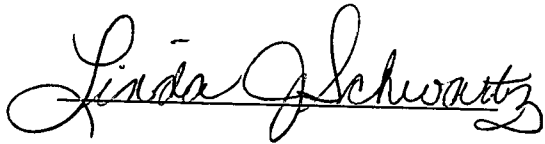
FEB 25 2003

William A. Shaw
Prothonotary

The original receipts and return receipt cards are also attached hereto, made part hereof and incorporated herein by reference.


Michael P. Yeager, Attorney for
Condemnor

Sworn to and subscribed before me this 25th day of February 2003.

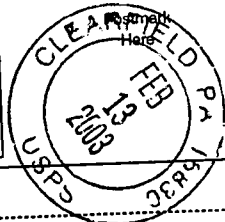




U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$.83
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.88



Sent To

James H. Swartz
Street, Apt. No.;
or PO Box No. 2 W. Long Avenue
City, State, ZIP+4 DuBois, PA 15801

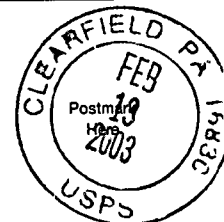
PS Form 3800, January 2001

See Reverse for Instructions

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$.83
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.88



Sent To

Clearfield County Tax Claim Bureau
Street, Apt. No.;
or PO Box No. 230 E. Market St., Suite 121
City, State, ZIP+4 Clearfield, PA 16830

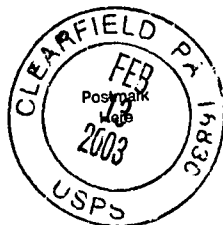
PS Form 3800, January 2001

See Reverse for Instructions

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$.83
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.88



Sent To

Lance Marshall, Director
REDEVELOPMENT AUTHORITY OF THE CITY OF
Street, Apt. No.;
or PO Box No. DuBois P.O. Box 711
City, State, ZIP+4 DuBois, PA 15801

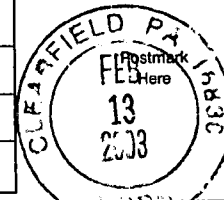
PS Form 3800, January 2001

See Reverse for Instructions

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$.83
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.88



Sent To

National Fuel Gas c/o Lawrence C. Bolla
Street, Apt. No.;
or PO Box No. 2722 W. Grandview Blvd.
City, State, ZIP+4 Erie, PA 16506-4508

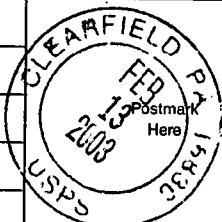
PS Form 3800, January 2001

See Reverse for Instructions

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$.83
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.88



Sent To Richard Kunkle, COMMONWEALTH OF PA
DEPT. OF REVENUE, Room 105, State
Street, Apt. No.;
or PO Box No. Office Bldg., 300 Liberty Ave.
City, State, ZIP+4 Pgh., PA 15222

PS Form 3800, January 2001

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

James H. Swartz
2 West Long Ave.
DuBois, PA 15801

2. Article Number (Copy from service label)

7001 0360 0001 7574 6670

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

James Swartz

B. Date of Delivery

07-21

C. Signature

X James Swartz

☐ Agent☐ Addressee

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Clearfield County Tax Claim
Bureau
230 E. Market St., Suite 12
Clearfield, PA 16830

2. Article Number (Copy from service label)

7001 0360 0001 7574 6595

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1789

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

Kean Orr

B. Date of Delivery

2-14-03

C. Signature

X Kean Orr

☐ Agent☐ Addressee

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Lance Marshall, Director
REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS
P.O. Box 711
DuBois, PA 15801

2. Article Number (Copy from service label)

7001 0360 0001 7574 6663

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

Lance Marshall

B. Date of Delivery

07-18-03

C. Signature

X Lance Marshall

☐ Agent☐ Addressee

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY								
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">A. Received by (Please Print Clearly) <i>DAVE BENSON</i></td> <td style="width: 50%; padding: 2px;">B. Date of Delivery <i>2-18-03</i></td> </tr> <tr> <td colspan="2" style="padding: 2px;">C. Signature <i>[Signature]</i></td> </tr> <tr> <td colspan="2" style="padding: 2px;"> ☒ Agent ☐ Addressee </td> </tr> <tr> <td colspan="2" style="padding: 2px;"> D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No </td> </tr> </table>	A. Received by (Please Print Clearly) <i>DAVE BENSON</i>	B. Date of Delivery <i>2-18-03</i>	C. Signature <i>[Signature]</i>		☒ Agent ☐ Addressee		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
A. Received by (Please Print Clearly) <i>DAVE BENSON</i>	B. Date of Delivery <i>2-18-03</i>								
C. Signature <i>[Signature]</i>									
☒ Agent ☐ Addressee									
D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No									
1. Article Addressed to: National Fuel Gas c/o Lawrence C. Bolla 2222 W. Grandview Blvd. Erie, PA 16506-4503	3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.								
2. Article Number (Copy from service label) 7001 0360 0001 7554 6588									
PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952									

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY								
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">A. Received by (Please Print Clearly)</td> <td style="width: 50%; padding: 2px;">B. Date of Delivery <i>2-18-03</i></td> </tr> <tr> <td colspan="2" style="padding: 2px;">C. Signature <i>[Signature]</i></td> </tr> <tr> <td colspan="2" style="padding: 2px;"> ☒ Agent ☐ Addressee </td> </tr> <tr> <td colspan="2" style="padding: 2px;"> D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No </td> </tr> </table>	A. Received by (Please Print Clearly)	B. Date of Delivery <i>2-18-03</i>	C. Signature <i>[Signature]</i>		☒ Agent ☐ Addressee		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
A. Received by (Please Print Clearly)	B. Date of Delivery <i>2-18-03</i>								
C. Signature <i>[Signature]</i>									
☒ Agent ☐ Addressee									
D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No									
1. Article Addressed to: Richard Kunkle Commonwealth of PA Department of Revenue Room 105, State Office Bldg. 300 Liberty Avenue Pittsburgh, PA 15222	3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.								
2. Article Number (Copy from service label) 7001 0360 0001 7574 6612									
PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952									

FILED

FEB 25 2003

01:40 PM

ND
CC
KJD

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD ..

: Type of Case: Condemnation

: Type of Pleading:

: COPIES OF NOTICE OF
service

: Filed on Behalf of: Condemnee.

: Counsel of Record for this Party:

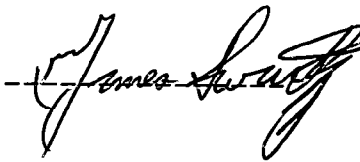
: James H. Swartz

: 2 West Long Avenue

: DuBois Pa 15801

: (814) 375-4453

filed on behalf of



FILED

FEB 28 2003

m/10:30/u
William A. Shaw

Prothonotary/Clerk of Courts

NO CERT.



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

1. Case NO. 25 WAL 2002
2. Counsel of Record for this Party:
3. Michael P. Yeager, Esq.
4. Supreme Court No.: 15587
5. P.O. Box 752
6. 110 North Second Street
7. Clearfield, PA 16830
8. (814) 765-9611

VS
JAMES H. SWARTZ, Condemnee

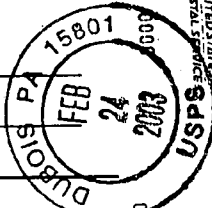
9. Type of Case: Condemnation
10. RESPECTFULLY SUBMITTED
11. BY: *James H. Swartz*
12. COUNSEL OF RECORD FOR THIS PARTY
13. CONDEMNOR, APPELLANT
14. James H. Swartz
15. 2 West Long Ave.
16. DUBOIS, PA. 15801

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE
ADDITION TO LEGAL BRIEF AND ADDITION MATTER HAS BEEN
SENT TO JUDGE JOHN RELLY JR. Clearfield courthouse
Clearfield, Pa 16830 on this 24 day of
February 2003

by *James H. Swartz*
counsel of record for
this party Condemnee
Appellant

U.S. POSTAL SERVICE	
CERTIFICATE OF MAILING	
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER	
Received From:	
James Swartz	
2 W. Long Ave	
DUBOIS PA 15801	
One piece of ordinary mail addressed to:	
Judge Reilly Jr.	
CLFD COURT House	
Box 549	
CLFD pa 16830	



\$0.90
00020961-01

U.S. POSTAGE
PAID
DUBOIS, PA
15801
FEB 24 2003
AMOUNT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Condemnor

vs.

JAMES H. SWARTZ,
Condemnee

No. 00-591-CD

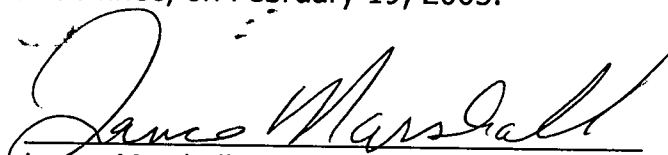
FILED

MAR 03 2003

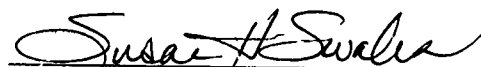
William A. Shaw
Prothonotary

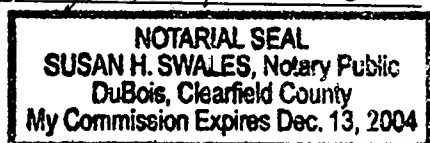
AFFIDAVIT OF SERVICE

I, LANCE MARSHALL, Director for Redevelopment Authority of the City of DuBois, depose and say that I served copies of the Petition for Payment into Court and Distribution as well as the Petition for Reimbursement of Advance of Real Estate Taxes, Penalties and Interest with Rules Returnable for both Petitions on the Condemnee, James H. Swartz, by leaving certified copies thereof at the address of the condemned property, 2 West Long Avenue, DuBois, PA 15801, by handing the same to Barbara Dubek, an apparent tenant of the said Condemnee, on February 19, 2003.


Lance Marshall, Director of Redevelopment
Authority of the City of DuBois, Condemnor

Sworn to and subscribed before me this 28TH day of FEBRUARY, 2003.





FILED

012:51:8X
MAR 03 2003

NO cc
S
KCB

William A. Shaw
Prothonotary

GA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Condemnor

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD
:
: Type of Case: Condemnation
:
: Type of Pleading: Motion for
: Writ of Possession
:
: Filed on Behalf of: Condemnor
:
: Counsel of Record for this Party:
:
: Michael P. Yeager, Esq.
: Supreme Court No.: 15587
:
: P.O. Box 752
: 110 North Second Street
: Clearfield, PA 16830
:
: (814) 765-9611

FILED

MAR 11 2003

0/2:25/10

William A. Shaw
Prothonotary

5 CENT TO ATT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Condemnor

vs.

JAMES H. SWARTZ,
Condemnee

No. 00-591-CD

**MOTION FOR WRIT OF POSSESSION PURSUANT TO
SECTION 1-407(A) OF THE EMINENT DOMAIN CODE;
PRAECIPE FOR RULE; REQUEST FOR EVIDENTIARY HEARING**

AND NOW, this ____ day of _____, 2003, the Redevelopment
Authority of the City of DuBois, Condemnor, by its attorney, Michael P. Yeager, Esquire,
respectfully represents as follows:

Count I. Motion for Writ of Possession

1. The Petitioner is the Redevelopment Authority of the City of DuBois with its principal place of business located at P.O. Box 171, DuBois, PA 15801 ("RACD").
2. The Respondent is James H. Swartz with a principal place of business located at 2 West Long Avenue, DuBois, PA 15801 ("Condemnee").
3. On May 18, 2000, RACD filed a Declaration of Taking under the provisions of the Eminent Domain Code of 1964, 26 P.S. §1-101 et seq., effecting a total taking of a property located at the corner of 2 West Long Avenue and Brady Street in the City of DuBois, Clearfield County, Pennsylvania ("Subject Property") and further described in the Deed dated December 30, 1992 and recorded in Clearfield Deeds & Records Vol. 1508

at page 102.

4. On June 19, 2000, Condemnee filed "Objections and Defense" pro se. Condemnor responded with an Answer and various Motions to Strike.

5. On October 11, 2000, the Honorable John K. Reilly, President Judge of Clearfield County, after review of the Objections and Defense, determined to treat the same as Preliminary Objections and accordingly denied the same by an Order issued that date. Subsequently, Judge Reilly issued a Supplemental Opinion and Order dated March 8, 2001.

6. Condemnee filed a Motion for Judgment Notwithstanding the Verdict on November 9, 2000; which was denied on November 14, 2000.

7. Condemnee filed defective Notices of Appeal in the Superior Court of Pennsylvania dated November 13, 2000 and November 27, 2000 to which Condemnor filed a Motion to Transfer and Quash.

8. The Superior Court, by Order dated February 1, 2001, transferred the matter sui sponte to the Commonwealth Court.

9. The Commonwealth Court issued an Order dated February 12, 2001 directing the proper refiled Notice of Appeal no later than February 23, 2001. A Notice of Appeal was then filed by Condemnee on February 22, 2001.

10. Subsequently, by Opinion (not reported) and Order dated September 11, 2001, the Commonwealth Court affirmed the October 11, 2000 order of the Court of Common Pleas of Clearfield County.

11. The Condemnee then filed an Application for Reconsideration with the Commonwealth Court; to which the Commonwealth Court responded by denying that

application on November 21, 2001.

12. The Condemnee filed a Petition for Allowance to Appeal to the Pennsylvania Supreme Court on December 21, 2001.

13. Finally, by Order dated July 9, 2002, the Pennsylvania Supreme Court denied the Petition for Allowance of Appeal.

14. By letter dated December 23, 2002, the Condemnor made its offer for just compensation relative to the condemnation that it is the subject matter of this proceeding. A copy of that offer is attached hereto, made part hereof and incorporated herein as "Exhibit A".

15. By document filed on January 13, 2003, Condemnee refused to accept the "offer of fair compensation".

16. On February 5, 2003, the Condemnor filed a Petition for Payment into Court and Distribution as well as a Petition for Reimbursement of Advance of Real Estate Taxes, Penalties and Interest accordingly proposes to pay its "estimate of just compensation" into Court pursuant to the provisions of the Eminent Domain Code of 1964 26 P.S. §1-522 and includes therewith a Schedule of Proposed Distribution relative to liens and encumbrances. Notice has been served and hearings on those Petitioners are scheduled to occur on March 25, 2003 at 9:00 A.M.

18. The Condemnee to date has refused to deliver possession of the Subject Property entitling RACD to relief pursuant to Section 1-407 of the Eminent Domain Code.

Count II. Praecipe for Rule

19. Paragraphs 1 through 18 above are incorporated by reference herein and

make a part hereof.

20. Section 1-407(a) of the Eminent Domain Code provides, in relevant part, as follows:

"If a condemnee thereafter refuses. . . (after offer and refusal as noted in Paragraphs 14 and 15 above). . . to deliver possession or permit right of entry, the Prothonotary upon Praecept of the condemnor shall issue a rule, **returnable in five days after service upon the condemnee**, to show cause why a writ of possession should not issue, upon which the court...may issue a writ of possession conditioned upon payment to the condemnee or into the court of such estimated just compensation and on such other terms as the court may direct." 26 P.S. §1-407(a) (emphasis supplied).

21. The Condemnee herein has refused to deliver possession and the attached Order requesting a Rule Returnable upon the Condemnee is authorized by law.

22. The Condemnor's Praecept for Writ of Possession is attached hereto, made part hereof and incorporated herein as "Exhibit B".

Count III. Request for Prompt Evidentiary Hearing

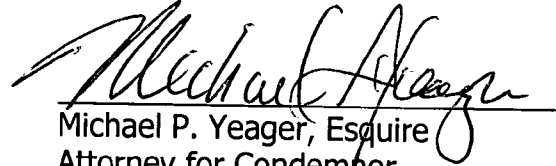
23. Paragraphs 1 through 21 above are incorporated by reference herein and made a part hereof.

24. Should Condemnee oppose possession in this matter by raising issues of fact requiring the development of a more thorough record, the Authority consents to a prompt evidentiary hearing as the most expeditious manner of resolving any factual and legal dispute.

WHEREFORE, for all the foregoing reasons, RACD respectfully requests this Honorable Court to issue a Rule upon the Condemnee to show cause why a Writ of Possession should not be issued pursuant to §1-407(a) of the Eminent Domain Code, 26

P.S. §1-407(a). The Authority also respectfully requests an evidentiary hearing be scheduled at the earliest possible time should the Court deem it necessary.

Respectfully submitted:



Michael P. Yeager, Esquire
Attorney for Condemnor

Law Office
MICHAEL P. YEAGER
P. O. Box 752
110 NORTH SECOND STREET
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-9811
FAX (814) 765-9503
December 23, 2002

CERTIFIED MAIL & 1ST CLASS MAIL

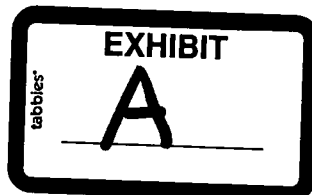
James H. Swartz
2 W. Long Avenue
DuBois, PA 15801

**Re: Offer of "Just Compensation"
Right of Possession & Entry
RACD v. Swartz
No. 00-591-CD
My File No. Y-2152**

Dear Mr. Swartz:

Please know that the Redevelopment Authority of the City of DuBois has secured an appraisal and is now in a position to make a written offer to you as to the amount of just compensation estimated by the RACD to be due to you as a result of the Eminent Domain Proceeding described above. In that regard, it is the intention of the Authority to take possession and exercise its right of entry on the property located at 2-4 West Long Avenue, DuBois, PA 15801 at 10:00 A.M. on January 13, 2003. If you refuse to deliver possession or permit the right of entry on that date, the Authority will have no choice but to issue a Rule upon you to show cause why a Writ of Possession should not be issued to the Authority to grant it the right of entry.

The Authority's estimate as to just compensation has been set at the amount of \$16,500.00. However, please note that the provisions of the Eminent Domain Code (§1-521) indicate that the amount payable to you shall be subject to a lien for all taxes and municipal claims assessed against the property as well as all mortgages, judgments and other liens of record against the property existing at the date of the filing of the Declaration of Taking (May 18, 2000). Those liens, claims and taxes set forth above are to be paid or reimbursed out of the estimate as to just compensation in the order of priority before any payment will ultimately be made to you.



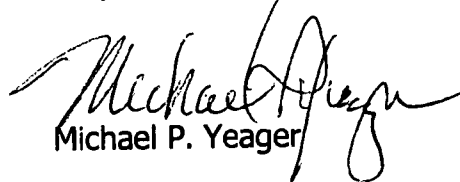
We are therefore currently in the process of determining the specific amounts as to liens or claims that need to be paid. Preliminarily, we are aware of the following amounts (all of which are estimates only):

1. Tax Claim Bureau – tax payment – 9/26/02 - \$3,434.09
2. Liens:
 - (a) National Fuel Gas - No. 97-1174 - \$3,193.27 (to 9/16/02)
 - (b) Commonwealth of PA - No. 97-1324 - \$996.79 (to 10/22/97)
 - (c) Commonwealth of PA - No. 98-156 - \$143.64 (to 2/5/98)

The Authority hopes that you will work with it to effect a smooth transition as to transfer of this property to the Authority. In this regard, please contact Mr. Lance Marshall at the Authority offices in the City Building in DuBois (371-2000, ext. 119) in order to accommodate any needs you might have with regard to the removal of personal items you may yet have in the property.

Of course, should you have any questions you feel I may be able to answer, please feel free to call me as well.

Very truly yours,



Michael P. Yeager

MPY/ljs

pc: RACD

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

Article Sent To:
James H. Swartz

Postage	\$.37
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.42

CLEARFIELD PA 16830
 DEC 23 2003
 USPS

Name (Please Print Clearly) (to be completed by mailer)
James H. Swartz
 Street, Apt. No., or PO Box No.
2 West Long Avenue
 City, State, ZIP+4
DuBois, PA 15801

PS Form 3800, July 1999 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. - Print your name and address on the reverse so that we can return the card to you. - Attach this card to the back of the mailpiece, or on the front if space permits.	A. Received by (Please Print Clearly) B. Date of Delivery James Swartz 12/23/2003 C. Signature X James Swartz 2003 D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below ☐ No
1. Article Addressed to: James H. Swartz 2 West Long Avenue DuBois, PA 15801	3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.
2. Article Number (Copy from service label) 7000 0600 0023 6401 1848	4. Restricted Delivery? (Extra Fee) ☐ Yes

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1789

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,

Condemnor

vs.

JAMES H. SWARTZ,

Condemnee

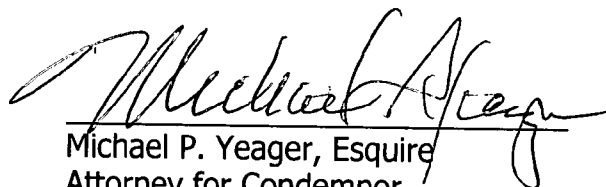
No. 00-591-CD

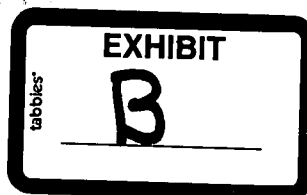
PRAECIPE FOR WRIT OF POSSESSION

TO THE PROTHONOTARY:

Please issue a Rule Returnable for April 17, 2003 for the Condemnee to show cause why a Writ of Possession should not issue relative to possession of the real estate that is the subject matter of this litigation. The amount of just compensation estimated by the Condemnor has been paid into court as is noted by previous filings in this matter.

Respectfully submitted:


Michael P. Yeager, Esquire
Attorney for Condemnor



CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,

Condemnor

vs.

JAMES H. SWARTZ,

Condemnee

No. 00-591-CD

ORDER

AND NOW, this 14 day of March, 2003, upon review of the
Condemnor's Motion for Writ of Possession, a Rule is issued upon Condemnee James H.
Swartz to show cause why a Writ of Possession should not be issued.

Rule Returnable April 17, 2003.

Evidentiary hearing (should the same be necessary) is hereby scheduled for April
17, 2003 at 3:00 o'clock P.M. in Courtroom No. 1 of the Clearfield County Courthouse,
Clearfield, PA.

BY THE COURT:


J.

FILED

MAR 14 2003

William A. Shaw
Prothonotary

FILED

502

01/10:30884
MAR 14 2003

Atty Yeager

William A. Shaw
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,

Condemnor

vs.

JAMES H. SWARTZ,

Condemnee

No. 00-591-CD

ORDER OF COURT

AND NOW, this 25 day of March, 2003, upon consideration of
the foregoing Petition for Payment into Court and Distribution, it is hereby

ORDERED, ADJUDGED AND DECREED that in view of Condemnee's refusal to
accept Condemnor's estimate of just compensation, the Condemnor is granted
permission to pay its estimate of just compensation in the above Eminent Domain
action into court through the Clearfield County Prothonotary,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Condemnor shall
make payment in the amount of \$16,500 to the Clearfield County Prothonotary, with
the same to be distributed in accordance with the attached Condemnor's Schedule of
Proposed Distribution as provided in applicable Pennsylvania law.

By the Court:

/s/ JOHN K. REILLY, JR.

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

MAR 25 2003

Attest.

William L. Reilly
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,

Condemnor

vs.

JAMES H. SWARTZ,

Condemnee

No. 00-591-CD

ORDER OF COURT

AND NOW, this 25 day of March, 2003, upon consideration of the foregoing Petition for Reimbursement of Advance of Real Estate Taxes, Penalties and Interest, it is hereby

ORDERED, ADJUDGED AND DECREED that the Prothonotary shall reimburse the Redevelopment Authority of the City of DuBois in the amount of \$3,434.09; said sum to be deducted from the payment of estimated just compensation in the above-captioned matter and as listed on the Schedule of Proposed Distribution previously filed by Condemnor.

By the Court:

/s/ JOHN K. REILLY, JR.

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

MAR 25 2003

Attest.

William A. Reilly
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Condemnor

vs.

JAMES H. SWARTZ,
Condemnee

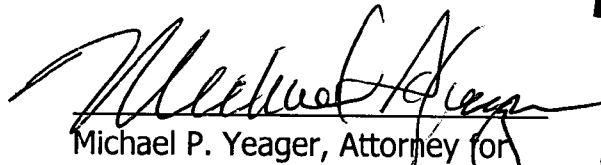
No. 00-591-CD

AFFIDAVIT OF SERVICE

I, MICHAEL P. YEAGER, attorney for Redevelopment Authority of the City of DuBois, depose and say that I forwarded the Motion for Writ of Possession with Rule Returnable by Certified Mail, Return Receipt Requested and First Class Mail on March 14, 2003 to the following:

James H. Swartz, Condemnee
2 West Long Avenue
DuBois, PA 15801.

The original receipt and return receipt card are also attached hereto, made part hereof and incorporated herein by reference.

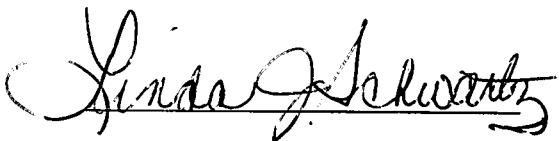

Michael P. Yeager, Attorney for
Condemnor

FILED

MAR 26 2003

012150 (w)
William A. Shaw
Prothonotary
No Cert Copy

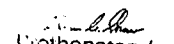
Sworn to and subscribed before me this 26th day of March, 2003, by certifying that the above is a true and attested copy of the original statement filed in this case.





MAR 26 2003

Attest.

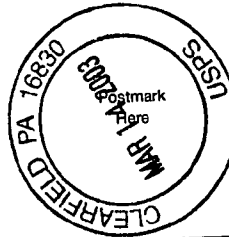

Prothonotary/
Clerk of Courts

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

7001 0360 0001 7574 6632

Postage	\$.83
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.88



Sent To
 James H. Swartz
 Street, Apt. No.;
 or PO Box No. 2 West Long Avenue
 City, State, ZIP+4 DuBois PA 15801
 PS Form 3800, January 2001 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

James H. Swartz
 2 West Long Avenue
 DuBois, PA 15801

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) JAMES SWARTZ B. Date of Delivery

C. Signature

X [Signature]

☐ Agent
☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)

7001 0360 0001 7574 6632

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

FILED

MAR 28 2003

**WILLIAM A. SHAW
PROTHONOTARY**

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD ..

: Type of Case: Condemnation

: Type of Pleading:

: MOTION FOR REQUEST OF 15
DAY EXTENCHION OF TIME ON
HEARING DATE

: Filed on Behalf of: Condemnee.

: Counsel of Record for this Party:

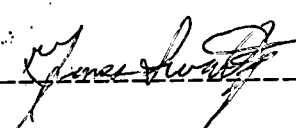
: James H. Swartz

: 2 West Long Avenue

: DuBois Pa 15801

: (814) 375-4453

filed on behalf of



FILED

APR 15 2003

m/10:30/1u

William A. Shaw

Prothonotary/Clerk of Courts

3 cent to Swartz.

CKB

DENNIS S. PARLAVECCHIO, M.D.

12-14 WEST LONG AVENUE
FIRST FLOOR
DuBOIS, PA 15801
Telephone (814) 371-3730
Fax (814) 371-9335

To whom it may concern:

Mr James Swartz has asked me to write this letter.
regarding an offer that I had made to him back in 1998 at
the time when I purchased the Former S and T bank building
next to his 2 West Long Ave location.

Mr Swartz declined my offer of \$40,000 because he
felt that other neighboring properties were be offered at
higher rates.

At that time I was very interested in the property
for several reasons including the enhancement of my medical
practice and protection reasons.

Sincerely,

Dennis Parlavecchio MD

Dennis Parlavecchio MD
March 23, 2003

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Condemnor

vs.

JAMES H. SWARTZ,
Condemnee

No. 00-591-CD

ORDER OF COURT

NOW, to wit, this 17 day of April, 2003, upon consideration of the foregoing Motion for Writ of Possession and it otherwise appearing to the Court that estimated just compensation has been paid into court as is noted by previous documents filed to this case, it is

ORDERED, ADJUDGED AND DECREED that the Condemnor shall be immediately entitled to possession of the real estate described in Exhibit A attached hereto, made part hereof and incorporated herein; said real estate being the subject matter of this condemnation action, it is

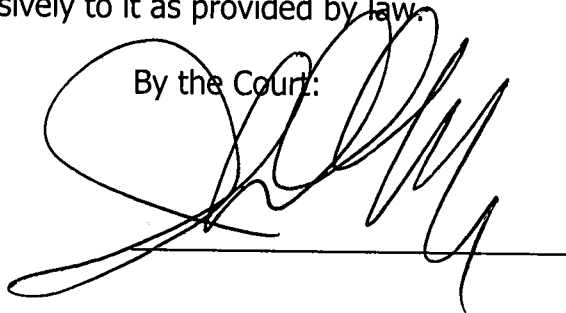
FURTHER ORDERED, ADJUDGED AND DECREED, that Condemnor may achieve said possession forcibly utilizing either the Clearfield County Sheriff's Office or the DuBois City Police Department or any other law enforcement officials in and around the Clearfield County area as may otherwise be available to Condemnor. In connection therewith, said authorities shall have the ability to break and enter to enable the Condemnor to effect possession exclusively to it as provided by law.

FILED

APR 17 2003

William A. Shaw
Prothonotary

By the Court:



FILED

APR 17 2003

0/3:10/11
William A. Shaw
Prothonotary

2 c fu + to 14TT7

Yusaka 

WARRANTY DEED - 1988

PLANNED GROW CO., WILLIAMSPORT, PA.

County Parcel No. _____

, This Deed,

MADE the 30th day of December
in the year nineteen hundred and ninety-two (1992)

BETWEEN GARY J. SIERZEGA And G. MICHAEL ROSIO, both of the City of DuBois,
Clearfield County, Pennsylvania, hereinafter called the grantors,

A
N
D

JAMES H. SWARTZ, single, of R. D. #1, Reynoldsville, Jefferson County, Pennsyl-
vania, hereinafter called the Grantee.

WITNESSETH, That in consideration of Sixteen Thousand
(\$16,000.00)

Dollars,

in hand paid, the receipt whereof is hereby acknowledged, the said grantors do hereby grant
and convey to the said grantee, his heirs and assigns

ALL that certain piece or parcel of land situate, lying and being in the City of
DuBois, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at a post at the corner of North Brady Street and West
Long Avenue; thence by line of West Long Avenue, 95 feet to a
post at the corner of lands of the S & T Bank, formerly The Union
Banking and Trust Company (formerly J. A. Vasbinder); thence by
lands of said S & T Bank, formerly The Union Banking and Trust
Company, 45 feet to post at lands now or formerly of Philip
Weaver; thence by line of lands now or formerly of Philip Weaver,
25 feet to a post; thence by lands now or formerly of Philip
Weaver and lands now or formerly of Annie Hoot (formerly W. I.
Shaw) 20 feet to a post at lands conveyed by W. I. Shaw and wife
to George R. Vosburg; thence by line of lands now or formerly
of said George R. Vosburg, 70 feet to a post at North Brady
Street; thence by line of North Brady Street 20 feet to a post
at corner of North Brady Street and West Long Avenue, the place
of beginning.

Being the same premises which vested in the Grantors herein by
deed of Horacio L. Sardou and Gary C. Crawford, dated January
19, 1987, recorded January 26, 1987 in Clearfield County Deeds
& Records Book 1135, page 590.

EXHIBIT

tabbles

A

THIS CHECK IS DELIVERED FOR PAYMENT ON THE FOLLOWING ACCOUNTS.					
DATE		AMOUNT			
TOTAL OF INVOICES					
LESS % DISCOUNT					
LESS FREIGHT					
LESS					
TOTAL DEDUCTIONS					
AMOUNT OF CHECK					

00-591-CD

2806

60-682 / 433

REDEVELOPMENT AUTHORITY OF THE CITY OF DUBOIS

DU BOIS, PA 15801

DATE March 24, 2003

PAY TO THE ORDER OF William A. Shaw - Prothonotary \$ 16,500.00

Sixteen Thousand Five Hundred and 00/100 DOLLARS

MAIN OFFICE 31

DEPOSIT BANK

DUBOIS, PA 15801

a division of FIRST COMMONWEALTH BANK Member FDIC

Jance Marshall
Trenely B. Shultz

⑈002806⑈ ⑆043306826⑆ 0101 711541⑈

National Fuel Gas
C/o Lawrence C. Bolla
2222 W. Grandview Blvd
Erie, PA 16506-4508

Richard Kunkle
Commonwealth of PA
Dept. of Revenue
State Office Building
300 Liberty Ave.
Pittsburgh, PA 15222

Lance Marshall, Director
Redevelopment Authority
of the City of DuBois
PO Box 711
DuBois, PA 15801

Clearfield County Tax Claim Bureau
230 E. Market Street
Suite 121
Clearfield, PA 16830

James H. Swartz
2 West Long Ave.
DuBois, PA 15801

As per: Affidavit of Service filed February 25, 2003, by Michael P. Yeager, Esq.

CLEARFIELD COUNTY PROTHONOTARY 7-83

~~ALLEN D. DIETZ~~ William A. Swan
 ESCROW ACCOUNT
 P.O. BOX 549
 CLEARFIELD, PA 16830

1157

MARCH 25, 2003

60-629/313

PAY
 TO THE ORDER OF COMMONWEALTH OF PA

\$ 1,980.16

NINETEEN HUNDRED EIGHTY AND 16/100-----DOLLARS



Main Office
 11 North 2nd Street
 Clearfield, PA 16830

IMMA

FOR 2000-591-CD PER COURT ORDER

⑆031306294⑆ 1 2 26577 2⑈ 1157

CLEARFIELD COUNTY PROTHONOTARY 7-83

~~ALLEN D. DIETZ~~ William A. Swan
 ESCROW ACCOUNT
 P.O. BOX 549
 CLEARFIELD, PA 16830

1158

MARCH 25, 2003

60-629/313

PAY
 TO THE ORDER OF REDEVELOPMENT AUTHORITY OF THE CITY OF DUBOIS

\$ 3,434.09

THIRTY-FOUR HUNDRED THIRTY-FOUR AND 09/100-----DOLLARS



Main Office
 11 North 2nd Street
 Clearfield, PA 16830

IMMA

FOR 2000-591-CD PER COURT ORDER

⑆031306294⑆ 1 2 26577 2⑈ 1158

CLEARFIELD COUNTY PROTHONOTARY 7-83

~~ALLEN D. DIETZ~~ William A. Swan
 ESCROW ACCOUNT
 P.O. BOX 549
 CLEARFIELD, PA 16830

1159

MARCH 25, 2003

60-629/313

PAY
 TO THE ORDER OF CLEARFIELD COUNTY TAX CLAIM BUREAU

\$ 1,202.36

TWELVE HUNDRED TWO AND 36/100-----DOLLARS



Main Office
 11 North 2nd Street
 Clearfield, PA 16830

IMMA

FOR 2000-591-CD PER COURT ORDER

⑆031306294⑆ 1 2 26577 2⑈ 1159

CLEARFIELD COUNTY PROTHONOTARY 7-83

~~ALLEN D. BRETZ~~ William A. Shaw
ESCROW ACCOUNT
P.O. BOX 549
CLEARFIELD, PA 16830

1156

MARCH 25, 2003

60-629/313

PAY
TO THE ORDER OF NATIONAL FUEL GAS

\$ 4,085.28

FOUR THOUSAND EIGHTY-FIVE AND 28/100-----DOLLARS



Main Office
11 North 2nd Street
Clearfield, PA 16830

IMMA

FOR 2000-591-CD PER COURT ORDER

⑆031306294⑆ 1 2 26577 20 1156

CLEARFIELD COUNTY PROTHONOTARY 7-83

~~ALLEN D. BRETZ~~ William A. Shaw
ESCROW ACCOUNT
P.O. BOX 549
CLEARFIELD, PA 16830

1160

MARCH 25, 2003

60-629/313

PAY
TO THE ORDER OF JAMES H. SWARTZ

\$ 5,798.11

FIFTY-SEVEN HUNDRED NINETY-EIGHT AND 11/100-----DOLLARS



Main Office
11 North 2nd Street
Clearfield, PA 16830

IMMA

FOR 2000-591-CD PER COURT ORDER

⑆031306294⑆ 1 2 26577 20 1160

DISBURSEMENT

Tuesday, March 25, 2003

Paid to: National Fuel Gas \$4085.28
c/o Lawrence C. Bolla
Erie PA 16506-117

Four Thousand Eighty-Five and 28/100 Dollars

Case: 2000-00591-CD

Plaintiff: City of Dubois

For: Trust

4085.28 William A. Shaw, Prothonotary/Clerk of Courts

By: _____

Deputy Clerk

Clerk: BILLSHAW

NOT NEGOTIABLE

DISBURSEMENT

Tuesday, March 25, 2003

Paid to: Commonwealth of PA \$1980.16
Dept. of Revenue, (Kunkle)
Pittsburgh PA 15222

One Thousand Nine Hundred Eighty and 16/100 Dollars

Case: 2000-00591-CD

Plaintiff: City of Dubois

For: Trust

1980.16 William A. Shaw, Prothonotary/Clerk of Courts

By: _____
Deputy Clerk

Clerk: BILLSHAW

NOT NEGOTIABLE

Clearfield County Court of Common Pleas

NO. 0010806

DISBURSEMENT

Tuesday, March 25, 2003

Paid to: Redevelment Authority City of DuBois

\$10434.56

Attn: Lance Marshall

DuBois PA 15801

Ten Thousand Four Hundred Thirty-Four and 56/100 Dollars

Case: 2000-00591-CD

Plaintiff: City of Dubois

For: Trust

10434.56 William A. Shaw, Prothonotary/Clerk of Courts

By: _____

Deputy Clerk

Clerk: BILLSHAW

NOT NEGOTIABLE

Clearfield County Court of Common Pleas

NO. 0010807

DISBURSEMENT

Tuesday, March 25, 2003

Paid to: Redevelopment Authority of DuBois

\$3434.09

Attn: Lance Marshall

DuBois PA 15801

Three Thousand Four Hundred Thirty-Four and 09/100 Dollars

Case: 2000-00591-CD

Plaintiff: City of Dubois

For: Trust

3434.09 William A. Shaw, Prothonotary/Clerk of Courts

By: _____

Deputy Clerk

Clerk: BILLSHAW

NOT NEGOTIABLE

Clearfield County Court of Common Pleas

NO. 0010808

DISBURSEMENT

Tuesday, March 25, 2003

Paid to: Clearfield County Tax Claim \$1202.89
230 E. Market St., Suite 121
Clearfield PA 16830

One Thousand Two Hundred Two and 89/100 Dollars

Case: 2000-00591-CD

Plaintiff: City of Dubois

For: Trust

1202.89 William A. Shaw, Prothonotary/Clerk of Courts

By: _____

Deputy Clerk

Clerk: BILLSHAW

NOT NEGOTIABLE

Clearfield County Court of Common Pleas

NO. 0010809

DISBURSEMENT

Tuesday, March 25, 2003

Paid to: City of Dubois
16 West Scribner Ave.
DuBois PA 15801 \$5797.58

Five Thousand Seven Hundred Ninety-Seven and 58/100 Dollars

Case: 2000-00591-CD

Plaintiff: City of Dubois

For: Trust

5797.58 William A. Shaw, Prothonotary/Clerk of Courts

By:

Deputy Clerk

Clerk: BILLSHAW

NOT NEGOTIABLE

Clearfield County Court of Common Pleas

NO. 0010810

DISBURSEMENT

Tuesday, March 25, 2003

Paid to: Clearfield County Tax Claim
230 E. Market St., Suite 121
Clearfield PA 16830

\$1202.36

One Thousand Two Hundred Two and 36/100 Dollars

Case: 2000-00591-CD

Plaintiff: City of Dubois

For: Trust

1202.36 William A. Shaw, Prothonotary/Clerk of Courts

By: _____

Deputy Clerk

Clerk: BILLSHAW

NOT NEGOTIABLE

Clearfield County Court of Common Pleas

NO. 0010811

DISBURSEMENT

Tuesday, March 25, 2003

Paid to: James H. Swartz
2 West Long Ave.
DuBois PA 15801

\$5798.11

Five Thousand Seven Hundred Ninety-Eight and 11/100 Dollars

Case: 2000-00591-CD

Plaintiff: City of Dubois

For: Trust

5798.11 William A. Shaw, Prothonotary/Clerk of Courts

By: _____

Deputy Clerk

Clerk: BILLSHAW

NOT NEGOTIABLE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD

: Type of Case: Condemnation

: Type of Pleading:

: Verdit Notwithstanding
With Appraisers

Statement

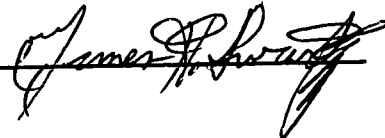
: Filed on Behalf of: Condemnee.

: Counsel of Record for this Party:
: James H. Swartz

: 2 West Long Avenue
: DuBois Pa 15801

: (814) 375-4453

filed on behalf of



FILED

MAY 02 2003

9m / 11:50 / ms
William A. Shaw

Prothonotary/Clerk of Courts

3 came to Swartz

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA

CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
CONDEMNATION

; NO 00-591-CD
;TYPE OF CASE CONDEMNATION

CITY OF DU BOIS

CONDEMNOR

VS

JAMES H.SWARTZ

CONDEMNTEE

CONTENTS LISTING

- 1.INVOICE with statement in writing offer of 16,500 is below market value
- 2.Motion to tax costs
- 3.State laws ARTICLE VI s 617.1 monetary just compensation,attempted avoidance ,Article VI s 601
A
- 4.Article VI s 602 measure of damages
- 5.Copies of other buildings in Du Bois area with there list prices proving low bid offer
- 6.Reason for motion to stop sale at the price offered in addition to it being a civil rights violation

***** INVOICE *****

April 30, 2003

REAL ESTATE APPRAISAL
James Swartz Property
2 West Long Ave.
DuBois, PA 15801

FOR: James Swartz
2 West Long Ave.
DuBois, PA. 15801

BY: Richard J. Provost, IFAS
302 East Pine Street
Clearfield, Pa. 16830

Real Estate Appraisal : 2 West Long Ave.
DuBois, PA 15801
Clearfield. County, PA.
Commercial Property

Appraisal Fee: \$2,000.00 (not including expert testimony)

It would seem an offer of \$16,000.00 is below market value.

PLEASE MAKE CHECK PAYABLE TO:

PROVOST REAL ESTATE APPRAISERS
302 EAST PINE STREET
CLEARFIELD, PA. 16830

"THANK YOU FOR YOUR BUSINESS"

TERMS: 1.5% interest on any balance due over 30 days.

Provost Real Estate Appraisers

Residential - Commercial - Industrial
State Certified General and Residential Appraisers
302 East Pine Street - Clearfield, Pa. 16830
(814) 765 5252 - Fax (814) 765 2425

Richard J. Provost, IFAS
General
Senior Certified Appraiser

Nancy M. Jacobson
General
Certified Appraiser

Sonya L. Flanagan
Residential
Certified Appraiser

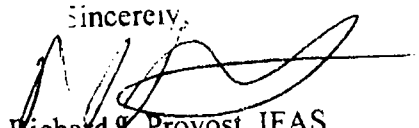
April 30, 2003

James Swartz
2 West Long Ave.
DuBois, PA 15801

Please be advised, I will not start working on the appraisal until payment is guaranteed and half the fee is paid up front.

I will not give any statement of value without doing an appraisal.

Thank you for your consideration.

Sincerely,

Richard J. Provost, IFAS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA

CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF

: NO 00-591-CD

CONDEMNATION

;TYPE OF CASE CONDEMNATION

CITY OF DU BOIS

CONDEMNOR

VS

JAMES H.SWARTZ

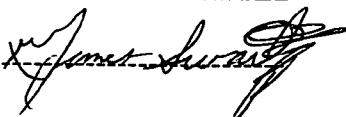
CONDEMNTEE

MOTION TO TAX COSTS

NOW COMES THE CONDEMNEE JAMES SWARTZ AND FILES THIS MOTION TO TAX COSTS TO HAVE THE COST OF A FAIR AND HONEST APPRAISAL DONE . IN SUPPORT OF THIS MOTION FIND COPY THE STATEMENT FROM THE REAL ESTATE APPRAISAL SERVICE OF RICHARD J. PROVOST 303 WEST PINE ST CLEARFIELD PA AS WELL AS COPYS OF OTHER BUILDING S SMALLER THAN THE ONE AT 2 west long ave AND THE PRICES THAT THE REALATORS HAD THEM LISTED FOR IN MY OPINION IT CLEARLY LOOKS LIKE CITY OF DU BOIS BROKE STATE LAWS BY TRYING TO AVOID FAIR MARKET VALUE AS PER STATE LAWS ARTICLE VI s 617.1 monetary just compensation , I ASK BY THIS MOTION THAT THIS STATE LAW BE ENFORCED TO PAY THE APPRAISAL COST OF THE BILL ENCLOSED WITH THIS PLEADING

RESPECTFULLY SUBMITTED

BY -----


JAMES H SWARTZ

2 WEST LONG AVE

DU BOIS PA 15801

Article VI §617.1 Monetary just compensation; attempted avoidance

Where a condemnor attempts to avoid the payment of monetary "just compensation", to which the condemnee otherwise would be entitled by use of a substitute for monetary compensation and the condemnee incurs expenses, including appraisal, attorney and engineering fees, in securing an adjudication that such substitute is not adequate, the condemnee shall be reimbursed by the condemnor for all such expenses incurred.

Article VI §601A. Moving and related expenses of displaced persons

(a) Any displaced person shall be reimbursed for reasonable expenses incurred in moving himself and his family and for the removal, transportation, and reinstallation of personal property.

(1) Receipts therefor shall be prima facie evidence of incurred reasonable moving expenses.

(2) Any displaced person who is displaced from a dwelling may elect to receive, in lieu of reimbursement of incurred moving expenses, a moving expense and dislocation allowance, determined in accordance with regulations promulgated under this act.

(b) Any displaced person who is displaced from his place of business or from his farm operation shall be entitled, in addition to payment received under subsection (a) of this section, to damages for dislocation of such business or farm operation as follows:

(1) Actual direct losses with reference to personal property, but not to exceed the greater of (i) the reasonable expenses which would have been required to relocate such personal property, or (ii) the value in place of such personal property; as cannot be moved without substantially destroying or diminishing its value, whether because of the unavailability of a comparable site for relocation or otherwise, or without substantially destroying or diminishing its utility in the relocated business or farm operation.

(2) In lieu of the damages provided in clause (1) hereof, at the option of the displaced person, an amount not to exceed ten thousand dollars (\$10,000) to be determined by taking fifty per cent of the difference if any, between the original cost of the personal property to the displaced person or the replacement cost of equivalent property at the time of sale, whichever is lower, and the net proceeds obtained by the displaced person at a commercially reasonable private or public sale. If this option is selected, the displaced person shall give the acquiring agency not less than sixty day's notice in writing of his intention to seek damages under this option. The displaced person shall not, directly or indirectly, purchase any of the personal property at private sale. Interest shall be paid for under this option only if the business is not relocated.

(3) Actual reasonable expenses in searching for a replacement business or farm determined in accordance with regulations promulgated under this act.

GDSBM Pennsylvania Eminent Domain Code Moving Expenses

(4) Actual reasonable expenses necessary, to reestablish a displaced farm, nonprofit organization or small business at its new site, in accordance with criteria to be established by regulation, but not to exceed ten thousand dollars (\$10,000).

(5) In lieu of damages under subsection (a) and clause (I). (2), (3) or (4) of this subsection, damages in an amount equal to the average annual net earnings but not more than twenty thousand dollars (\$20,000) nor less than one thousand dollars (\$1,000). The term "average annual net earnings" means one-half of any net earnings of the business or farm operation before Federal, State and local income taxes during the two taxable years immediately

Preceding the taxable year in which the business or farm operation moves from the real property; acquired for a project, and includes any compensation paid by, the business or farm operation to the owner, his spouse or his dependents during this period. The regulations promulgated under section 604-A of this act may designate another period determined to be more equitable for establishing average annual net earnings provided the designation of the period does not produce a lesser payment than would use of the last two taxable years. Payment shall be made only if the business cannot be relocated without a substantial loss of profits. A person whose sole business at a dwelling from which he is displaced is the rental of such property to others shall not qualify for a payment under this clause.

§ 409. Right to enter property prior to condemnation

Prior to the filing of the declaration of taking, the condemnor or its employees or agents, shall have the right to enter upon any land or improvement which it has the power to condemn, in order to make studies, surveys, tests, soundings and appraisals, provided that the owner of the land or the party in whose name the property is assessed has been notified ten days prior to entry on the property. Any actual damages sustained by the owner of a property interest in the property entered upon by the condemnor shall be paid by the condemnor and shall be assessed by the court or viewers in the same manner as provided in section 408.1

1964, Sp.Sess., June 22, P.L. 84, art. Iv, § 409.

§ 501. Agreement as to damages

At any stage of the proceedings, the condemnor and the condemnee may agree upon all or any part or item of the damages, and proceed to have those parts or items thereof not agreed upon assessed as herein provided. The condemnor may make payment of any part or item thereof so agreed upon.

1964, Sp.Sess., June 22, P.L. 84, art. V, § 501.

Article VI, §602 Measure of damages

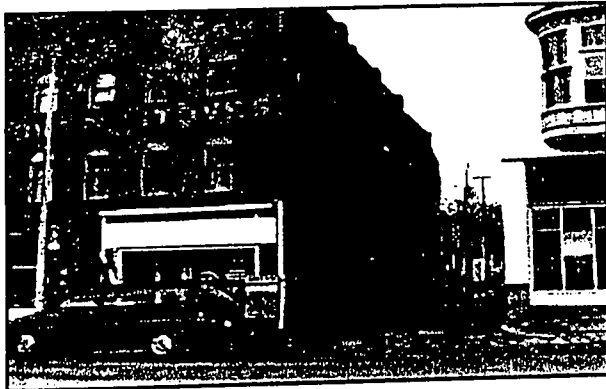
(a) Just compensation shall consist of the difference between the fair market value of the condemnee's entire property interest immediately before the condemnation and as unaffected thereby and the fair market value of his property interest remaining immediately after such condemnation and as affected thereby, and such other damages as are provided in this code.

(b) In case of the condemnation of property in connection with any urban development or development project, which property is damaged by subsidence due to failure of surface support resulting from the existence of mine tunnels or passageways under the said property, or by reason of fires occurring in said mine tunnels or passageways or of burning coal refuse banks, the damage resulting from such subsidence or underground fires or burning coal refuse banks shall be excluded in determining the fair market value of the condemnee's entire property interest therein immediately before the condemnation.

(c) In case of the condemnation of property in connection with any program or project which property is damaged by any natural disaster, the damage resulting therefrom shall be excluded in determining fair market value of the condemnee's entire property interest therein immediately before the condemnation.

(d) In the case of property which was damaged by any natural disaster, an acquiring agency may acquire the entire property interest of a condemnee, except any improvements made since the date of such natural disaster, and reconvey to the condemnee a portion of the property interest taken; in which case the damage shall be the difference between the value of the property interest acquired, excluding damage resulting from such natural disaster, and the value of the property interest reconveyed. For the purposes of this act, all mobile homes which were in use as dwellings and were destroyed, demolished or damaged beyond reasonable repair by any natural disaster shall be considered to be real property.

(e) Subsections (c) and (d) are applicable only where the damage resulting from such natural disaster has occurred within three years Prior to the initiation of negotiations for or notice of intent to acquire or order to vacate the property and during the ownership of the Property by the condemnee. The damage to be excluded shall include only actual physical damage to the property for which the condemnee has not received any compensation or reimbursement.



Address:
327-329 West Long Avenue, DuBois, PA 15801

Price: 119,000

Property Type: MultiFamily
Area: 04 DuBois
Apx. GLA (Incl BLA): 0 00

List #04-7849

Three Story Apartment building, 8 Units, 7 Apartments, 1 Commercial. 2 stall storage building out back

Contract Information

Listing Agent	TERESA BALL Home (814) 371.3233 Office (814) 375.0722 ext. 15 www.hhlook.com	Listing Agency	HOWARD HANNA SHIPPEN Office (814) 375 0722 Fax 375 4101
Status	Active	Owner	Bloom
How To Show	Call Office		

General Property Description

Book Section	Multi-Family	Realtor.COM Type	Multi-Family
# of Units	4	Basement Living Area	0
Total Basement Area	0	Year Built	1920
Style	See Remarks		

Location, Tax and Legal Information

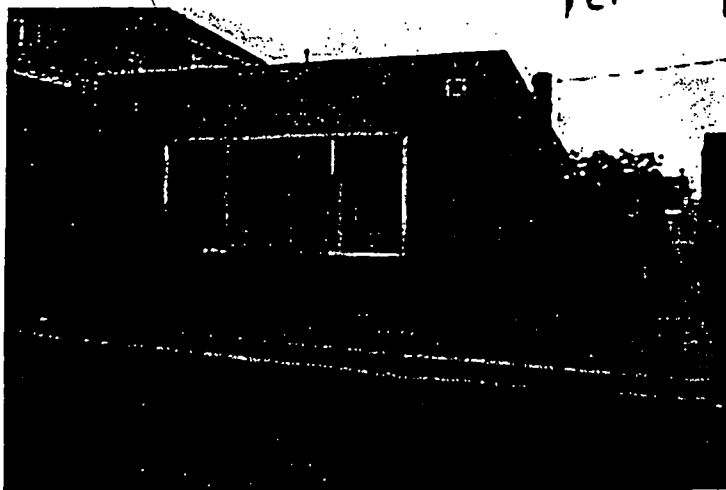
County	Clearfield	Zoning	Commercial
Taxes	2.301	Tax Year	2002
Map	7.1-2-00399	DB	1999
Page	8238	Municipality	DuBois

Details

		No.	Bed	Bath	Rent	SqFt	Parking	Lease	Furnish	Stories	Rem.
Unit 1:	Refrigerator; Electricity Paid By: Tenant; Garbage Paid By: Owner; Heat Paid By: Owner; Sewer Paid By: Owner; Water Paid By: Owner										
Income/Expenses:	Yearly Expenses: 6,288.00; Electricity Expense: 538.26; Heat Expense: 1,025.15; Water Expense: 1,001.03; Tax Expense: 2,384.79; Insurance Expense: 840.00; Garbage Expense: 262.40; Maintenance Expense: 498.00; Other Expense: 360.00; Yearly Income: 24,480.00	Store			300.00		side/2 car				
		A	1	1	250.00		yes				
		B	1	1	200.00		yes				
		C	1	1	300.00		yes				
		D	2	1	350.00		yes				
		E	1	1	245.00		yes				
		F	2	1	195.00		yes				New in 2001
		G	2	1	200.00		yes				New in 2001

Information is deemed to be reliable, but is not guaranteed. See copyright notice Prepared Friday December 2 2002 12:45 PM
The information on this sheet has been made available by the MLS and may not be the listing of the provider

PENDING
11-22-02
Sale



DEVELOPAC REALTY

998 Beaver Drive, DuBois, PA 15801
PH: 814-375-1167 FAX: 814-375-9842
WEBSITE: www.developac.com
EMAIL: devpac@key-net.net

EACH OFFICE IS INDEPENDENTLY OWNED AND OPERATED

PRICE: \$39,900.00

MLS#: 04-7744
OWNER: Hibbert
ADDRESS: 27 W. Washington Ave.
DuBois

Listing Agent: G. Gruda

Nice location. Close to downtown. Can be used for a variety of businesses. Nat. Gas HW Radiator heat, rubber roof, 24x60 building, 3/4 bath lower level.

GENERAL PROPERTY INFORMATION

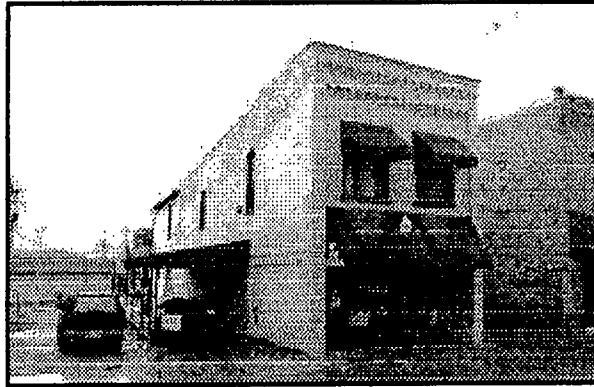
Commercial Building	
Lot Size:	27x113x36x112
GLA:	1440
Total Basement:	1440
Bath:	3/4 LL
Inst. Number:	200115897
Map:	7.2-1-245
Taxes:	\$954.18
County:	Clearfield
Municipality:	DuBois
Zoning:	Commercial

BA	2.8
SA	2.8
TL	

TO SHOW: Call Lockbox

DIRECTIONS: Tommy D's T/R, across from CW Graphics

Hoffer Realty Associates



Address	22 & 24 S. BRADY ST. DUBOIS, PA 15801	Owner	MOLICA
List Number	04-7949	Status	A
List Price	160,000	Gross Living Area	3,780
Total Basement Area	1,890	Lot Size	50 X 135
Zoning	COMMERCIAL	Taxes	2,056.32
Tax Year	2002	Map	01-196
DB	483	Page	689
Municipality	DUBOIS	How To Show	CALL FOR APPOINTMENT
Public Remarks	INCLUDED WITH THE SALE - ALL DRY CLEANING EQUIPMENT ON THE PREMISES - SEE LIST IN OFFICE.		
Directions	S. BRADY ST.		

(814) 371-2100

Information is deemed to be reliable, but is not guaranteed. See copyright notice. Prepared Tuesday, April 22, 2003 10:15 AM
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REASON FOR REQUEST FOR MOTION TO STOP SALE IS AS
follow:

Adequacy of the Sale Price

however, the rule is well-settled, at least in normal times, that a court will not refuse to confirm a sale or set it aside unless the price obtained was "grossly inadequate"²⁸ or the inadequacy was "so gross as to shock the conscience or raise a presumption of fraud or unfairness."²⁸

, courts have set aside as "inequitably less than the real value of the property" a sale price of approximately one-seventh of the fair market value.²⁹ Moreover, where the disparity is substantial, courts will seize upon any other irregularity or misconduct to provide the additional basis for setting aside the sale.

1. enclosed find copy of sale pending building in area for 39,000 plus and it is not one-third the size of mine
2. copies of other buildings at price range of about one hundred thousand dollars and size compare to the one you want
- 3 IN my opinion you broke my civil rights, no public use private gain, refused to talk about the REAL GRANT MONEY, like rice got

Reference note adequacy of sale information is from west law books real estate finance law 2nd edition west publishing.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD

: Type of Case: Condemnation

: Type of Pleading:

: Verdit Notwithstanding
With Appraisers

Statement

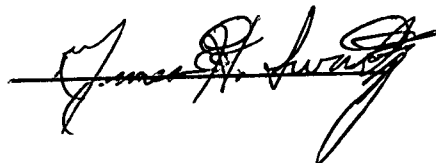
: Filed on Behalf of: Condemnee.

: Counsel of Record for this Party:
: James H. Swartz

: 2 West Long Avenue
: DuBois Pa 15801

: (814) 375-4453

filed on behalf of



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Condemnor

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD
:
: Type of Case: Condemnation
:
: Type of Pleading: Response to
: Motion to Tax Costs
:
: Filed on Behalf of: Condemnor
:
: Counsel of Record for this Party:
:
: Michael P. Yeager, Esq.
: Supreme Court No.: 15587
:
: P.O. Box 752
: 110 North Second Street
: Clearfield, PA 16830
:
: (814) 765-9611

FILED

MAY 05 2003

01355/m
William A. Shaw
Prothonotary

no cert -

6/1/03

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF	:	
THE CITY OF DUBOIS,	:	No. 00 - 591 - CD
Condemnor	:	
vs	:	IN CONDEMNATION
	:	
JAMES H. SWARTZ,	:	
Condemnee	:	

RESPONSE TO MOTION TO TAX COSTS

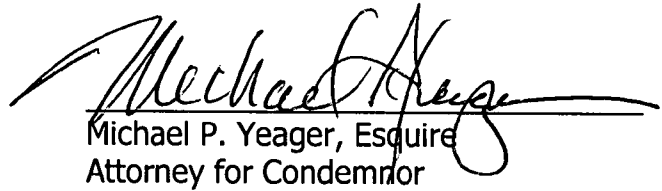
COMES NOW, the Condemnor, by and through its attorney, Michael P. Yeager, Esquire, and files the within Response to the Condemnee's Motion to Tax Costs based upon the following:

1. The Condemnor is the Redevelopment Authority of the City of DuBois with its principal place of business located at P.O. Box 171, DuBois, PA 15801 ("RACD").
2. The Condemnee is James H. Swartz and utilizes a mailing address of 2 West Long Avenue, DuBois, PA 15801 ("Condemnee").
3. Condemnee has filed a Motion to Tax Costs proposing that such costs relate to a fair and honest appraisal of the property.
4. The Eminent Domain Code of 1964, 26 P.S. §1-101 et seq. (the "Code") specifies the circumstances under which an Owner of any right, title or interest in real property that is the subject of Eminent Domain Proceedings is eligible for reimbursement of various fees including appraisal fees. Section 1-610 of the Code provides as follows:

"The owner of any right, title or interest in real property acquired or injured by an acquiring agency, who is not eligible for reimbursement of such fees under Sections 406(e), 408 or 609 of this act, shall be reimbursed in an amount **not to exceed \$500** as payment toward reasonable expenses **actually incurred** for appraisal, attorney and engineering fees" (26 PS §1-610) (Emphasis supplied).

5. Sections 406(e), 408 and 609 clearly do not apply. Although Condemnee did file Preliminary Objections, they were never sustained thereby eliminating Section 1-406(e). Section 1-408 is eliminated in view of the fact that RACD never abandoned these Eminent Domain Proceedings. A Declaration of Taking was filed in this case thereby eliminating Section 1-609 (and its related Section 1-502(e)).

WHEREFORE, Condemnor requests that Your Honorable Court follow the dictates of Section 1-610 of the Code limiting any reimbursement to Condemnee to an amount not to exceed \$500.00; and relating that reimbursement to expenses "actually incurred" by Condemnee.


Michael P. Yeager, Esquire
Attorney for Condemnor

Source: All Sources > Statutes & Regulations > **PA - Pennsylvania Statutes**
Terms: **26 w/n3 1-601A** (Edit Search)

*26 P.S. § 1-610, **

PENNSYLVANIA STATUTES

* THIS SECTION IS CURRENT THROUGH ACT 139 OF THE 2002 LEGISLATIVE SESSION *
*** FEBRUARY 2003 ANNOTATION SERVICE ***

PENNSYLVANIA STATUTES
TITLE 26. EMINENT DOMAIN
CHAPTER 1. EMINENT DOMAIN CODE
ARTICLE VI. JUST COMPENSATION AND MEASURE OF DAMAGES

26 P.S. § 1-610 (2002)

§ 1-610. Limited reimbursement of appraisal, attorney and engineering fees

The owner of any right, title, or interest in real property acquired or injured by an acquiring agency, who is not eligible for reimbursement of such fees under sections 406(e), 408 or 609 of this act, shall be reimbursed in an amount not to exceed five hundred dollars (\$ 500) as a payment toward reasonable expenses actually incurred for appraisal, attorney and engineering fees.

Source: All Sources > Statutes & Regulations > **PA - Pennsylvania Statutes**
Terms: **26 w/n3 1-601A** (Edit Search)
View: Full
Date/Time: Friday, May 2, 2003 - 11:59:46 AM EDT

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Source: All Sources > Statutes & Regulations > PA - Pennsylvania Statutes
Terms: **26 w/n3 1-406(e)** (Edit Search)

*26 P.S. § 1-406, **

PENNSYLVANIA STATUTES

* THIS SECTION IS CURRENT THROUGH ACT 139 OF THE 2002 LEGISLATIVE SESSION *
*** FEBRUARY 2003 ANNOTATION SERVICE ***

PENNSYLVANIA STATUTES
TITLE 26. EMINENT DOMAIN
CHAPTER 1. EMINENT DOMAIN CODE
ARTICLE IV. PROCEDURE TO CONDEMN

26 P.S. § 1-406 (2002)

§ 1-406. Preliminary objections

(a) Within thirty days after being served with notice of condemnation, the condemnee may file preliminary objections to the declaration of taking. The court upon cause shown may extend the time for filing preliminary objections. Preliminary objections shall be limited to and shall be the exclusive method of challenging (1) the power or right of the condemnor to appropriate the condemned property unless the same has been previously adjudicated; (2) the sufficiency of the security; (3) any other procedure followed by the condemnor; or (4) the declaration of taking. Failure to raise these matters by preliminary objections shall constitute a waiver thereof.

(b) Preliminary objections shall state specifically the grounds relied upon.

(c) All preliminary objections shall be raised at one time and in one pleading. They may be inconsistent.

(d) The condemnee shall serve a copy of the preliminary objections on the condemnor within seventy-two hours after filing the same.

(e) The court shall determine promptly all preliminary objections and make such preliminary and final orders and decrees as justice shall require, including the revesting of title. If preliminary objections are finally sustained, which have the effect of finally terminating the condemnation, the condemnee shall be entitled to damages as if the condemnation had been revoked under section 408, to be assessed as therein provided. If an issue of fact is raised, the court shall take evidence by depositions or otherwise. The court may allow amendment or direct the filing of a more specific declaration of taking.

Source: All Sources > Statutes & Regulations > PA - Pennsylvania Statutes
Terms: **26 w/n3 1-406(e)** (Edit Search)
View: Full
Date/Time: Friday, May 2, 2003 - 12:03:09 PM EDT

Source: All Sources > Statutes & Regulations > PA - Pennsylvania Statutes
Terms: **26 w/n3 1-408** (Edit Search)

*26 P.S. § 1-408, **

PENNSYLVANIA STATUTES

* THIS SECTION IS CURRENT THROUGH ACT 139 OF THE 2002 LEGISLATIVE SESSION *
*** FEBRUARY 2003 ANNOTATION SERVICE ***

PENNSYLVANIA STATUTES
TITLE 26. EMINENT DOMAIN
CHAPTER 1. EMINENT DOMAIN CODE
ARTICLE IV. PROCEDURE TO CONDEMN

26 P.S. § 1-408 (2002)

§ 1-408. Revocation of condemnation proceedings

The condemnor, by filing a declaration of relinquishment in court within one year from the filing of the declaration of taking, and before having made the payment provided for in section 407(a) or (b), or as to which the condemnee has not tendered possession of the condemned property as provided in section 407, may relinquish all or any part of the property condemned that it has not taken actual possession of for use in the improvement, whereupon title shall revert in the condemnee as of the date of the filing of the declaration of taking, and all mortgages and other liens existing as of such date shall be reinstated. Notice of said relinquishment shall be recorded in the office of the recorder of deeds of the county in which the property taken is located, with the condemnor as the grantor and the condemnee as the grantee, and the notice of said relinquishment shall be served on the condemnee in the same manner as provided for service of the declaration of taking. The fees payable to the recorder for recording the notice of relinquishment shall be in the same amounts as provided in section 404 for the recording of notices of condemnation. Where condemned property is relinquished, the condemnee shall be reimbursed by the condemnor for reasonable appraisal, attorney and engineering fees and other costs and expenses actually incurred because of the condemnation proceedings. Such damages shall be assessed by the court, or the court may refer the matter to viewers to ascertain and assess the damages sustained by the condemnee, whose award shall be subject to appeal as provided in this act. The condemnor and the condemnee, without the filing of a declaration of relinquishment as provided herein, may by agreement effect a revesting of title in the condemnee, which agreement shall be properly recorded.

Source: All Sources > Statutes & Regulations > PA - Pennsylvania Statutes
Terms: **26 w/n3 1-408** (Edit Search)
View: Full
Date/Time: Friday, May 2, 2003 - 12:04:33 PM EDT

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Source: All Sources > Statutes & Regulations > **PA - Pennsylvania Statutes**

Terms: **26 w/n3 1-609** (Edit Search)

*26 P.S. § 1-609, **

PENNSYLVANIA STATUTES

* THIS SECTION IS CURRENT THROUGH ACT 139 OF THE 2002 LEGISLATIVE SESSION *

*** FEBRUARY 2003 ANNOTATION SERVICE ***

PENNSYLVANIA STATUTES
TITLE 26. EMINENT DOMAIN
CHAPTER 1. EMINENT DOMAIN CODE
ARTICLE VI. JUST COMPENSATION AND MEASURE OF DAMAGES

26 P.S. § 1-609 (2002)

§ 1-609. Condemnee's costs where no declaration of taking filed

Where proceedings are instituted by a condemnee under section 502(e), a judgment awarding compensation to the condemnee for the taking of property shall include reimbursement of reasonable appraisal, attorney and engineering fees and other costs and expenses actually incurred.

Source: All Sources > Statutes & Regulations > **PA - Pennsylvania Statutes**

Terms: **26 w/n3 1-609** (Edit Search)

View: Full

Date/Time: Friday, May 2, 2003 - 12:07:38 PM EDT

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Source: All Sources > Statutes & Regulations > PA - Pennsylvania Statutes
Terms: 26 w/n3 1-502(e) (Edit Search)

26 P.S. § 1-502, *

PENNSYLVANIA STATUTES

* THIS SECTION IS CURRENT THROUGH ACT 139 OF THE 2002 LEGISLATIVE SESSION *
*** FEBRUARY 2003 ANNOTATION SERVICE ***

PENNSYLVANIA STATUTES
TITLE 26. EMINENT DOMAIN
CHAPTER 1. EMINENT DOMAIN CODE
ARTICLE V. PROCEDURE FOR DETERMINING DAMAGES

26 P.S. § 1-502 (2002)

§ 1-502. Petition for the appointment of viewers

(a) The condemnee may file a petition requesting the appointment of viewers, setting forth:

(1) A caption which shall be the caption of the proceeding substantially as set forth in the declaration of taking, with an identification of the petitioner and his property. The petitioner shall be designated as the plaintiff. Except as otherwise ordered by the court, the viewers' proceedings shall be at the same court term and number as the declaration of taking.

(2) The date of the filing of the declaration of taking and whether any preliminary objections thereto have been filed and remain undisposed of.

(3) The name of the condemnor.

(4) The names and addresses of all condemnees and mortgagees known to the petitioner to have an interest in his property and the nature of their interests.

(5) A brief description of his property which may include any or all of his properties in the same county taken, injured or destroyed for the same purpose by the condemnor, whether by the same or separate declarations or without a declaration of taking.

(6) A request for the appointment of viewers to ascertain just compensation.

(b) The condemnor may file a petition requesting the appointment of viewers, setting forth:

(1) A caption which shall be the caption of the proceeding substantially as set forth in the declaration of taking, to which shall be added the name of the condemnee as plaintiff as to whose property the petition is filed and the name of the condemnor as defendant. If there is more than one condemnee it shall be sufficient to designate

the name of the first condemnee as the plaintiff with appropriate indication of other condemnees. Except as otherwise ordered by the court, the viewers' proceedings shall be at the same term and number as the declaration of taking.

(2) The date of the filing of the declaration of taking and whether any preliminary objections thereto have been filed and remain undisposed of.

(3) The names and addresses of all condemnees known to the petitioner to have an interest in the property which is the subject of the petition and the nature of their interests.

(4) A brief description of the property which is the subject of the petition and the interest condemned.

(5) A request for the appointment of viewers to ascertain just compensation.

(c) The condemnor may include in its petition any or all of the property included in the declaration of taking.

(d) The court appointing the viewers may, on its own motion or at the request of a party, direct them to determine the damages for any or all of the properties included in the declaration of taking or any or all properties taken, injured or destroyed for the same purpose by a condemnor without a declaration of taking.

(e) If there has been a compensable injury suffered and no declaration of taking therefor has been filed, a condemnee may file a petition for the appointment of viewers substantially in the form provided for in subsection (a) of this section, setting forth such injury.

(f) A copy of any petition for the appointment of viewers filed by a condemnee shall be sent promptly by registered or certified mail, return receipt requested, to the adverse party.

(g) The court, in furtherance of convenience or to avoid prejudice, may on its own motion or on motion of any party, order separate viewers' proceedings or trial when more than one property has been included in the petition.

Source: All Sources > Statutes & Regulations > **PA - Pennsylvania Statutes**

Terms: **26 w/n3 1-502(e)** (Edit Search)

View: Full

Date/Time: Friday, May 2, 2003 - 12:08:49 PM EDT

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF	:	
THE CITY OF DUBOIS,	:	No. 00 - 591 - CD
Condemnor	:	
vs	:	IN CONDEMNATION
	:	
JAMES H. SWARTZ,	:	
Condemnee	:	

ORDER

AND NOW, to wit, this _____ day of _____, 2003, upon
consideration of the foregoing Motion to Tax Costs and the response thereto, it is
hereby

ORDERED, ADJUDGED and DECREED that Condemnee be entitled to
reimbursement in an amount not to exceed \$500 as a payment toward reasonable
expenses actually incurred by Condemnee for appraisal, attorney and engineering fees.
Prior to such reimbursement, Condemnee is to supply both the Court and the
Redevelopment Authority of the City of DuBois with invoices indicating actual
expenditures after which the reimbursement is to be paid toward those invoices for
actual costs incurred.

BY THE COURT:

P.J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Condemnor

vs.

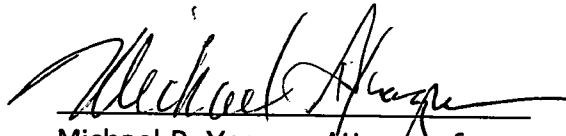
JAMES H. SWARTZ,
Condemnee

No. 00-591-CD

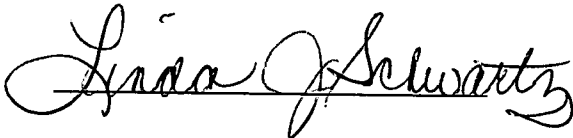
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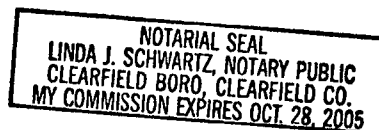
I, MICHAEL P. YEAGER, attorney for Redevelopment Authority of the City of DuBois, depose and say that I forwarded the Response to Motion to Tax Costs by First Class Mail on May 5, 2003 to the following:

James H. Swartz, Condemnee
2 West Long Avenue
DuBois, PA 15801.


Michael P. Yeager, Attorney for
Condemnor

Sworn to and subscribed before me this 6th day of May, 2003.





FILED

MAY 06 2003

William A. Shaw
Prethenetary

FILED

013:00261
MAY 06 2003

McC
K2B

William A. Shew
Prattbury

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD ..

: Type of Case: Condemnation

: Type of Pleading:

: COPIES OF NOTICE OF
service

: Filed on Behalf of: Condemnee.

: Counsel of Record for this Party:

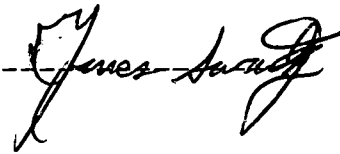
: James H. Swartz

: 2 West Long Avenue

: DuBois Pa 15801

: (814) 375-4453

filed on behalf of



FILED

MAY 07 2003

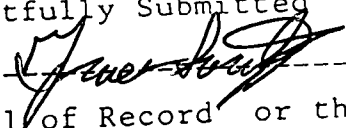
William A. Shaw
Prothonotary/Clerk of Courts

INTHE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA
CIVIL ACTION LAW

Redevelopment Authority of
the city of Du Bois
Condemnor

vs

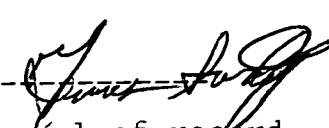
James H. Swartz
Condemnee

: Case No. 00-591-CD
: Counsel of Record for this
: party
: Michael P. Yeager, Esq.
: P.O. Box 752
: 110 North Second Street
: Clearfield, Pa. 16830
: (814) 765-9611
: Type of case Condemnation
: Respectfully Submitted
: BY 
: Counsel of Record or this
: party
: James H. Swartz
: 2 West Long Ave.
: Du Bois, Pa. 15801

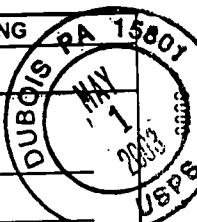
CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE
ADDITION TO LEGAL BRIEF AND ADDITION MATTER HAS BEEN
SENT TO JUDGE JOHN RELLY JR. Clearfield courthouse
Clearfield, Pa 16830 on this 1st day of

May 2003

By 
Counsel of record
for this party
Condemnee

U.S. POSTAL SERVICE	CERTIFICATE OF MAILING
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER	
Received From: <u>James H. Swartz</u> <u>2 W Long Ave</u> <u>Du Bois Pa.</u>	
One piece of ordinary mail addressed to: <u>Judge John Relly JR</u> <u>Clearfield Court House</u> <u>Clearfield, Pa</u> <u>16830</u>	



\$0.90
00020961-06

U.S. POSTAGE
PAID
DUBOIS, PA
15801
MAY 01, 03
AMOUNT

INTHE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA
CIVIL ACTION LAW

Redevelopment Authority of
the city of Du Bois
Condemnor

vs

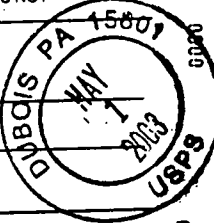
James H. Swartz
Condemnee

: Case No. 00-591-CD
: Counsel of Record for this
: party
: Michael P. Yeager, Esq.
: P.O. Box 752
: 110 North Second Street
: Clearfield, Pa. 16830
: (814) 765-9611
: Type of case Condemnation
: Respectfully Submitted
: BY *[Signature]*
: Counsel of Record for this
: party
: James H. Swartz
: 2 West Long Ave.
: Du Bois, Pa. 15801

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE
ADDITION TO LEGAL BRIEF AND ADDITION MATTER HAS BEEN
SENT TO MICHAEL PYEAGER, ESQ P.O. &%@ !!0) NORTH
SECOND STREET, CLEARFIELD, PA. 16830 on this 1st dat of
May 2003

By *[Signature]*
Counsel of record
for this party
Condemnee

U.S. POSTAL SERVICE		CERTIFICATE OF MAILING	
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER			
Received From:			
<i>James Swartz</i>			
<i>2 W Long Ave</i>			
<i>Du Bois PA 15801</i>			
One piece of ordinary mail addressed to:			
<i>Michael Yeager</i>			
<i>110 N 2nd St</i>			
<i>CLFD PA 16830</i>			

U.S. POSTAGE
DU BOIS, PA
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD ..

: Type of Case: Condemnation

:

: Type of Pleading:

:

COPIES OF NOTICE OF
service

: Filed on Behalf of: Condemnee.

:

: Counsel of Record for this Party:

: James H. Swartz

:

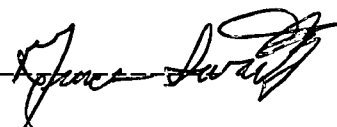
: 2 West Long Avenue

: DuBois Pa 15801

:

: (814) 375-4453

filed on behalf of--



FILED

MAY 07 2003

W. A. Shaw

William A. Shaw

Prothonotary/Clerk of Courts

W. A. Shaw

INTTHE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA
CIVIL ACTION LAW

Redevelopment Authority of
the city of Du Bois
Condemnor

vs
James H. Swartz
Condemnee

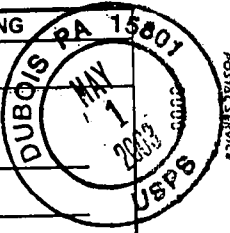
: Case No. 00-591-CD
: Counsel of Record for this
: party
: Michael P. Yeager. Esq.
: P.O. Box 752
: 110 North Second Street
: Clearfield, Pa. 16830
: (814) 765-9611
: Type of case Condemnation
: Respectfully Submitted
: BY *James H. Swartz*
: Counsel of Record for this
: party
: James H. Swartz
: 2 West Long Ave.
: Du Bois, Pa. 15801

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE
ADDITION TO LEGAL BRIEF AND ADDITION MATTER HAS BEEN
SENT TO JUDGE JOHN RELLY JR. Clearfield courthouse
Clearfield, Pa 16830 on this 1st day of

May 2003

By *James H. Swartz*
Counsel of record
for this party
Condemnee

U.S. POSTAL SERVICE		CERTIFICATE OF MAILING	
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER			
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<i>James H. Swartz</i> <i>2 W Long Ave</i> <i>Du Bois Pa.</i>			
One piece of ordinary mail addressed to:			
<i>Judge John Relly Jr</i> <i>Clearfield Court House</i> <i>Clearfield, Pa</i> <i>16830</i>			

U.S. POSTAGE
PAID
DUBOIS, PA
15801
MAY 1 2003
\$0.90
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INTHE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA
CIVIL ACTION LAW

Redevelopment Authority of : Case No. 00-591-CD
the city of Du Bois : Counsel of Record for this
Condemnor : party
 : Michael P.yeager.Esq.
 : P.O.Box 752
 : 110 North Second Street
 : Clearfield,Pa.16830
 : (814) 765-9611
 : Type of case Condemnation
 : Respectfully Submitted
 : BY James Swartz
 : Counsel of Record for this
 : party
 : James H.Swartz
 : 2 West Long Ave.
 : Du Bois,Pa.15801

vs
James H.Swartz
Condemnee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE
ADDITION TO LEGAL BRIEF AND ADDITION MATTER HAS BEEN
SENT TO MICHAEL PYEAGER, ESQ P.O. &%@ !!@) NORTH
SECOND STREET, CLEARFIELD, PA. 16830 on this 1st dat of
May 2003

By James Swartz
Counsel of record
for this party
Condemnee

U.S. POSTAL SERVICE		CERTIFICATE OF MAILING	
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER			
Received From:			
<u>James Swartz</u>			
<u>2 W Long Ave</u> <u>Du Bois PA 15801</u>			
One piece of ordinary mail addressed to:			
<u>Michael Yeager</u>			
<u>110 N 2nd St</u> <u>CLFD PA 16830</u>			

100 FILED
MAY 07 2003

William A. Shaw
Prothonotary/Clerk of Courts

Prothonotary Office

Clearfield Courthouse

Clearfield, Pa 16830

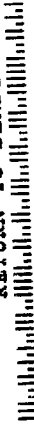
00-591-00

5-8-03



SWAR127 158012063 1102 03 05/06/03
FORWARD TIME EXP RTN TO SEND
SWARTZ, JAMES
2 W LONG AVE
DU BOIS PA 15801-2102

RETURN TO SENDER



James Swartz
127 South Brady St
Du Bois, Pa
15801

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD

:
: Type of Case: Condemnation

:
: Type of Pleading:

: Verdit Notwithstanding
With Appraisers
Statement

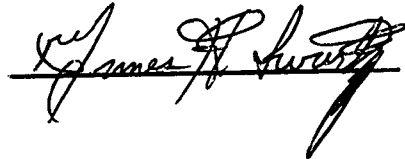
:
: Filed on Behalf of: Condemnee.

:
: Counsel of Record for this Party:
: James H. Swartz

:
: 2 West Long Avenue
: DuBois Pa 15801

:
: (814) 375-4453

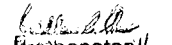
filed on behalf of



I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

MAY 02 2003

Attest.


Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA

CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
CITY OF DU BOIS
CONDEMNATION

; NO 00-591-CD
;TYPE OF CASE CONDEMNATION

CITY OF DU BOIS

CONDEMNOR

VS

JAMES H.SWARTZ

CONDEMNTEE

CONTENTS LISTING

- 1.INVOICE with statement in writing offer of 16,500 is below market value
- 2.Motion to tax costs
- 3.State laws ARTICLE VI s 617.1 monetary just compensation,attempted avoidance ,Article VI s 601
A
- 4.Article VI s 602 measure of damages
- 5.Copies of other buildings inDu Bois area with there list prices proving low bid offer
- 6.Reason for motion to stop sale at the price offered in addition to it being a civil rights violation

***** INVOICE *****

April 30, 2003

REAL ESTATE APPRAISAL
James Swartz Property
2 West Long Ave.
DuBois, PA 15801

FOR: James Swartz
2 West Long Ave.
DuBois, PA. 15801

BY: Richard J. Provost, IFAS
302 East Pine Street
Clearfield, Pa. 16830

Real Estate Appraisal : 2 West Long Ave.
DuBois, PA 15801
Clearfield, County, PA.
Commercial Property

Appraisal Fee: \$2,000.00 (not including expert testimony)

It would seem an offer of \$16,000.00 is below market value.

PLEASE MAKE CHECK PAYABLE TO:

PROVOST REAL ESTATE APPRAISERS
302 EAST PINE STREET
CLEARFIELD, PA. 16830

"THANK YOU FOR YOUR BUSINESS"

TERMS: 1.5% interest on any balance due over 30 days.

Provost Real Estate Appraisers

Residential - Commercial - Industrial
State Certified General and Residential Appraisers
302 East Pine Street - Clearfield, Pa. 16830
(814) 765 5252 - Fax (814) 765 2425

Richard J. Provost, IFAS
General
Senior Certified Appraiser

Nancy M. Jacobson
General
Certified Appraiser

Sonya L. Flanagan
Residential
Certified Appraiser

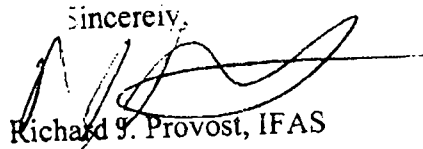
April 30, 2003

James Swartz
2 West Long Ave.
DuBois, PA 15801

Please be advised, I will not start working on the appraisal until payment is guaranteed and half the fee is paid up front.

I will not give any statement of value without doing an appraisal.

Thank you for your consideration.

Sincerely,

Richard J. Provost, IFAS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA

CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF

: NO 00-591-C0

CONDEMNATION

;TYPE OF CASE CONDEMNATION

CITY OF DU BOIS

CONDEMNOR

VS

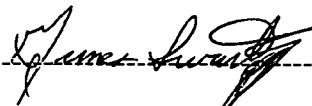
JAMES H.SWARTZ

CONDEMNTEE

MOTION TO TAX COSTS

NOW COMES THE CONDEMNEE JAMES SWARTZ AND FILES THIS MOTION TO TAX COSTS TO HAVE THE COST OF A FAIR AND HONEST APPRAISAL DONE . IN SUPPORT OF THIS MOTION FIND COPY THE STATEMENT FROM THE REAL ESTATE APPRAISAL SERVICE OF RICHARD J. PROVOST 303 WEST PINE ST CLEARFIELD PA AS WELL AS COPYS OF OTHER BUILDING S SMALLER THAN THE ONE AT 2 west long ave AND THE PRICES THAT THE REALATORS HAD THEM LISTED FOR IN MY OPINION IT CLEARLY LOOKS LIKE CITY OF DU BOIS BROKE STATE LAWS BY TRYING TO AVOID FAIR MARKET VALUE AS PER STATE LAWS ARTICLE VI s 617.1 monetary just compensation , I ASK BY THIS MOTION THAT THIS STATE LAW BE ENFORCED TO PAY THE APPRAISAL COST OF THE BILL ENCLOSED WITH THIS PLEADING

RESPECTFULLY SUBMITTED

BY 

JAMES H SWARTZ

2 WEST LONG AVE

DU BOIS PA 15801

Article VI §617.1 Monetary just compensation; attempted avoidance

Where a condemnor attempts to avoid the payment of monetary "just compensation", to which the condemnee otherwise would be entitled by use of a substitute for monetary compensation and the condemnee incurs expenses, including appraisal, attorney and engineering fees, in securing an adjudication that such substitute is not adequate, the condemnee shall be reimbursed by the condemnor for all such expenses incurred.

Article VI §601A. Moving and related expenses of displaced persons

(a) Any displaced person shall be reimbursed for reasonable expenses incurred in moving himself and his family and for the removal, transportation, and reinstallation of personal property.

(1) Receipts therefor shall be prima facie evidence of incurred reasonable moving expenses.

(2) Any displaced person who is displaced from a dwelling may elect to receive, in lieu of reimbursement of incurred moving expenses, a moving expense and dislocation allowance, determined in accordance with regulations promulgated under this act.

(b) Any displaced person who is displaced from his place of business or from his farm operation shall be entitled, in addition to payment received under subsection (a) of this section, to damages for dislocation of such business or farm operation as follows:

(1) Actual direct losses with reference to personal property, but not to exceed the greater of (i) the reasonable expenses which would have been required to relocate such personal property, or (ii) the value in place of such personal property; as cannot be moved without substantially destroying or diminishing its value, whether because of the unavailability of a comparable site for relocation or otherwise, or without substantially destroying or diminishing its utility in the relocated business or farm operation.

(2) In lieu of the damages provided in clause (1) hereof, at the option of the displaced person, an amount not to exceed ten thousand dollars (\$10,000) to be determined by taking fifty per cent of the difference if any, between the original cost of the personal property to the displaced person or the replacement cost of equivalent property at the time of sale, whichever is lower, and the net proceeds obtained by the displaced person at a commercially reasonable private or public sale. If this option is selected, the displaced person shall give the acquiring agency not less than sixty day's notice in writing of his intention to seek damages under this option. The displaced person shall not, directly or indirectly, purchase any of the personal property at private sale. Interest shall be paid for under this option only if the business is not relocated.

(3) Actual reasonable expenses in searching for a replacement business or farm determined in accordance with regulations promulgated under this act.

GDSBM Pennsylvania Eminent Domain Code Moving Expenses

(4) Actual reasonable expenses necessary, to reestablish a displaced farm, nonprofit organization or small business at its new site, in accordance with criteria to be established by regulation, but not to exceed ten thousand dollars (\$10,000).

(5) In lieu of damages under subsection (a) and clause (I). (2), (3) or (4) of this subsection, damages in an amount equal to the average annual net earnings but not more than twenty thousand dollars (\$20,000) nor less than one thousand dollars (\$1,000). The term "average annual net earnings" means one-half of any net earnings of the business or farm operation before Federal, State and local income taxes during the two taxable years immediately

Preceding the taxable year in which the business or farm operation moves from the real property; acquired for a project, and includes any compensation paid by the business or farm operation to the owner, his spouse or his dependents during this period. The regulations promulgated under section 604-A of this act may designate another period determined to be more equitable for establishing average annual net earnings provided the designation of the period does not produce a lesser payment than would use of the last two taxable years. Payment shall be made only if the business cannot be relocated without a substantial loss of profits. A person whose sole business at a dwelling from which he is displaced is the rental of such property to others shall not qualify for a payment under this clause.

§ 409. Right to enter property prior to condemnation

Prior to the filing of the declaration of taking, the condemnor or its employees or agents, shall have the right to enter upon any land or improvement which it has the power to condemn, in order to make studies, surveys, tests, soundings and appraisals, provided that the owner of the land or the party in whose name the property is assessed has been notified ten days prior to entry on the property. Any actual damages sustained by the owner of a property interest in the property entered upon by the condemnor shall be paid by the condemnor and shall be assessed by the court or viewers in the same manner as provided in section 408.1

1964, Sp.Sess., June 22, P.L. 84, art. Iv, § 409.

§ 501. Agreement as to damages

At any stage of the proceedings, the condemnor and the condemnee may agree upon all or any part or item of the damages, and proceed to have those parts or items thereof not agreed upon assessed as herein provided. The condemnor may make payment of any part or item thereof so agreed upon.

1964, Sp.Sess., June 22, P.L. 84, art. V, § 501.

Article VI, §602 Measure of damages

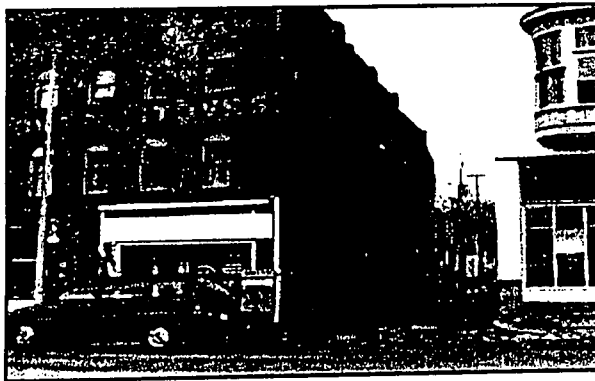
(a) Just compensation shall consist of the difference between the fair market value of the condemnee's entire property interest immediately before the condemnation and as unaffected thereby and the fair market value of his property interest remaining immediately after such condemnation and as affected thereby, and such other damages as are provided in this code.

(b) In case of the condemnation of property in connection with any urban development or development project, which property is damaged by subsidence due to failure of surface support resulting from the existence of mine tunnels or passageways under the said property, or by reason of fires occurring in said mine tunnels or passageways or of burning coal refuse banks, the damage resulting from such subsidence or underground fires or burning coal refuse banks shall be excluded in determining the fair market value of the condemnee's entire property interest therein immediately before the condemnation.

(c) In case of the condemnation of property in connection with any program or project which property is damaged by any natural disaster, the damage resulting therefrom shall be excluded in determining fair market value of the condemnee's entire property interest therein immediately before the condemnation.

(d) In the case of property which was damaged by any natural disaster, an acquiring agency may acquire the entire property interest of a condemnee, except any improvements made since the date of such natural disaster, and reconvey to the condemnee a portion of the property interest taken; in which case the damage shall be the difference between the value of the property interest acquired, excluding damage resulting from such natural disaster, and the value of the property interest reconveyed. For the purposes of this act, all mobile homes which were in use as dwellings and were destroyed, demolished or damaged beyond reasonable repair by any natural disaster shall be considered to be real property.

(e) Subsections (c) and (d) are applicable only where the damage resulting from such natural disaster has occurred within three years Prior to the initiation of negotiations for or notice of intent to acquire or order to vacate the property and during the ownership of the Property by the condemnee. The damage to be excluded shall include only actual physical damage to the property for which the condemnee has not received any compensation or reimbursement.



Address:
327-329 West Long Avenue, DuBois, PA 15801

Price: 119,000

Property Type: MultiFamily
Area: 04 DuBois
Apx. GLA (Incl BLA): 0 00

List #04-7849

Three Story Apartment building, 8 Units, 7 Apartments, 1 Commercial. 2 stall storage building out back

Contract Information

Listing Agent	TERESA BALL Home (814) 371.3233 Office (814) 375.0722 ext. 15 www.hhlook.com	Listing Agency	HOWARD HANNA SHIPPEN Office (814) 375 0722 Fax 375 4101
Status	Active	Owner	Bloom
How To Show	Call Office		

General Property Description

Book Section	Multi-Family	Realtor.COM Type	Multi-Family
# of Units	4	Basement Living Area	0
Total Basement Area	0	Year Built	1920
Style	See Remarks		

Location, Tax and Legal Information

County	Clearfield	Zoning	Commercial
Taxes	2,301	Tax Year	2002
Map	7.1-2-00399	DB	1999
Page	8238	Municipality	DuBois

Details

Unit 1:
Refrigerator; Electricity Paid By: Tenant; Garbage
Paid By: Owner; Heat Paid By: Owner; Sewer Paid
By: Owner; Water Paid By: Owner
Income/Expenses: Yearly Expenses: 6,288.00; Electricity Expense:
538.26; Heat Expense: 1,025.15; Water Expense:
1,001.03; Tax Expense: 2,384.79; Insurance
Expense: 840.00; Garbage Expense: 262.40;
Maintenance Expense: 498.00; Other Expense:
360.00; Yearly Income: 24,480.00

Units

No.	Bed	Bath	Rent	SqFt	Parking	Lease	Furnish	Stories	Rem.
Store			300.00		side/2 car				
A	1	1	250.00		yes				
B	1	1	200.00		yes				
C	1	1	300.00		yes				
D	2	1	350.00		yes				
E	1	1	245.00		yes				
F	2	1	195.00		yes				New in 2001
G	2	1	200.00		yes				New in 2001

Information is deemed to be reliable, but is not guaranteed. See copyright notice. Prepared Friday December 21, 2002 12:49 PM

The information on this sheet has been made available by the MLS and may not be the listing of the provider



Address:
134-136 West Long Avenue DuBois PA 15801

Price: 98 500

Property Type: MultiFamily
Area: 04 DuBois
Apx. GLA (Incl BLA): 0 00

List #04-7850

Lots of Income with this 2 story multi-unit property. Six apartments and 2 store fronts Off street parking + patio s for apartments, gas forced air, seperate electric

Contract Information

Listing Agent	TERESA BALL Home (814) 371.3233 Office (814) 375.0722 ext. 15 www.hhlook.com	Listing Agency	HOWARD HANNA SHIPPEN Office (814) 375 0722 Fax 375 4101
Status	Active	Owner	Bloom
How To Show	Call Office		

General Property Description

Book Section	Multi-Family	Realtor.COM Type	Multi-Family
# of Units	4	Basement Living Area	0
Total Basement Area	0	Style	See Remarks

Location, Tax and Legal Information

County	Clearfield	Zoning	Commercial
Taxes	1 244 17	Tax Year	2003
Map	7 2-1-00081-80	DB	1822
Page	24	Municipality	DuBois

Remarks

Permanent Book Msg Great Income

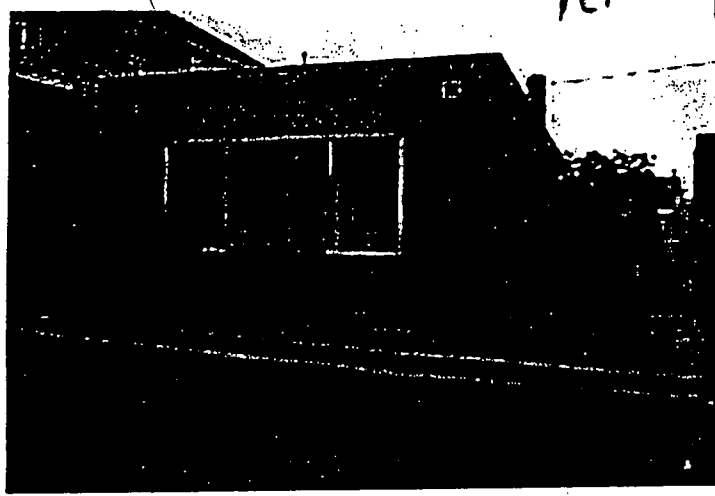
Details

Units

		No.	Bed	Bath	Rent	SqFt	Parking	Lease	Furnish	Stories	Rem
Unit 1.	Range, Refrigerator; Electricity Paid By: Tenant;	1	1	1	200 00		yes				Efficiency
	Garbage Paid By: Owner; Heat Paid By: Owner;	1	1	1	200 00		yes				New
	Sewer Paid By: Owner; Water Paid By: Owner	2	1	1	260 00		yes				Kitchen
Income/Expenses:	Yearly Expenses: 6,849.00; Electricity Expense:	3	1	1	225 00		yes				Lots of
	282 01; Heat Expense: 2,444.81; Water Expense	4	1	1	212 00		yes				storage
	1 130 21; Sewer Expense: 269.20; Lawn/Snow	5	1	1	180 00		yes				
	Expense 682.00; Insurance Expense: 1,300.00;	6	1	1	300 00		yes				
	Garbage Expense: 264.20; Maintenance Expense										1st Floor
	482 00; Yearly Income: 23,724.00										over 600
											Sq. ft.
		Store			400 00		yes				
		add.store			200 00		yes				

Information is deemed to be reliable, but is not guaranteed. See copyright notice Prepared Friday, December 27, 2003 11:45 PM
The information on this sheet has been made available by the MLS and may not be the listing of the provider

PENDING
11-22-02
Sale



DEVELOPAC REALTY

998 Beaver Drive, DuBois, PA 15801
PH: 814-375-1167 FAX: 814-375-9842
WEBSITE: www.developac.com
EMAIL: devpac@key-net.net

EACH OFFICE IS INDEPENDENTLY OWNED AND OPERATED

PRICE: \$39,900.00

MLS#: 04-7744
OWNER: Hibbert
ADDRESS: 27 W. Washington Ave.
DuBois

Listing Agent: G. Gruda

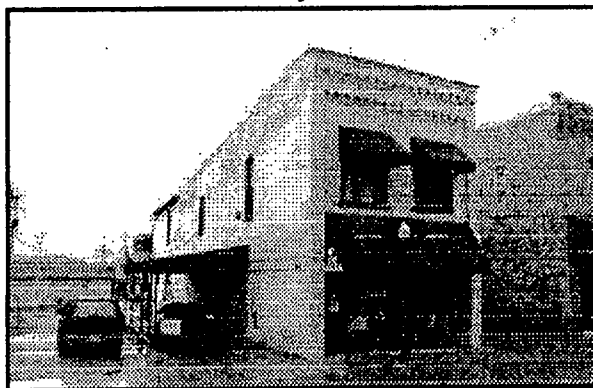
Nice location. Close to downtown. Can be used for a variety of businesses. Nat. Gas HW Radiator heat, rubber roof, 24x60 building, 3/4 bath lower level.

GENERAL PROPERTY INFORMATION

Commercial Building	
Lot Size:	27x113x36x112
GLA:	1440
Total Basement:	1440
Bath:	3/4 LL
Inst. Number:	200115897
Map:	7.2-1-245
Taxes:	\$954.18
County:	Clearfield
Municipality:	DuBois
Zoning:	Commercial

BA 2.8
SA 2.8
TL

TO SHOW: Call Lockbox
DIRECTIONS: Tommy D's T/R, across from CW Graphics

Hoffer Realty Associates

Address	22 & 24 S. BRADY ST. DUBOIS, PA 15801	Owner	MOLLIKA
List Number	04-7949	Status	A
List Price	160,000	Gross Living Area	3,780
Total Basement Area	1,890	Lot Size	50 X 135
Zoning	COMMERCIAL	Taxes	2,056.32
Tax Year	2002	Map	01-196
DB	483	Page	689
Municipality	DUBOIS	How To Show	CALL FOR APPOINTMENT
Public Remarks	INCLUDED WITH THE SALE - ALL DRY CLEANING EQUIPMENT ON THE PREMISES - SEE LIST IN OFFICE.		
Directions	S. BRADY ST.		

(814) 371-2100

Information is deemed to be reliable, but is not guaranteed. See copyright notice. Prepared Tuesday, April 22, 2003 10:15 AM
The information on this sheet has been made available by the MLS and may not be the listing of the provider.

REASON FOR REQUEST FOR MOTION TO STOP SALE IS AS
follow:

Adequacy of the Sale Price

however, the rule is well-settled, at least in normal times, that a court will not refuse to confirm a sale or set it aside unless the price obtained was "grossly inadequate"²⁸ or the inadequacy was "so gross as to shock the conscience or raise a presumption of fraud or unfairness."²⁸

courts have set aside as "inequitably less than the real value of the property" a sale price of approximately one-seventh of the fair market value.²⁹ Moreover, where the disparity is substantial, courts will seize upon any other irregularity or misconduct to provide the additional basis for setting aside the sale.

1. enclosed find copy of sale pending building in area for 39,000 plus and it is not one-third the size of mine
2. copies of other buildings at price range of about one hundred thousand dollars and size compare to the one you want
- 3 IN my opinion you broke my civil rights, no public use private gain, refused to talk about the REAL GRANT MONEY, like rice got

Reference note adequacy of sale information is from west law books real estate finance law 2nd edition west publishing.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD

: Type of Case: Condemnation

: Type of Pleading:

: Verdict Notwithstanding
With Appraisers

Statement

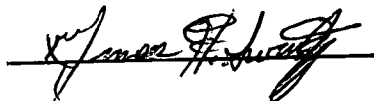
: Filed on Behalf of: Condemnee.

: Counsel of Record for this Party:
: James H. Swartz

: 2 West Long Avenue
: DuBois Pa 15801

: (814) 375-4453

filed on behalf of



I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

MAY 02 2003

Attest.


Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA

CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
00-591-CD
CONDEMNATION

; NO 00-591-CD
; TYPE OF CASE CONDEMNATION

CITY OF DU BOIS

CONDEMNOR

VS

JAMES H. SWARTZ

CONDEMNTEE

CONTENTS LISTING

1. INVOICE with statement in writing offer of 16,500 is below market value
2. Motion to tax costs
3. State laws ARTICLE VI s 617.1 monetary just compensation, attempted avoidance , Article VI s 601
A
4. Article VI s 602 measure of damages
5. Copies of other buildings in Du Bois area with their list prices proving low bid offer
6. Reason for motion to stop sale at the price offered in addition to it being a civil rights violation

***** INVOICE *****

April 30, 2003

REAL ESTATE APPRAISAL
James Swartz Property
2 West Long Ave.
DuBois, PA 15801

FOR: James Swartz
2 West Long Ave.
DuBois, PA. 15801

BY: Richard J. Provost, IFAS
302 East Pine Street
Clearfield, Pa. 16830

Real Estate Appraisal : 2 West Long Ave.
DuBois, PA 15801
Clearfield, County, PA.
Commercial Property

Appraisal Fee: \$2,000.00 (not including expert testimony)

It would seem an offer of \$16,000.00 is below market value.

PLEASE MAKE CHECK PAYABLE TO:

PROVOST REAL ESTATE APPRAISERS
302 EAST PINE STREET
CLEARFIELD, PA. 16830

"THANK YOU FOR YOUR BUSINESS"

TERMS: 1.5% interest on any balance due over 30 days.

Provost Real Estate Appraisers
Residential - Commercial - Industrial
State Certified General and Residential Appraisers
302 East Pine Street - Clearfield, Pa. 16830
(814) 765 5252 - Fax (814) 765 2425

Richard J. Provost, IFAS
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Residential
Certified Appraiser

April 30, 2003

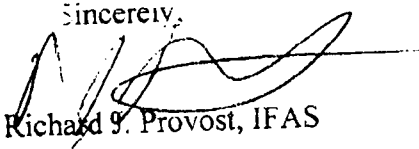
James Swartz
2 West Long Ave.
DuBois, PA 15801

Please be advised, I will not start working on the appraisal until payment is guaranteed and half the fee is paid up front.

I will not give any statement of value without doing an appraisal.

Thank you for your consideration.

Sincerely,



Richard J. Provost, IFAS

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CONDEMNATION

: NO 00-591-CD
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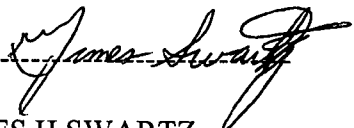
CONDEMNTEE

MOTION TO TAX COSTS

NOW COMES THE CONDEMNEE JAMES SWARTZ AND FILES THIS MOTION TO TAX COSTS TO HAVE THE COST OF A FAIR AND HONEST APPRAISAL DONE . IN SUPPORT OF THIS MOTION FIND COPY THE STATEMENT FROM THE REAL ESTATE APPRAISAL SERVICE OF RICHARD J. PROVOST 303 WEST PINE ST CLEARFIELD PA AS WELL AS COPYS OF OTHER BUILDING S SMALLER THAN THE ONE AT 2 west long ave AND THE PRICES THAT THE REALATORS HAD THEM LISTED FOR IN MY OPINION IT CLEARLY LOOKS LIKE CITY OF DU BOIS BROKE STATE LAWS BY TRYING TO AVOID FAIR MARKET VALUE AS PER STATE LAWS ARTICLE VI s 617.1 monetary just compensation , I ASK BY THIS MOTION THAT THIS STATE LAW BE ENFORCED TO PAY THE APPRAISAL COST OF THE BILL ENCLOSED WITH THIS PLEADING

RESPECTFULLY SUBMITTED

BY -----


JAMES H SWARTZ

2 WEST LONG AVE

DU BOIS PA 15801

Article VI §617.1 Monetary just compensation; attempted avoidance

Where a condemnor attempts to avoid the payment of monetary "just compensation", to which the condemnee otherwise would be entitled by use of a substitute for monetary compensation and the condemnee incurs expenses, including appraisal, attorney and engineering fees, in securing an adjudication that such substitute is not adequate, the condemnee shall be reimbursed by the condemnor for all such expenses incurred.

Article VI §601A. Moving and related expenses of displaced persons

(a) Any displaced person shall be reimbursed for reasonable expenses incurred in moving himself and his family and for the removal, transportation, and reinstallation of personal property.

(1) Receipts therefor shall be prima facie evidence of incurred reasonable moving expenses.

(2) Any displaced person who is displaced from a dwelling may elect to receive, in lieu of reimbursement of incurred moving expenses, a moving expense and dislocation allowance, determined in accordance with regulations promulgated under this act.

(b) Any displaced person who is displaced from his place of business or from his farm operation shall be entitled, in addition to payment received under subsection (a) of this section, to damages for dislocation of such business or farm operation as follows:

(1) Actual direct losses with reference to personal property, but not to exceed the greater of (i) the reasonable expenses which would have been required to relocate such personal property, or (ii) the value in place of such personal property; as cannot be moved without substantially destroying or diminishing its value, whether because of the unavailability of a comparable site for relocation or otherwise, or without substantially destroying or diminishing its utility in the relocated business or farm operation.

(2) In lieu of the damages provided in clause (1) hereof, at the option of the displaced person, an amount not to exceed ten thousand dollars (\$10,000) to be determined by taking fifty per cent of the difference if any, between the original cost of the personal property to the displaced person or the replacement cost of equivalent property at the time of sale, whichever is lower, and the net proceeds obtained by the displaced person at a commercially reasonable private or public sale. If this option is selected, the displaced person shall give the acquiring agency not less than sixty day's notice in writing of his intention to seek damages under this option. The displaced person shall not, directly or indirectly, purchase any of the personal property at private sale. Interest shall be paid for under this option only if the business is not relocated.

(3) Actual reasonable expenses in searching for a replacement business or farm determined in accordance with regulations promulgated under this act.

GDSBM Pennsylvania Eminent Domain Code Moving Expenses

(4) Actual reasonable expenses necessary, to reestablish a displaced farm, nonprofit organization or small business at its new site, in accordance with criteria to be established by regulation, but not to exceed ten thousand dollars (\$10,000).

(5) In lieu of damages under subsection (a) and clause (I). (2), (3) or (4) of this subsection, damages in an amount equal to the average annual net earnings but not more than twenty thousand dollars (\$20,000) nor less than one thousand dollars (\$1,000). The term 'average annual net earnings' means one-half of any net earnings of the business or farm operation before Federal, State and local income taxes during the two taxable years immediately

Preceding the taxable year in which the business or farm operation moves from the real property; acquired for a project, and includes any compensation paid by, the business or farm operation to the owner, his spouse or his dependents during this period. The regulations promulgated under section 604-A of this act may designate another period determined to be more equitable for establishing average annual net earnings provided the designation of the period does not produce a lesser payment than would use of the last two taxable years. Payment shall be made only if the business cannot be relocated without a substantial loss of profits. A person whose sole business at a dwelling from which he is displaced is the rental of such property to others shall not qualify for a payment under this clause.

§ 409. Right to enter property prior to condemnation

Prior to the filing of the declaration of taking, the condemnor or its employees or agents, shall have the right to enter upon any land or improvement which it has the power to condemn, in order to make studies, surveys, tests, soundings and appraisals, provided that the owner of the land or the party in whose name the property is assessed has been notified ten days prior to entry on the property. Any actual damages sustained by the owner of a property interest in the property entered upon by the condemnor shall be paid by the condemnor and shall be assessed by the court or viewers in the same manner as provided in section 408.1

1964, Sp.Sess., June 22, P.L. 84, art. Iv, § 409.

§ 501. Agreement as to damages

At any stage of the proceedings, the condemnor and the condemnee may agree upon all or any part or item of the damages, and proceed to have those parts or items thereof not agreed upon assessed as herein provided. The condemnor may make payment of any part or item thereof so agreed upon.

1964, Sp.Sess., June 22, P.L. 84, art. V, § 501.

Article VI, §602 Measure of damages

(a) Just compensation shall consist of the difference between the fair market value of the condemnee's entire property interest immediately before the condemnation and as unaffected thereby and the fair market value of his property interest remaining immediately after such condemnation and as affected thereby, and such other damages as are provided in this code.

(b) In case of the condemnation of property in connection with any urban development or development project, which property is damaged by subsidence due to failure of surface support resulting from the existence of mine tunnels or passageways under the said property, or by reason of fires occurring in said mine tunnels or passageways or of burning coal refuse banks, the damage resulting from such subsidence or underground fires or burning coal refuse banks shall be excluded in determining the fair market value of the condemnee's entire property interest therein immediately before the condemnation.

(c) In case of the condemnation of property in connection with any program or project which property is damaged by any natural disaster, the damage resulting therefrom shall be excluded in determining fair market value of the condemnee's entire property interest therein immediately before the condemnation.

(d) In the case of property which was damaged by any natural disaster, an acquiring agency may acquire the entire property interest of a condemnee, except any improvements made since the date of such natural disaster, and reconvey to the condemnee a portion of the property interest taken; in which case the damage shall be the difference between the value of the property interest acquired, excluding damage resulting from such natural disaster, and the value of the property interest reconveyed. For the purposes of this act, all mobile homes which were in use as dwellings and were destroyed, demolished or damaged beyond reasonable repair by any natural disaster shall be considered to be real property.

(e) Subsections (c) and (d) are applicable only where the damage resulting from such natural disaster has occurred within three years Prior to the initiation of negotiations for or notice of intent to acquire or order to vacate the property and during the ownership of the Property by the condemnee. The damage to be excluded shall include only actual physical damage to the property for which the condemnee has not received any compensation or reimbursement.



Address:
327-329 West Long Avenue, DuBois, PA 15801

Price: 119,000

Property Type: MultiFamily
Area: 04 DuBois
Apx. GLA (Incl BLA): 0 00

List #04-7849

Three Story Apartment building, 8 Units, 7 Apartments, 1 Commercial. 2 stall storage building out back

Contract Information

Listing Agent	TERESA BALL Home (814) 371.3233 Office (814) 375.0722 ext. 15 www.hhlook.com	Listing Agency	HOWARD HANNA SHIPPEN Office (814) 375 0722 Fax 375 4101
Status	Active	Owner	Bloom
How To Show	Call Office		

General Property Description

Book Section	Multi-Family	Realtor.COM Type	Multi-Family
# of Units	4	Basement Living Area	0
Total Basement Area	0	Year Built	1920
Style	See Remarks		

Location, Tax and Legal Information

County	Clearfield	Zoning	Commercial
Taxes	2,301	Tax Year	2002
Map	7.1-2-00399	DB	1999
Page	8238	Municipality	DuBois

Details

		No.	Bed	Bath	Rent	SqFt	Parking	Lease	Furnish	Stones	Rem
Unit 1:	Refrigerator; Electricity Paid By: Tenant; Garbage Paid By: Owner; Heat Paid By: Owner; Sewer Paid By: Owner; Water Paid By: Owner	Store			300.00		side/2 car				
Income/Expenses:	Yearly Expenses: 6,288.00; Electricity Expense: 538.26; Heat Expense: 1,025.15; Water Expense: 1,001.03; Tax Expense: 2,384.79; Insurance Expense: 840.00; Garbage Expense: 262.40; Maintenance Expense: 498.00; Other Expense: 360.00; Yearly Income: 24,480.00	A	1	1	250.00		yes				
		B	1	1	200.00		yes				
		C	1	1	300.00		yes				
		D	2	1	350.00		yes				
		E	1	1	245.00		yes				
		F	2	1	195.00		yes				New in 2001
		G	2	1	200.00		yes				New in 2001

Information is deemed to be reliable, but is not guaranteed. See copyright notice. Prepared Friday, December 7, 2001, 12:45 PM.
The information on this sheet has been made available by the MLS and may not be the listing of the provider.



Address:
134-136 West Long Avenue DuBois PA 15801

Price: 98 500

Property Type: MultiFamily
Area: 04 DuBois
Apx. GLA (Incl BLA): 0 00

List #04-7850

Lots of Income with this 2 story multi-unit property. Six apartments and 2 store fronts Off street parking + patios for apartments, gas forced air, seperate electric

Contract Information

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Status	Active	Owner	Bloom
How To Show	Call Office		

General Property Description

Book Section	Multi-Family	Realtor.COM Type	Multi-Family
# of Units	4	Basement Living Area	0
Total Basement Area	0	Style	See Remarks

Location, Tax and Legal Information

County	Clearfield	Zoning	Commercial
Taxes	1 244 17	Tax Year	2007
Map	7 2-1-00081-80	DB	1827
Page	24	Municipality	DuBois

Remarks

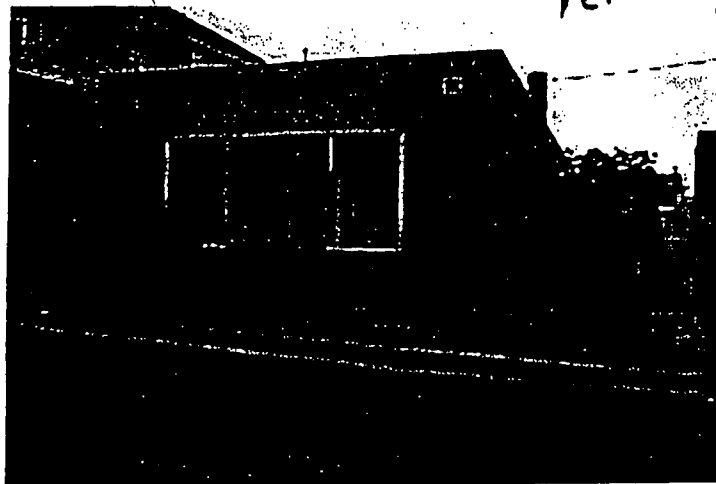
Permanent Book Msg Great Income

Details

Units

Unit 1:	Range, Refrigerator; Electricity Paid By: Tenant;	No.	Bed	Bath	Rent	SqFt	Parking	Lease	Furnish	Stories	Rem
	Garbage Paid By: Owner; Heat Paid By: Owner;	1	1	1	200 00		yes				Efficiency
	Sewer Paid By: Owner; Water Paid By: Owner	2	1	1	260 00		yes				New
Income/Expenses:	Yearly Expenses: 6,849.00; Electricity Expense:	3	1	1	225 00		yes				Kitchen
	282 01; Heat Expense: 2,444.81; Water Expense:	4	1	1	212 00		yes				Lots of
	1 130 21; Sewer Expense: 269.20; Lawn/Snow	5	1	1	180 00		yes				storage
	Expense 682 00; Insurance Expense: 1,300.00;	6	1	1	300 00		yes				
	Garbage Expense: 264.20; Maintenance Expense										1st Floor
	482 00; Yearly Income: 23,724.00										over 600
		Store			400 00		yes				sq ft
		add.store			200 00		yes				

Information is deemed to be reliable, but is not guaranteed. See copyright notice. Prepared Friday, December 27, 2007 11:43 PM
The information on this sheet has been made available by the MLS and may not be the listing of the provider



PENDING
11-22-02
Sale

**COLDWELL
BANKER**

DEVELOPAC REALTY

998 Beaver Drive, DuBois, PA 15801
PH: 814-375-1167 FAX: 814-375-9842
WEBSITE: www.developac.com
EMAIL: devpac@key-net.net

EACH OFFICE IS INDEPENDENTLY OWNED AND OPERATED

PRICE: \$39,900.00

MLS#: 04-7744
OWNER: Hibbert
ADDRESS: 27 W. Washington Ave.
DuBois

Listing Agent: G. Gruda

Nice location. Close to downtown. Can be used for a variety of businesses. Nat. Gas HW Radiator heat, rubber roof, 24x60 building, 3/4 bath lower level.

GENERAL PROPERTY INFORMATION

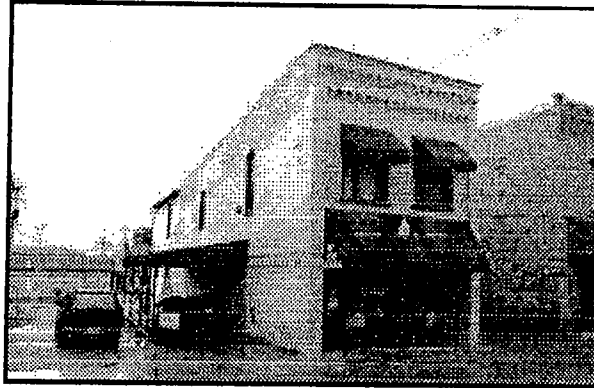
Commercial Building	
Lot Size:	27x113x36x112
GLA:	1440
Total Basement:	1440
Bath:	3/4 LL
Inst. Number:	200115897
Map:	7.2-1-245
Taxes:	\$954.18
County:	Clearfield
Municipality:	DuBois
Zoning:	Commercial

BA	2.8
SA	2.8
TL	

TO SHOW: Call Lockbox

DIRECTIONS: Tommy D's T/R, across from CW Graphics

THIS INFORMATION HAS BEEN SECURED FROM SOURCES WE BELIEVE TO BE RELIABLE, BUT WE MAKE NO REPRESENTATION OR WARRANTIES, EXPRESSED OR IMPLIED, AS TO THE ACCURACY OF THE INFORMATION. ALL REFERENCES TO AGE, SQ. FOOTAGE, AND EXPENSES ARE APPROXIMATE. BUYERS S

Hoffer Realty Associates

Address	22 & 24 S. BRADY ST. DUBOIS, PA 15801	Owner	MOLLICA
List Number	04-7949	Status	A
List Price	160,000	Gross Living Area	3,780
Total Basement Area	1,890	Lot Size	50 X 135
Zoning	COMMERCIAL	Taxes	2,056.32
Tax Year	2002	Map	01-196
DB	483	Page	689
Municipality	DUBOIS	How To Show	CALL FOR APPOINTMENT
Public Remarks	INCLUDED WITH THE SALE - ALL DRY CLEANING EQUIPMENT ON THE PREMISES - SEE LIST IN OFFICE.		
Directions	S. BRADY ST.		

(814) 371-2100

Information is deemed to be reliable, but is not guaranteed. See copyright notice. Prepared Tuesday, April 22, 2003 10:15 AM
The information on this sheet has been made available by the MLS and may not be the listing of the provider.

REASON FOR REQUEST FOR MOTION TO STOP SALE IS AS
follow:

Adequacy of the Sale Price

however, the rule is well-settled, at least in normal times, that a court will not refuse to confirm a sale or set it aside unless the price obtained was "grossly inadequate"²⁸ or the inadequacy was "so gross as to shock the conscience or raise a presumption of fraud or unfairness."²⁸

courts have set aside as "inequitably less than the real value of the property" a sale price of approximately one-seventh of the fair market value.²⁹ Moreover, where the disparity is substantial, courts will seize upon any other irregularity or misconduct to provide the additional basis for setting aside the sale.

1. enclosed find copy of sale pending building in area for 39,000 plus and it is not one-third the size of mine
2. copies of other buildings at price range of about one hundred thousand dollars and size compare to the one you want
- 3 IN my opinion you broke my civil rights, no public use private gain, refused to talk about the REAL GRANT MONEY, like rice got

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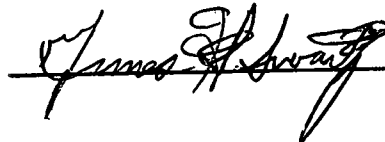
: Filed on Behalf of: Condemnee.

: Counsel of Record for this Party:
: James H. Swartz

: 2 West Long Avenue
: DuBois Pa 15801

: (814) 375-4453

filed on behalf of



I hereby certify this to be a true
and attested copy of the original
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MAY 02 2003

Attest.


Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA

CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
901 12
CONDEMNATION

; NO 00-591-CD
; TYPE OF CASE CONDEMNATION

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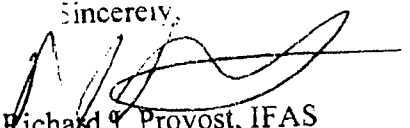
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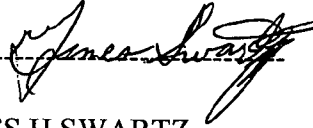
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RESPECTFULLY SUBMITTED

BY ----- 

JAMES H SWARTZ

2 WEST LONG AVE

DU BOIS PA 15801

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(4) Actual reasonable expenses necessary, to reestablish a displaced farm, nonprofit organization or small business at its new site, in accordance with criteria to be established by regulation, but not to exceed ten thousand dollars (\$10,000).

(5) In lieu of damages under subsection (a) and clause (I). (2), (3) or (4) of this subsection, damages in an amount equal to the average annual net earnings but not more than twenty thousand dollars (\$20,000) nor less than one thousand dollars (\$1,000). The term "average annual net earnings" means one-half of any net earnings of the business or farm operation before Federal, State and local income taxes during the two taxable years immediately

Preceding the taxable year in which the business or farm operation moves from the real property; acquired for a project, and includes any compensation paid by, the business or farm operation to the owner, his spouse or his dependents during this period. The regulations promulgated under section 604-A of this act may designate another period determined to be more equitable for establishing average annual net earnings provided the designation of the period does not produce a lesser payment than would use of the last two taxable years. Payment shall be made only if the business cannot be relocated without a substantial loss of profits. A person whose sole business at a dwelling from which he is displaced is the rental of such property to others shall not qualify for a payment under this clause.

§ 409. Right to enter property prior to condemnation

Prior to the filing of the declaration of taking, the condemnor or its employees or agents, shall have the right to enter upon any land or improvement which it has the power to condemn, in order to make studies, surveys, tests, soundings and appraisals, provided that the owner of the land or the party in whose name the property is assessed has been notified ten days prior to entry on the property. Any actual damages sustained by the owner of a property interest in the property entered upon by the condemnor shall be paid by the condemnor and shall be assessed by the court or viewers in the same manner as provided in section 408.1

1964, Sp.Sess., June 22, P.L. 84, art. Iv, § 409.

§ 501. Agreement as to damages

At any stage of the proceedings, the condemnor and the condemnee may agree upon all or any part or item of the damages, and proceed to have those parts or items thereof not agreed upon assessed as herein provided. The condemnor may make payment of any part or item thereof so agreed upon.

1964, Sp.Sess., June 22, P.L. 84, art. V, § 501.

Article VI, §602 Measure of damages

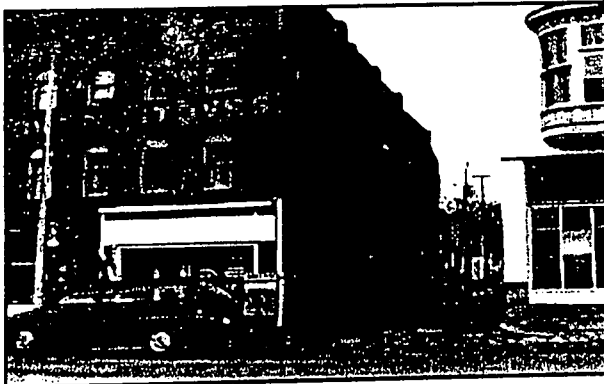
(a) Just compensation shall consist of the difference between the fair market value of the condemnee's entire property interest immediately before the condemnation and as unaffected thereby and the fair market value of his property interest remaining immediately after such condemnation and as affected thereby, and such other damages as are provided in this code.

(b) In case of the condemnation of property in connection with any urban development or development project, which property is damaged by subsidence due to failure of surface support resulting from the existence of mine tunnels or passageways under the said property, or by reason of fires occurring in said mine tunnels or passageways or of burning coal refuse banks, the damage resulting from such subsidence or underground fires or burning coal refuse banks shall be excluded in determining the fair market value of the condemnee's entire property interest therein immediately before the condemnation.

(c) In case of the condemnation of property in connection with any program or project which property is damaged by any natural disaster, the damage resulting therefrom shall be excluded in determining fair market value of the condemnee's entire property interest therein immediately before the condemnation.

(d) In the case of property which was damaged by any natural disaster, an acquiring agency may acquire the entire property interest of a condemnee, except any improvements made since the date of such natural disaster, and reconvey to the condemnee a portion of the property interest taken; in which case the damage shall be the difference between the value of the property interest acquired, excluding damage resulting from such natural disaster, and the value of the property interest reconveyed. For the purposes of this act, all mobile homes which were in use as dwellings and were destroyed, demolished or damaged beyond reasonable repair by any natural disaster shall be considered to be real property.

(e) Subsections (c) and (d) are applicable only where the damage resulting from such natural disaster has occurred within three years Prior to the initiation of negotiations for or notice of intent to acquire or order to vacate the property and during the ownership of the Property by the condemnee. The damage to be excluded shall include only actual physical damage to the property for which the condemnee has not received any compensation or reimbursement.



Address:
327-329 West Long Avenue, DuBois, PA 15801

Price: 119,000

Property Type: MultiFamily
Area: 04 DuBois
Apx. GLA (Incl BLA): 0 00

List #04-7849

Three Story Apartment building, 8 Units, 7 Apartments, 1 Commercial. 2 stall storage building out back

Contract Information

Listing Agent	TERESA BALL Home (814) 371.3233 Office (814) 375.0722 ext. 15 www.hhlook.com	Listing Agency	HOWARD HANNA SHIPPEN Office (814) 375 0722 Fax 375 4101
Status	Active	Owner	Bloom
How To Show	Call Office		

General Property Description

Book Section	Multi-Family	Realtor.COM Type	Multi-Family
# of Units	4	Basement Living Area	0
Total Basement Area	0	Year Built	1920
Style	See Remarks		

Location, Tax and Legal Information

County	Clearfield	Zoning	Commercial
Taxes	2.301	Tax Year	2002
Map	7.1-2-00399	DB	1999
Page	8238	Municipality	DuBois

Details

	No.	Bed	Bath	Rent	SqFt	Parking	Lease	Furnish	Stories	Rem.
Unit 1:										
Refrigerator; Electricity Paid By: Tenant; Garbage										
Paid By: Owner; Heat Paid By: Owner; Sewer Paid										
By: Owner; Water Paid By: Owner										
Income/Expenses:										
Yearly Expenses: 6,288.00; Electricity Expense:	A	1	1	250.00		yes				
538.26; Heat Expense: 1,025.15; Water Expense:	B	1	1	200.00		yes				
1,001.03; Tax Expense: 2,384.79; Insurance	C	1	1	300.00		yes				
Expense: 840.00; Garbage Expense: 262.40;	D	2	1	350.00		yes				
Maintenance Expense: 498.00; Other Expense:	E	1	1	245.00		yes				
360.00; Yearly Income: 24,480.00	F	2	1	195.00		yes				New in 2001
	G	2	1	200.00		yes				New in 2001

Information is deemed to be reliable, but is not guaranteed. See copyright notice. Prepared Friday, December 21, 2002 12:49 PM
The information on this sheet has been made available by the MLS and may not be the listing of the provider



Address:
134-136 West Long Avenue DuBois PA 15801

Price: 98,500

Property Type: MultiFamily
Area: 04 DuBois
Apx. GLA (Incl BLA): 0 00

List #04-7850

Lots of Income with this 2 story multi-unit property. Six apartments and 2 store fronts Off street parking + patios for apartments, gas forced air, separte electric

Contract Information

Listing Agent	TERESA BALL Home (814) 371.3233 Office (814) 375.0722 ext. 15 www.hhlook.com	Listing Agency	HOWARD HANNA SHIPPEN Office (814) 375 0722 Fax 375 4101
Status	Active	Owner	Bloom
How To Show	Call Office		

General Property Description

Book Section	Multi-Family	Realtor.COM Type	Multi-Family
# of Units	4	Basement Living Area	0
Total Basement Area	0	Style	See Remarks

Location, Tax and Legal Information

County	Clearfield	Zoning	Commercial
Taxes	1,244.17	Tax Year	2002
Map	7 2-1-00081-80	DB	182.
Page	24	Municipality	DuBois

Remarks

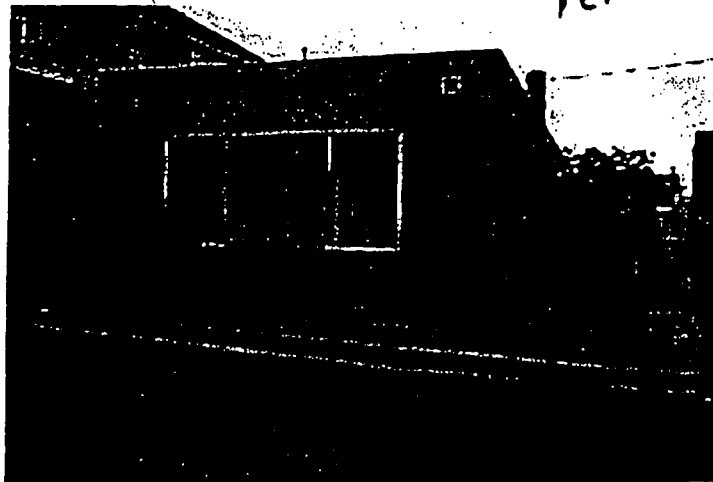
Permanent Book Msg Great Income

Details

		No.	Bed	Bath	Rent	SqFt	Parking	Lease	Furnish	Stories	Rem
Unit 1.	Range, Refrigerator; Electricity Paid By: Tenant;	1	1	1	200 00		yes				Efficiency
	Garbage Paid By: Owner; Heat Paid By: Owner;	1	1	1	200 00		yes				New
	Sewer Paid By: Owner; Water Paid By: Owner	2	1	1	260 00		yes				Kitchen
Income/Expenses:	Yearly Expenses: 6,849.00; Electricity Expense:	3	1	1	225 00		yes				lots of
	282 01; Heat Expense: 2,444.81; Water Expense:	4	1	1	212 00		yes				storage
	1,130 21; Sewer Expense: 269.20; Lawn/Snow	5	1	1	180 00		yes				
	Expense 682.00; Insurance Expense: 1,300.00;	6	1	1	300 00		yes				1st Floor
	Garbage Expense: 264 20; Maintenance Expense										over 500
	482 00; Yearly Income: 23,724.00										sq ft
	Store				400 00		yes				
	add.store				200 00		yes				

Information is deemed to be reliable, but is not guaranteed. See copyright notice Prepared Friday, December 27, 2002 11:49 PM

The information on this sheet has been made available by the MLS and may not be the listing of the provider



PENDING
11-22-02
Sale

**COLDWELL
BANKER**

DEVELOPAC REALTY

998 Beaver Drive, DuBois, PA 15801
PH: 814-375-1167 FAX: 814-375-9842

WEBSITE: www.developac.com

EMAIL: devpac@key-net.net

EACH OFFICE IS INDEPENDENTLY OWNED AND OPERATED

PRICE: \$39,900.00

MLS#: 04-7744
OWNER: Hibbert
ADDRESS: 27 W. Washington Ave.
DuBois

Listing Agent: G. Gruda

Nice location. Close to downtown. Can be used for a variety of businesses. Nat. Gas HW Radiator heat, rubber roof, 24x60 building, 3/4 bath lower level.

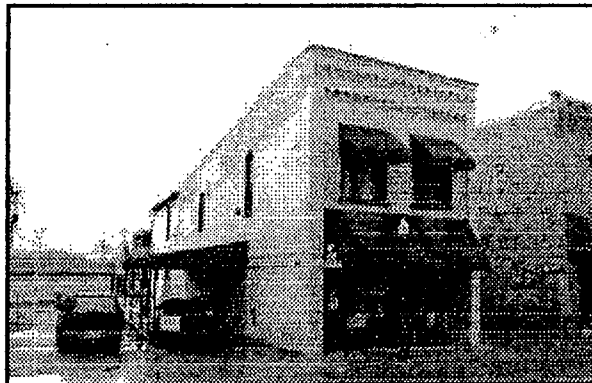
GENERAL PROPERTY INFORMATION

Commercial Building	
Lot Size:	27x113x36x112
GLA:	1440
Total Basement:	1440
Bath:	3/4 LL
Inst. Number:	200115897
Map:	7.2-1-245
Taxes:	\$954.18
County:	Clearfield
Municipality:	DuBois
Zoning:	Commercial

BA	2.8
SA	2.8
TL	

TO SHOW: Call Lockbox

DIRECTIONS: Tommy D's T/R, across from CW Graphics

Hoffer Realty Associates

Address	22 & 24 S. BRADY ST. DUBOIS, PA 15801	Owner	MOLLIKA
List Number	04-7949	Status	A
List Price	160,000	Gross Living Area	3,780
Total Basement Area	1,890	Lot Size	50 X 135
Zoning	COMMERCIAL	Taxes	2,056.32
Tax Year	2002	Map	01-196
DB	483	Page	689
Municipality	DUBOIS	How To Show	CALL FOR APPOINTMENT
Public Remarks	INCLUDED WITH THE SALE - ALL DRY CLEANING EQUIPMENT ON THE PREMISES - SEE LIST IN OFFICE.		
Directions	S. BRADY ST.		

(814) 371-2100

Information is deemed to be reliable, but is not guaranteed. See copyright notice. Prepared Tuesday, April 22, 2003 10:15 AM
The information on this sheet has been made available by the MLS and may not be the listing of the provider.

REASON FOR REQUEST FOR MOTION TO STOP SALE IS AS
follow:

Adequacy of the Sale Price

however, the rule is well-settled, at least in normal times, that a court will not refuse to confirm a sale or set it aside unless the price obtained was "grossly inadequate"²⁸ or the inadequacy was "so gross as to shock the conscience or raise a presumption of fraud or unfairness."²⁸

courts have set aside as "inequitably less than the real value of the property" a sale price of approximately one-seventh of the fair market value.²⁹ Moreover, where the disparity is substantial, courts will seize upon any other irregularity or misconduct to provide the additional basis for setting aside the sale.

1. enclosed find copy of sale pending building in area for 39,000 plus and it is not one-third the size of mine
2. copies of other buildings at price range of about one hundred thousand dollars and size compare to the one you want
- 3 IN my opinion you broke my civil rights, no public use private gain, refused to talk about the REAL GRANT MONEY, like rice got

Reference note adequacy of sale information is from west law books real estate finance law 2nd edition west publishing.

CP

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JAMES H. SWARTZ,
Plaintiff/Condemnee

vs

REDEVELOPMENT AUTHORITY OF THE
CITY OF DUBOIS,
Defendant/Condemnor

: NO. 00 - 591 - CD
:
: Type of Case: Condemnation
:
: Type of Pleading: Petition for
: Appointment of Board of Viewers
:
: Filed on Behalf of: Defendant/Condemnor
:
: Counsel of Record for this Party:
:
: Michael P. Yeager, Esq.
: Supreme Court No.: 15587
:
: P.O. Box 752
: 110 North Second Street
: Clearfield, PA 16830
:
: (814) 765-9611

FILED

JUN 25 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES H. SWARTZ,	:	
Plaintiff/Condemnee	:	
	:	
vs	:	No. 00-591-CD
	:	
REDEVELOPMENT AUTHORITY OF	:	
THE CITY OF DUBOIS,	:	
Defendant/Condemnor	:	

PETITION FOR THE APPOINTMENT OF BOARD OF VIEWERS

The Petition of the Redevelopment Authority of the City of DuBois,
("Condemnor") by its undersigned counsel, represents:

1. The Petitioner is the Redevelopment Authority of the City of DuBois with its principal place of business located at P.O. Box 171, DuBois, PA 15801 ("RACD").
2. The Respondent is James H. Swartz with a principal place of business located at 2 West Long Avenue, DuBois, PA 15801 ("Condemnee").
3. On May 18, 2000, RACD filed a Declaration of Taking under the provisions of the Eminent Domain Code of 1964, 26 P.S. §1-101 et seq., effecting a total taking of a property located at the corner of 2 West Long Avenue and Brady Street in the City of DuBois, Clearfield County, Pennsylvania ("Subject Property") and further described in the Deed dated December 30, 1992 and recorded in Clearfield Deeds & Records Vol. 1508 at page 102.
4. On June 19, 2000, Condemnee filed "Objections and Defense" pro se. Condemnor responded with an Answer and various Motions to Strike.
5. On October 11, 2000, the Honorable John K. Reilly, President Judge of Clearfield County, after review of the Objections and Defense, determined to treat the same as Preliminary Objections and accordingly denied the same by an Order issued

that date. Subsequently, Judge Reilly issued a Supplemental Opinion and Order dated March 8, 2001.

6. Condemnee filed a Motion for Judgment Notwithstanding the Verdict on November 9, 2000; which was denied on November 14, 2000.

7. Condemnee filed defective Notices of Appeal in the Superior Court of Pennsylvania dated November 13, 2000 and November 27, 2000 to which Condemnor filed a Motion to Transfer and Quash.

8. The Superior Court, by Order dated February 1, 2001, transferred the matter sui sponte to the Commonwealth Court.

9. The Commonwealth Court issued an Order dated February 12, 2001 directing the proper refiled Notice of Appeal no later than February 23, 2001. A Notice of Appeal was then filed by Condemnee on February 22, 2001.

10. Subsequently, by Opinion (not reported) and Order dated September 11, 2001, the Commonwealth Court affirmed the October 11, 2000 order of the Court of Common Pleas of Clearfield County.

11. The Condemnee then filed an Application for Reconsideration with the Commonwealth Court; to which the Commonwealth Court responded by denying that application on November 21, 2001.

12. The Condemnee filed a Petition for Allowance to Appeal to the Pennsylvania Supreme Court on December 21, 2001.

13. Finally, by Order dated July 9, 2002, the Pennsylvania Supreme Court denied the Petition for Allowance of Appeal, thereby terminating the issue of Preliminary Objections.

14. By letter dated December 23, 2002, the Condemnor made its offer for just compensation relative to the condemnation that it is the subject matter of this proceeding. A copy of that offer is attached hereto, made part hereof and incorporated herein as "Exhibit A".

15. By document filed on January 13, 2003, Condemnee refused to accept the "offer of fair compensation".

16. On February 5, 2003, Petitioner filed a Petition for Payment into Court and Distribution as well as a Petition for Reimbursement of Advance of Real Estate Taxes, Penalties and Interest accordingly proposed to pay its "estimate of just compensation" into Court pursuant to the provisions of the Eminent Domain Code of 1964 26 P.S. §1-522 and included therewith a Schedule of Proposed Distribution relative to liens and encumbrances.

17. On or about April 15, 2003 Condemnee filed a Motion for Request of 15 Day Extension of Time on Hearing Date.

18. By Order of Court dated April 17, 2003, Petitioner was granted the right to possess the property in question; said possession having been accomplished on or about April 22, 2003.

19. On or about May 2, 2003, Condemnee filed a Verdict Notwithstanding With Appraisers Statement.

20. The subject property is more fully described in that certain Deed attached to the aforesaid Declaration of Taking as Exhibit A; but also attached hereto as "Exhibit B".

21. As indicated previously, it is believed that the Condemnee is:

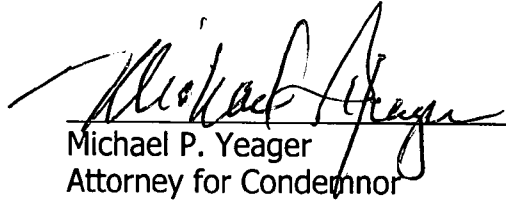
James H. Swartz
2 West Long Avenue
DuBois, PA 15801*

*However, now that Petitioner has secured possession, this address may no longer be applicable to Condemnee, and Petitioner is otherwise unaware as to a specific address for the said James H. Swartz.

WHEREFORE, Petitioner respectfully requests that this Court appoint three viewers to assess the damages to which Condemnee is entitled, and to assess the

benefits, if any, arising from the above-described condemnation.

Respectfully submitted:



Michael P. Yeager
Attorney for Condemnor

FILE

Law Office
MICHAEL P. YEAGER
P. O. Box 752
110 NORTH SECOND STREET
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-9611
FAX (814) 765-9503
December 23, 2002

CERTIFIED MAIL & 1ST CLASS MAIL

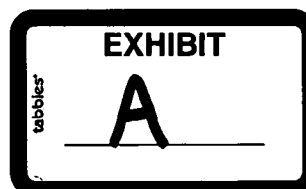
James H. Swartz
2 W. Long Avenue
DuBois, PA 15801

**Re: Offer of "Just Compensation"
Right of Possession & Entry
RACD v. Swartz
No. 00-591-CD
My File No. Y-2152**

Dear Mr. Swartz:

Please know that the Redevelopment Authority of the City of DuBois has secured an appraisal and is now in a position to make a written offer to you as to the amount of just compensation estimated by the RACD to be due to you as a result of the Eminent Domain Proceeding described above. In that regard, it is the intention of the Authority to take possession and exercise its right of entry on the property located at 2-4 West Long Avenue, DuBois, PA 15801 at 10:00 A.M. on January 13, 2003. If you refuse to deliver possession or permit the right of entry on that date, the Authority will have no choice but to issue a Rule upon you to show cause why a Writ of Possession should not be issued to the Authority to grant it the right of entry.

The Authority's estimate as to just compensation has been set at the amount of \$16,500.00. However, please note that the provisions of the Eminent Domain Code (§1-521) indicate that the amount payable to you shall be subject to a lien for all taxes and municipal claims assessed against the property as well as all mortgages, judgments and other liens of record against the property existing at the date of the filing of the Declaration of Taking (May 18, 2000). Those liens, claims and taxes set forth above are to be paid or reimbursed out of the estimate as to just compensation in the order of priority before any payment will ultimately be made to you.



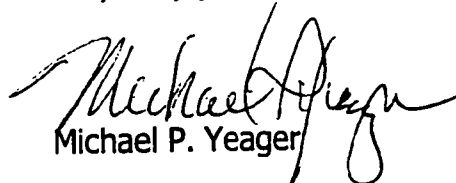
We are therefore currently in the process of determining the specific amounts as to liens or claims that need to be paid. Preliminarily, we are aware of the following amounts (all of which are estimates only):

1. Tax Claim Bureau – tax payment – 9/26/02 - \$3,434.09
2. Liens:
 - (a) National Fuel Gas - No. 97-1174 - \$3,193.27 (to 9/16/02)
 - (b) Commonwealth of PA - No. 97-1324 - \$996.79 (to 10/22/97)
 - (c) Commonwealth of PA - No. 98-156 - \$143.64 (to 2/5/98)

The Authority hopes that you will work with it to effect a smooth transition as to transfer of this property to the Authority. In this regard, please contact Mr. Lance Marshall at the Authority offices in the City Building in DuBois (371-2000, ext. 119) in order to accommodate any needs you might have with regard to the removal of personal items you may yet have in the property.

Of course, should you have any questions you feel I may be able to answer, please feel free to call me as well.

Very truly yours,


Michael P. Yeager

MPY/ljs

pc: RACD

(Domestic Mail Only; No Insurance Coverage Provided)

James H. Swartz

Certified Fee	2.30
---------------	------

Restricted Delivery Fee (Endorsement Required)	
---	--

Total Postage & Fees	\$ 4.42
---------------------------------	----------------

James H. Swartz

2 West Long Avenue

City, State, ZIP+4
DuBois, PA 15801

CLEARFIELD PA 16830
 Postmark
 DEC 23 1962
 USPS

7000 0600 0023 6409 1049 8487. 0002

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

James H. Swartz
2 West Long Avenue
DuBois, PA 15801

A. Received by (Please Print Clearly) AS B. Date of Delivery 6-2

A. Received by (Please Print Clearly) AS B. Date of Delivery 6-2

C. Signature

X *James Smith* 2003 Agent
Addressee

D. Is delivery address different from item? ☒ Yes ☐ No
If YES, enter delivery address below: ☐

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)

7009 0600 0023 6401 1843

WARRANTY DEED - 1988

FLAMINGHOOD CO. WILLIAMSPORT, PA.

County Parcel No. _____

This Deed,

MADE the 30th day of December

in the year nineteen hundred and ninety-two (1992)

BETWEEN GARY J. SIERZEGA And G. MICHAEL ROSIO, both of the City of DuBois, Clearfield County, Pennsylvania, hereinafter called the grantors,

A
N
D

JAMES H. SWARTZ, single, of R. D. #1, Reynoldsville, Jefferson County, Pennsylvania, hereinafter called the Grantee.

WITNESSETH, That in consideration of Sixteen Thousand
(\$16,000.00)

Dollars,

In hand paid, the receipt whereof is hereby acknowledged, the said grantor a do hereby grant
and convey to the said grantee, his heirs and assigns

ALL that certain piece or parcel of land situate, lying and being in the City of DuBois, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at a post at the corner of North Brady Street and West Long Avenue; thence by line of West Long Avenue, 95 feet to a post at the corner of lands of the S & T Bank, formerly The Union Banking and Trust Company (formerly J. A. Vasbinder); thence by lands of said S & T Bank, formerly The Union Banking and Trust Company, 45 feet to post at lands now or formerly of Philip Weaver; thence by line of lands now or formerly of Philip Weaver, 25 feet to a post; thence by lands now or formerly of Philip Weaver and lands now or formerly of Annie Hoot (formerly W. I. Shaw) 20 feet to a post at lands conveyed by W. I. Shaw and wife to George R. Vosburg; thence by line of lands now or formerly of said George R. Vosburg, 70 feet to a post at North Brady Street; thence by line of North Brady Street 20 feet to a post at corner of North Brady Street and West Long Avenue, the place of beginning.

Being the same premises which vested in the Grantors herein by deed of Horacio L. Sardou and Gary C. Crawford, dated January 19, 1987, recorded January 26, 1987 in Clearfield County Deeds & Records Book 1135, page 590.

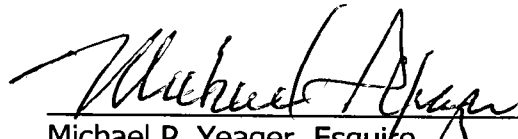
EXHIBIT

B

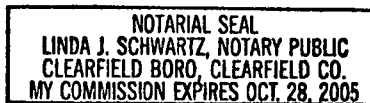
tabbles

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF CLEARFIELD :

I, MICHAEL P. YEAGER, being duly sworn according to law, deposes and says that I am the Attorney for the Redevelopment Authority of the City of DuBois and that the facts set forth in the foregoing Petition are true and correct to the best of my knowledge, information and belief.


Michael P. Yeager, Esquire

Sworn to and subscribed
before me this 25th day of
June, 2003.



FILED

JUN 25 2003

William A. Shaw
Prothonotary

06/30/2003
Atty Yeager
[Signature]

Law Office
MICHAEL P. YEAGER
P. O. Box 752
110 NORTH SECOND STREET
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-0811
FAX (814) 765-9503
FAX COVER LETTER

DATE: 6/27/03

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: Marcy FAX #: 765-7649

COMPANY: Court Admin

TOTAL NUMBER OF PAGES (INCLUDING THIS PAGE) _____. IF YOU DO NOT
RECEIVE ALL OF THE PAGES, PLEASE CALL BACK AS SOON AS POSSIBLE.

**NOTICE: The information contained in this facsimile message is
attorney privileged and confidential information and intended only
for the use of the individual or entity named above. If the reader
of this message is not the intended recipient, you are hereby
notified that any dissemination, distribution, or copy of this
communication is strictly prohibited. If you have received this
communication in error, please notify me by telephone immediately,
and return the original message to me by mail. Thank you.**

Re: RACED v. James Swartz

26 P.S. § 1-501**Note 4**

of Transp., 280 A.2d 685, 2 Pa.1 with 643, Cmwlth. 1971.

Release of condemnor by condemnors for any taking, injury or destruction of property, through or by reason of any improvement of highway which, after construction, abated landowner's property included construction of highway which was not mentioned in release and which intersected highway mentioned in release near condemnor's property. Lowry v. Com., Dept. of Transp., 280 A.2d 685, 2 Pa.Cmwlth. 643, Cmwlth. 1971.

In eminent domain proceeding to determine validity of release of condemnor by condemnors, trial judge's reference in his opinion to another action involving an adjacent property in which highway plans unredacting condemnor's release and showing change of grade were produced was proper to demonstrate that condemnor was under no such misapprehension of fact regarding change of grade as would entitle condemnor to avoid release on ground of unusual mistake at time release was delivered. Lowry v. Com., Dept. of Transp., 280 A.2d 685, 2 Pa.Cmwlth. 643, Cmwlth. 1971.

Where a landowner permits the construction of a telephone line and agrees that no damages shall be paid, or accepts a sum in settlement of damages, neither he nor his successor in title can assert any subsequent claim for damages. Sloope v. Kitzmaring Telephone Co., 89 A.686, 242 Pa. 556, Supp. 1914.

5. **Waiver**
Where condemnor had rights which it might otherwise have been entitled to assert under eminent domain code, but chose to bargain with such rights and did not elect to bargain under state highway

EMINENT DOMAIN

law provisions, (36 P.S. §§ 670-304.2, 670-304.5, now repealed), authorizing payment of expenses for moving business in lieu of damages provided for in eminent domain code and condemnor for stated consideration released condemnor from any claim for damages which condemnor might otherwise have been entitled to assert under eminent domain code, condemnor impliedly abandoned the State Highway Law provisions. Penn Iron Works, Inc. v. Com., Dept. of Transp., 320 A.2d 846, 13 Pa.Cmwlth. 532, Cmwlth. 1974.

6. Appeal

Absent fraud or duress, a stipulation agreement as provided for under this section precludes an appeal on those items or damages stipulated by the parties to the agreement. Bundy v. Hopewell Tr., 33 Beaver 103 (1973).

7. Jurisdiction

Court of common pleas had jurisdiction of condemnor's claims based on agreement of settlement between condemnor and Department of Transportation (DOT), although statute gave Board of Claims exclusive jurisdiction over contract claims against the Commonwealth over \$300, eminent domain code specifically authorized parties to enter agreements, code gave court of common pleas exclusive jurisdiction over condemnation proceedings, code's jurisdiction provision was more general than statute giving Board of Claims exclusive jurisdiction over contract actions against Commonwealth, and Board of Claims was not listed among exceptions to exclusive jurisdiction under code. Com. v. Plur En. Enterprises, Inc., 596 A.2d 1253, 142 Pa.Cmwlth. 114, Cmwlth. 1991.

§ 1-502. Petition for the appointment of viewers

(a) The condemnor may file a petition requesting the appointment of viewers, setting forth:

(1) A caption which shall be the caption of the proceeding substantially as set forth in the declaration of taking, with an identification of the petitioner and his property. The petitioner shall be designated as the plaintiff. Except as otherwise ordered by the court, the viewers' proceedings shall be at the same court term and number as the declaration of taking.

DAMAGES**26 P.S. § 1-502**

(2) The date of the filing of the declaration of taking and whether any preliminary objections thereto have been filed and remain undisposed of.

(3) The name of the condemnor.

(4) The names and addresses of all condemnors and mortgages known to the petitioner to have an interest in his property and the nature of their interests.

(5) A brief description of his property which may include any or all of his properties in the same county taken, injured or destroyed for the same purpose by the condemnor, whether by the same or separate declarations or without a declaration of taking.

(6) A request for the appointment of viewers to ascertain just compensation.

(b) The condemnor may file a petition requesting the appointment of viewers, setting forth:

(1) A caption which shall be the caption of the proceeding substantially as set forth in the declaration of taking, to which shall be added the name of the condemnor as plaintiff as to whose property the petition is filed and the name of the condemnor as defendant. If there is more than one condemnor it shall be sufficient to designate the name of the first condemnor as the plaintiff with appropriate indication of other condemnors. Except as otherwise ordered by the court, the viewers' proceedings shall be at the same term and number as the declaration of taking.

(2) The date of the filing of the declaration of taking and whether any preliminary objections thereto have been filed and remain undisposed of.

(3) The names and addresses of all condemnors known to the petitioner to have an interest in the property which is the subject of the petition and the nature of their interests.

(4) A brief description of the property which is the subject of the petition and the interest condemned.

(5) A request for the appointment of viewers to ascertain just compensation.

(c) The condemnor may include in its petition any or all of the property included in the declaration of taking.

(d) The court appointing the viewers may, on its own motion or at the request of a party, direct them to determine the damages for any or all of the properties included in the declaration of taking or any or all properties taken, injured or destroyed for the same purpose by a condemnor without a declaration of taking.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,

Condemnor

vs.

JAMES H. SWARTZ,

Condemnee

No. 00-591-CD

FILED

JUL 01 2003

ORDER

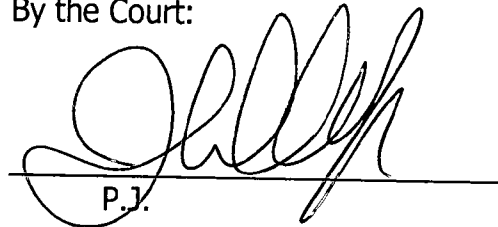
William A. Shaw
Prothonotary

AND NOW, this 1st day of July, 2003, upon consideration of the Petition of
Redevelopment Authority of the City of DuBois, the Court appoints:

J. Richard Mattson II, Esq.
Sam Yost
SVO Prokine

as a Board of Viewers to assess damages in the condemnation and further orders that
the Board of Viewers perform its duties in accordance with the law and Acts of
Assembly and grants leave to the Board of Viewers to issue an interlocutory report or
interlocutory reports covering such properties or claims as the Board of Viewers
determines appropriate.

By the Court:


P.J.

FILED

21053701
JUL 01 2003

4cc Amy Yeager
C
KJA

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Condemnor

vs.

JAMES H. SWARTZ,
Condemnee

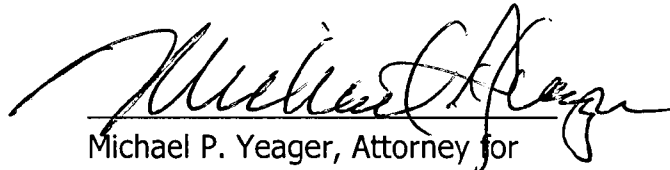
No. 00-591-CD

AFFIDAVIT OF SERVICE

I, MICHAEL P. YEAGER, attorney for Redevelopment Authority of the City of DuBois, depose and say that I forwarded the Petition for the Appointment of Board of Viewers and Order by certified mail, return receipt requested and by First Class Mail on July 15, 2003 to the following:

James H. Swartz, Condemnee/Plaintiff
127 S. Brady Street
DuBois, PA 15801.

The original Certified Mail Receipt and Return Receipt card as well as the Certificate of Mailing are also attached hereto, made part hereof and incorporated herein by reference.



Michael P. Yeager, Attorney for
Condemnor/Defendant

Sworn to and subscribed before me this 29th day of July, 2003.



FILED

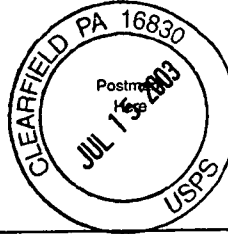
JUL 29 2003

William A. Shaw
Prothonotary/Clerk of Courts

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$.83
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.88



Sent To James H. Swartz
Street, Apt. No., or PO Box No. 127 S. Brady Street
City, State, ZIP+4 DuBois, PA 15801
PS Form 3800, January 2001 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

James H. Swartz
127 S. Brady Street
DuBois, PA 15801

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) James Swartz **B. Date of Delivery** 7-28-03

C. Signature
☒ *James Swartz* ☐ Agent
☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)
7001 0360 0001 7574 6762

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

U.S. POSTAL SERVICE

CERTIFICATE OF MAILING

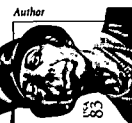
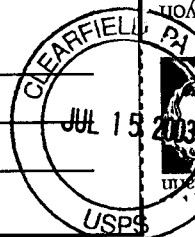
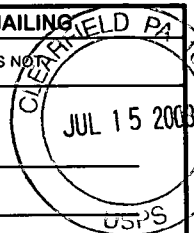
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT
PROVIDE FOR INSURANCE-POSTMASTER

Received From:

Michael P Yeager
PO Box 752
Clearfield PA 16830

One piece of ordinary mail addressed to:

James H. Swartz
127 S. Brady St.
DuBois, PA 15801



PS Form 3817, January 2001

FILED
JUL 29 2003
JUL 29 2003

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM A. SEAW

PROTHONOTARY
AND
CLERK OF COURT

CLEARFIELD COUNTY



DAVID S. AMMERMAN

SOLICITOR

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

P.O. Box 549
CLEARFIELD, PENNSYLVANIA 15830
(814) 765-2641 Ext. 1320
FAX (814) 765-7659

00-591-4

Q
Q
Q
Y

August 1, 2003

James H. Swartz
127 S. Brady Street
DuBois, PA 15801

Dear Mr. Swartz:

On March 25, 2003 a check #1160 in the amount \$5,798.11 was sent per Court Order. Our records indicate this check has not returned to our bank.

If you are still holding this check, please cash it within the next thirty (30) days; otherwise, we will escheat the money to the County.

Please call our office if you have any questions.

Sincerely yours,

William A. Shaw
Prothonotary

WAS/ba

1. STOP-PAYMENT REQUEST

CB&T

INSTITUTION ("We" or "Us")

Request Received
☒ In Person ☐ By Phone

Request Accepted
 Date 9-11-03
 Time 12:59
 By LP

Account Number 12265772
 Duplicate Issued
☐ Yes ☒ No

Other: _____
 Number _____
 Date _____

Stop-Payment Fee
\$ 20.00

Amount of Item
☒ Exact to the penny
☐ Exact to the dollar
\$ 5798.11

☐ Number 1160 ☐ Dated 3-25-03
☐ Payable To James H. Swartz

IMPORTANT! Item Description: Because of the large volume of items we process, we do not visually inspect each item. We use a computer system. Therefore, every one of the item descriptions indicated by a "X" must be EXACT or our computer system will not be able to identify the item, making this stop-payment order ineffective.

Account Name

Clearfield County Prothonotary
William A. Shaw
Escrow Account

You and we will abide by the rules and regulations (as established by the Uniform Commercial Code or other law) governing Stop-Payment Orders. To be effective, we must receive the Stop-Payment Order in time to give us a reasonable opportunity to act on it, and before our stop-payment cutoff time. If any. Oral Stop-Payment Orders (including by phone) are binding for 14 DAYS ONLY, unless you confirm the order in writing on the proper form within the 14-day period. Properly signed Stop-Payment Orders are effective for 6 months after the date accepted and will automatically expire after that period unless renewed in writing.

[Signature]

AUTHORIZED SIGNATURE ("You" or "Your")

II. RELEASE OF STOP-PAYMENT ORDER

 Clearfield, Pa., 9-11-03 ~~7~~ No 4531

Received of William Shaw \$ 20.00

Twenty Dollars

For Stop pmt fee By Heather Peters

CLEARFIELD BANK & TRUST COMPANY

III. FINANCIAL INSTITUTION USE

Tellers must verify receipt of the information described in Section I. Place your initials in the proper box and then forward this form to the next teller. When all tellers have been informed return this copy to the head teller.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40

Release: Date _____ Authorized Signature _____

Notify Tellers, Bookkeepers, etc. of the release by following the same procedure described above.

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,

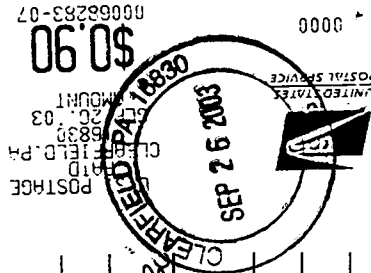
VS.

Condemnee

J. RICHARD MATTERN, II, ESQ.
Attorney ID# 06817
CHAIRMAN, BOARD OF VIEWERS
211 East Pine Street
Clearfield, Pa., 16830
(814) 765-6416

William A. Shaw
Prothonotary/Clerk of Courts

U.S. POSTAL SERVICE	CERTIFICATE OF MAILING
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER	
Received From:	RICK MATTHEW LANGE 211 EAST RIVER STREET CLEARFELD, PA 16830
One piece of ordinary mail addressed to:	MR. JAMES H. SWARTZ 127 SOUTH BRADY STREET DUBOIS, PA 15801



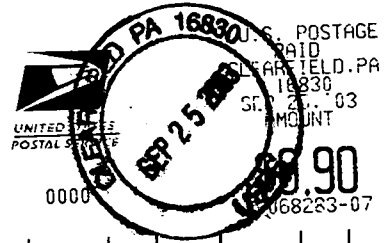
**** U.S. POSTAL SERVICE ****
CLEARFIELD PA 168309998
411432 52.00
CAMPBELL # 07
09-26-03 10:50:20

CUSTOMER RECEIPT

109 POST VAL IMP	.90
TOTAL	.90
CASH T	1.00
CHANGE	.10

*** THANK YOU ***

U.S. POSTAL SERVICE	CERTIFICATE OF MAILING
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER	
Received From:	
Nick Matheson	
211 E. Pine St	
Cleveland, Pa 16830	
One piece of ordinary mail addressed to:	
James H Swartz	
127 South Brady St.	
Du Bois, Pa 15801	



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

REDEVELOPMENT AUTHORITY
OF THE CITY OF DUBOIS,
Condemnor

vs.

JAMES H. SWARTZ,
Condemnee

No. 00-591-CD

NOTICE OF FILING OF REPORT OF VIEWERS

*Amended Notice 9/26/2003

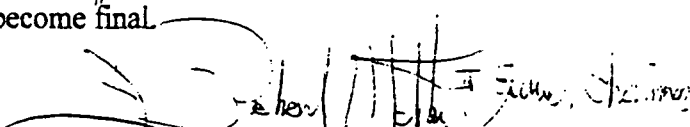
TO: **CONDEMNOR:**
THE REDEVELOPMENT AUTHORITY OF THE CITY OF DUBOIS
C/O COUNSEL MICHAEL P. YEAGER, ESQUIRE
110 North Second Street
Clearfield, PA 16830

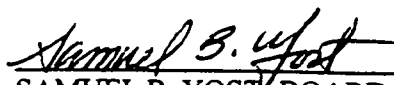
CONDEMNTEE:
JAMES H. SWARTZ
127 South Brady Street
Dubois, PA 15801

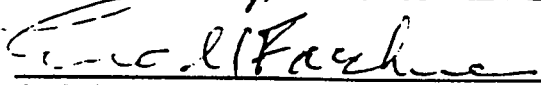
Please be advised that the undersigned Board of Viewers will file their Report, a copy of which is attached, in the Office of the Prothonotary of the Court of Common Pleas of Clearfield County on OCTOBER 13th, 2003. * Amended 9/26/03 -Filing date will be October 13, 2003.

If there are any errors in this Report, notify us before the above date, and they will be corrected.

Unless objections to the Report or appeals therefrom are filed within thirty (30) days from the date the Report is filed, the Report will become final.


J. RICHARD MATTERN, II, ESQUIRE
CHAIRMAN, BOARD OF VIEWERS


SAMUEL B. YOST, BOARD OF VIEWERS


EVO G. FACCHINE, BOARD OF VIEWER

Date: 9/24/03, 2003

*
9/26/03. The Filing Date for the Report is hereby amended to be October 13, 2003 in order to give all parties ten (10) days notice to respond. This was an oversight in the initial preparation of the Notice.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

REDEVELOPMENT AUTHORITY
OF THE CITY OF DUBOIS,
Condemnor

vs.

JAMES H. SWARTZ,
Condemnee

No. 00-591-CD

NOTICE OF FILING OF REPORT OF VIEWERS

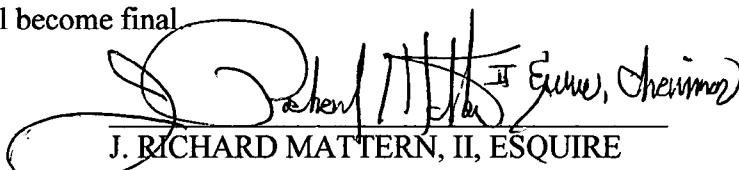
TO: CONDEMNOR:
THE REDEVELOPMENT AUTHORITY OF THE CITY OF DUBOIS
C/O COUNSEL MICHAEL P. YEAGER, ESQUIRE
110 North Second Street
Clearfield, PA 16830

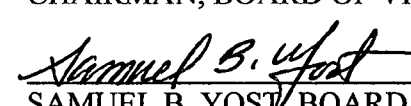
CONDEMNEE:
JAMES H. SWARTZ
127 South Brady Street
Dubois, PA 15801

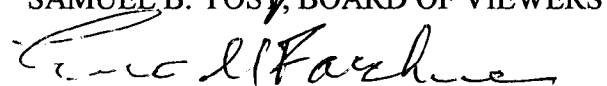
Please be advised that the undersigned Board of Viewers will file their Report, a copy of which is attached, in the Office of the Prothonotary of the Court of Common Pleas of Clearfield County on OCTOBER 3rd, 2003.

If there are any errors in this Report, notify us before the above date, and they will be corrected.

Unless objections to the Report or appeals therefrom are filed within thirty (30) days from the date the Report is filed, the Report will become final.


J. RICHARD MATTERN, II, ESQUIRE
CHAIRMAN, BOARD OF VIEWERS


SAMUEL B. YOST, BOARD OF VIEWERS


EVO G. FACCHINE, BOARD OF VIEWER

Date: 9/24/03, 2003

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

REDEVELOPMENT AUTHORITY
OF THE CITY OF DUBOIS,
Condemnor

vs.

JAMES H. SWARTZ,
Condemnee

No. 00-591-CD

REPORT OF VIEWERS

TO: THE HONORABLE JOHN K. REILLY, JR.
PRESIDENT JUDGE OF SAID COURT

J. Richard Mattern, Jr., Chairman of the Board of Viewers, respectfully represents:

1. A Declaration of Taking, Proceeding in Rem. was filed May 18, 2000, by the Redevelopment Authority of the City of Dubois, whose address is 16 West Scribner Avenue, Dubois, Pa., 15801.
2. The Condemnee is James H. Swartz, whose address is 127 South Brady Street, Dubois, Pa., 15801.
3. The address of the property condemned is 2-4 West Long Avenue, Dubois, Pennsylvania, 15801, and the description of the property condemned herein is contained in Exhibit 1, which is a copy of a Deed dated December 30, 1992 and recorded in Clearfield County Deed and Records Volume 1508, at page 102. The property is otherwise identified by Clearfield County Map Number 7.2-001-65, and a map thereto is available for inspection at the Clearfield County Assessment Office.

13. All parties testifying were duly sworn according to law. The official document of the plan of the property condemned was offered and accepted into evidence.
14. Testifying were Michael P. Yeager, Esquire; Lance Marshall, Executive Director for the Redevelopment Authority of the City of Dubois and Robert J. Fleck, G.R.I., PA Certified General Real Estate Appraiser. The Appraisal Report of Robert J. Fleck dated December 18, 2002 was offered and accepted into evidence, marked Condemnor's Exhibit B attached hereto.
15. From the evidence submitted to them and the View of the premises affected by these proceedings, the Board of Viewers find the following:

FACTS

- a. On June 15, 1999, pursuant to Urban Redevelopment Law, May 24, 1945 P.L. 991, §1 et seq. (35 P.S. §1701, et seq.) and as further authorized by Resolution of the Condemnor adopted June 15, 1999 by a majority of its duly approved Board members, the Redevelopment Authority of the City of Dubois approved the condemnation of the subject land and building as set forth for the stated purpose.
- b. The Declaration of Taking condemning the property located at 2-4 West Long Avenue, Dubois, Pa., 15801, was filed on May 18, 2000, the date of taking under the Eminent Domain Code. As a result, the Redevelopment Authority of the City of Dubois acquired a fee simple or absolute title in the premises pursuant to the Urban Redevelopment Law of May 24, 1945, P.L. 991, §1 et seq. (35 P.S. §1701, et seq.)

CONCLUSIONS

The Board of Viewers reports that after consideration of all the evidence submitted to it by the parties and after a careful view of the land and improvements taken or affected by reason of the Condemnation, it does find and award the following damages:

To: James H. Swartz, as Owner of the subject premises:

Real Estate	\$16,500.00
-------------	-------------

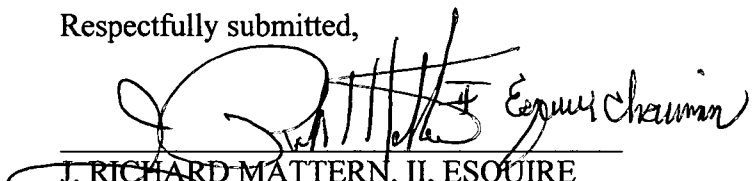
Less Liens and Encumbrances as stated in the Schedule of Proposed Distribution approved by Order of Court dated March 25, 2003	<u>(\$-10,701.89)</u>
--	-----------------------

Estimated amount remaining for distribution to Condemnee:	\$5,798.11
--	------------

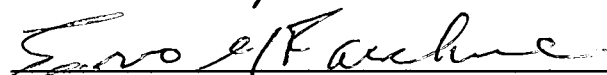
The above damages are assessed against the Condemnor, the Redevelopment Authority of the City of Dubois, which has paid said \$16,500.00 to the Clearfield County Prothonotary, who has distributed such in accordance with the filed Condemnor's Schedule of Proposed Distribution filed with the Court and Prothonotary, as provided in applicable Pennsylvania Law.

Respectfully submitted,

Date: 9/24/03, 2003


J. RICHARD MATTERN, II, ESQUIRE
CHAIRMAN, BOARD OF VIEWERS


SAMUEL B. YOST, BOARD OF VIEWERS


EVO G. FACCHINE, BOARD OF VIEWERS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

REDEVELOPMENT AUTHORITY
OF THE CITY OF DUBOIS,
Condemnor

vs.

JAMES H. SWARTZ,
Condemnee

No. 00-591-CD

BOARD OF VIEWERS
SCHEDULE OF FEES AND COSTS
TO BE PAID BY
THE REDEVELOPMENT AUTHORITY OF THE CITY OF DUBOIS

Payable to: **Samuel B. Yost**
R.D. 2, Box 111
Clearfield, PA 16830

Five (5) hours @ \$70.00 per hour: \$350.00

Mileage – 1 trip Clearfield to Dubois and Return
44 miles plus 2 trips to Clearfield from Goshen
and Return (20 miles)

64 miles @ 35 cents per mile \$22.40

Total \$372.40

Payable to: **Evo G. Facchine**
407 Patterson Avenue
Dubois, PA 15801

Four and one-half (4 ½) hours @ \$70.00 per hour: \$315.00

Mileage – 1 trip Dubois to Clearfield and return
44 miles plus Dubois to View and Hearing – 4 miles
48 miles at 35 cents per mile \$16.80

Total \$331.80

Payable to:

J. Richard Mattern, II, Chairman
211 East Pine Street
Clearfield, PA 16830

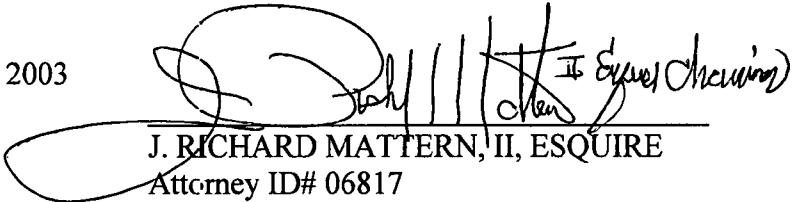
Thirteen and three-quarters (13 ¾) hours
@ \$70.00 per hour: \$962.50

Photocopy expense – 159 copies @ \$.20: \$ 31.80
Certified Mail: \$ 14.84
Regular Mail: \$ 2.17
Stenographer Service – Sherry Greenland: \$202.50

Total: \$1,213.81

Please mail all checks directly to the Board of Viewers at their respective addresses. I certify all of these fees, costs and expenses were incurred by the above respectively, for professional services performed in the above captioned case.

Date: 9/24/03, 2003


J. RICHARD MATTERN, II, ESQUIRE
Attorney ID# 06817
CHAIRMAN, BOARD OF VIEWERS

FILED

30e

OCT 17 2003

Atty Marken

William A. Shaw

Prothonotary/Clerk of Courts

WARRANTY DEED - 1988

FLANKBUSH CO. WILLIAMSPORT, PA.

County Parcel No. _____

This Deed,

MADE the 30th day of December

in the year nineteen hundred and ninety-two (1992)

BETWEEN GARY J. SIERZEGA And G. MICHAEL ROSIO, both of the City of DuBois, Clearfield County, Pennsylvania, hereinafter called the grantors,

A
N
D

JAMES H. SWARTZ, single, of R. D. #1, Reynoldsville, Jefferson County, Pennsylvania, hereinafter called the Grantee.

WITNESSETH, That in consideration of: Sixteen Thousand
(\$16,000.00)

Dollars,

in hand paid, the receipt whereof is hereby acknowledged, the said grantor s do hereby grant
and convey to the said grantee, his heirs and assigns

ALL that certain piece or parcel of land situate, lying and being in the City of DuBois, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at a post at the corner of North Brady Street and West Long Avenue; thence by line of West Long Avenue, 95 feet to a post at the corner of lands of the S & T Bank, formerly The Union Banking and Trust Company (formerly J. A. Vabinder); thence by lands of said S & T Bank, formerly The Union Banking and Trust Company, 45 feet to post at lands now or formerly of Philip Weaver; thence by line of lands now or formerly of Philip Weaver, 25 feet to a post; thence by lands now or formerly of Philip Weaver and lands now or formerly of Annie Hoot (formerly W. I. Shaw) 20 feet to a post at lands conveyed by W. I. Shaw and wife to George R. Vosburg; thence by line of lands now or formerly of said George R. Vosburg, 70 feet to a post at North Brady Street; thence by line of North Brady Street 20 feet to a post at corner of North Brady Street and West Long Avenue, the place of beginning.

Being the same premises which vested in the Grantors herein by deed of Horacio L. Sardou and Gary C. Crawford, dated January 19, 1987, recorded January 26, 1987 in Clearfield County Deeds & Records Book 1135, page 590.

Our 1

EXHIBIT # 1 - BOARD OF VIEWERS REPORT

EXHIBIT

tabbier

A

DUBOIS AREA SCHOOL DISTRICT
1% REALTY TRANSFER TAX

AMOUNT \$ 160.00
PAID 1-7-93 KAREN L. STARCK
Date Agent

MAIL TAX STATEMENTS TO:

James H. Swartz
R. D. #1, Reynoldsville, PA 15851

I hereby CERTIFY that this document
is recorded in the Recorder's Office of
Clearfield County, Pennsylvania.

044372 COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE

REALTY
TRANSFER
TAX JAN-7-93



160.00



Karen L. Starck

Karen L. Starck
Recorder of Deeds

NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1968", I/we, the undersigned grantee/grantees, hereby certify that I/we know and understand that I/we may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal. I/we further certify that this certification is in a color contrasting with that in the deed proper and is printed in twelve point type preceded by the word "notice" printed in twenty-four point type.

Witness:

Luerina R. J. Smith, Esq.

James H. Swartz
(James H. Swartz)

This 6th day of January, 1993

THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. (This Notice is set forth pursuant to Act No. 255, approved September 18, 1965, as amended.)

AND the said grantor s will generally hereby conveyed.

WARRANT AND FOREVER DEFEND the property

IN WITNESS WHEREOF, said grantor s ha vohereunto set their hands and seals, the day and year first above-written.

Scaled and delivered in the presence of



Gary J. Sierzega [Seal]
(Gary J. Sierzega)
G. Michael Rosio [Seal]
(G. Michael Rosio)
[Seal]
[Seal]
[Seal]
[Seal]

CERTIFICATE OF RESIDENCE

I hereby certify, that the precise residence of the grantee is herein as follows:
R. D. #1, Reynoldsville, PA 15851

Quinn R. Tawell Esq.
Attorney or Agent for Grantee

Commonwealth of Pennsylvania

County of CLEARFIELD } ss.

On this, the 30th day of December 19 92, before me a notary public, the undersigned officer, personally appeared GARY J. SIERZEGA and G. MICHAEL ROSIO, known to me (or satisfactorily proven) to be the person s whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My Commission Expires



Kathryn E. Swartz

Notary Seal
Kathryn E. Swartz, Notary Public
DuBois, Clearfield County
My Commission Expires Aug. 29, 1998
Member, Pennsylvania Association of Notaries

State of } ss.
 County of

On this, the _____ day of _____, 19____, before me
 the undersigned officer, personally appeared
 known to me (or satisfactorily proven) to be the person whose name _____ subscribed to the within
 instrument, and acknowledged that _____ executed the same for the purpose therein
 contained.

IN WITNESS WHEREOF, I have hereunto set my hand and

seal.

My Commission Expires

CLEARFIELD COUNTY
 ENTERED OF RECORD
 TIME 12:14 PM 1-7-93
 BY Karen L. Starck
 FEES 13.50
 Karen L. Starck, Recorder

Commonwealth of Pennsylvania } ss.
 County of

RECORDED in the Office for Recording of Deeds, etc., in and for the said
 County, in Deed Book No. _____, Page _____

WITNESS my hand and official seal this _____ day of _____, 19____

Recorder of Deeds

DO NOT PUBLISH

160.00
 50.00
 50.00
 Deed

WARRANTY DEED
 The Plankinton Co., Williamsport, Pa.

GARY J. SIERZEGA AND
 MICHAEL ROSIO
 TO
 JAMES H. SWARTZ

Dated
 For
 Consideration
 Recorded
 Entered for Record in the Recorder's
 Office of
 County, the day of Jan. 5
 19____
 Fees, \$
 Recorder

LAW OFFICES
 ERVIN S. FENNEL, JR.
 P. O. BOX 403
 DUBLIN, PA 15001

Entered of Record Jan 7 1993 12:14 PM Karen L. Starck, Recorder

COPY

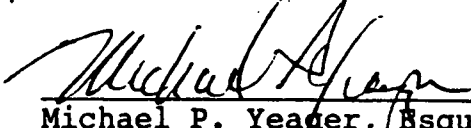
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF :
THE CITY OF DUBOIS, : No. 00-591-CD
Condemnor :
vs : IN CONDEMNATION
: :
JAMES H. SWARTZ, :
Condemnee :

NOTICE OF FILING OF DECLARATION OF TAKING

A Declaration of Taking was filed this date, the 18th day of May, 2000 as of the above court and number, wherein the following property was condemned in whole in fee simple or absolute title:

1. Condemnee/Owner/Grantor:
James H. Swartz
R.R. 1
Reynoldsville, PA 15851
(To be indexed as Grantor)
2. Condemnor/Grantee:
Redevelopment Authority of the City of DuBois
16 West Scribner Avenue
DuBois, PA 15801
3. Property Location:
2-4 West Long Avenue, DuBois, PA 15801
Clearfield County Assessment Map No. 7.2-001-65
4. Property Description:
For a description of the Property condemned, please see Exhibit A attached hereto, made part hereof and incorporated herein by reference.
5. Property map:
A map showing the premises so condemned is available for inspection at the Clearfield County Assessment Offices (Map No. 7.2-001-65) and at the offices of the Condemnor at 16 West Scribner Avenue, DuBois, PA 15801.


Michael P. Yeager, Esquire
Attorney for Condemnor

COMMONWEALTH OF PENNSYLVANIA

:

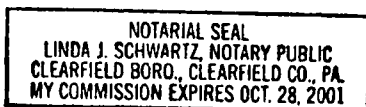
: SS:

COUNTY OF CLEARFIELD

:

On this, the 18th day of May, 2000 before me, the undersigned officer, personally appeared MICHAEL P. YEAGER, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Linda J. Schwartz

KAREN L. STARCK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania

INSTRUMENT NUMBER

200006905

RECORDED ON

May 18, 2000

3:32:05 PM

RECORDING FEES - \$17.00

RECORDER

COUNTY IMPROVEMENT \$1.00

FUND

RECORDER \$1.00

IMPROVEMENT FUND

STATE WRIT TAX \$0.50

TOTAL

\$19.50

FILE

Law Office
MICHAEL P. YEAGER
P. O. Box 752
110 NORTH SECOND STREET
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-9611
FAX (814) 765-9503
December 23, 2002

CERTIFIED MAIL & 1ST CLASS MAIL

James H. Swartz
2 W. Long Avenue
DuBois, PA 15801

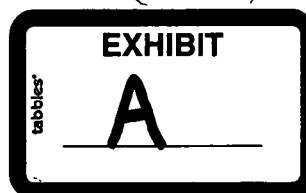
**Re: Offer of "Just Compensation"
Right of Possession & Entry
RACD v. Swartz
No. 00-591-CD
My File No. Y-2152**

Dear Mr. Swartz:

Please know that the Redevelopment Authority of the City of DuBois has secured an appraisal and is now in a position to make a written offer to you as to the amount of just compensation estimated by the RACD to be due to you as a result of the Eminent Domain Proceeding described above. In that regard, it is the intention of the Authority to take possession and exercise its right of entry on the property located at 2-4 West Long Avenue, DuBois, PA 15801 at 10:00 A.M. on January 13, 2003. If you refuse to deliver possession or permit the right of entry on that date, the Authority will have no choice but to issue a Rule upon you to show cause why a Writ of Possession should not be issued to the Authority to grant it the right of entry.

The Authority's estimate as to just compensation has been set at the amount of \$16,500.00. However, please note that the provisions of the Eminent Domain Code (§1-521) indicate that the amount payable to you shall be subject to a lien for all taxes and municipal claims assessed against the property as well as all mortgages, judgments and other liens of record against the property existing at the date of the filing of the Declaration of Taking (May 18, 2000). Those liens, claims and taxes set forth above are to be paid or reimbursed out of the estimate as to just compensation in the order of priority before any payment will ultimately be made to you.

EXHIBIT A Board of Viewers Report



IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
NO. 00-591--CD
IN CONDEMNATION

IN RE:

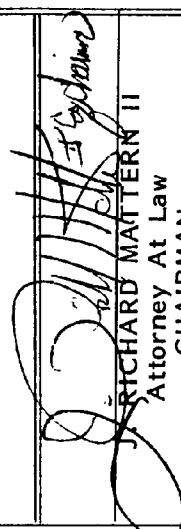
REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,

Condemnor

-VS-

JAMES H. SWARTZ,
Condemnee

REPORT OF VIEWERS, SCHEDULE
OF COSTS, ORDER FOR PAYMENT,
and NOTICE OF FILING OF REPORT


RICHARD MATTERN II

Attorney At Law

CHAIRMAN,
BOARD OF VIEWERS

OCTOBER 13 2003

RICK MATTERN

ATTORNEY AT LAW

211 EAST PINE STREET

CLEARFIELD, PENNSYLVANIA 16830

FILED

16 CC
OCT 13 2003

William A. Shaw
Prothonotary/Clerk of Courts

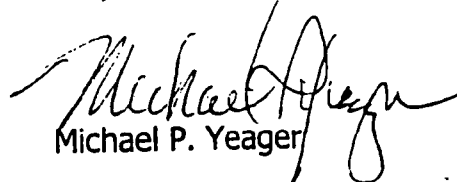
We are therefore currently in the process of determining the specific amounts as to liens or claims that need to be paid. Preliminarily, we are aware of the following amounts (all of which are estimates only):

1. Tax Claim Bureau – tax payment – 9/26/02 - \$3,434.09
2. Liens:
 - (a) National Fuel Gas - No. 97-1174 - \$3,193.27 (to 9/16/02)
 - (b) Commonwealth of PA - No. 97-1324 - \$996.79 (to 10/22/97)
 - (c) Commonwealth of PA - No. 98-156 - \$143.64 (to 2/5/98)

The Authority hopes that you will work with it to effect a smooth transition as to transfer of this property to the Authority. In this regard, please contact Mr. Lance Marshall at the Authority offices in the City Building in DuBois (371-2000, ext. 119) in order to accommodate any needs you might have with regard to the removal of personal items you may yet have in the property.

Of course, should you have any questions you feel I may be able to answer, please feel free to call me as well.

Very truly yours,


Michael P. Yeager

MPY/ljs

pc: RACD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,

Condemnor

vs.

JAMES H. SWARTZ,

Condemnee

No. 00-591-CD

ORDER

AND NOW, this 1st day of July, 2003, upon consideration of the Petition of
Redevelopment Authority of the City of DuBois, the Court appoints:

J. Richard Mattern, II, Esq.
Sam Yost
Evo Facchine

as a Board of Viewers to assess damages in the condemnation and further orders that
the Board of Viewers perform its duties in accordance with the law and Acts of
Assembly and grants leave to the Board of Viewers to issue an interlocutory report or
interlocutory reports covering such properties or claims as the Board of Viewers
determines appropriate.

By the Court:

/s/ JOHN K. REILLY, JR.

P.J.

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

JUL 01 2003

EXHIBIT 2 Board of Viewers Report
Attest. William A. Brown
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,

Condemnor

vs.

JAMES H. SWARTZ,

Condemnee

No. 00-591-CD

Type of Case: **CONDEMNATION**

Type of Pleading: **NOTICE OF
VIEW AND HEARING**

Filed on Behalf of:
BOARD OF VIEWERS

Counsel of Record for this Party:

J. RICHARD MATTERN, II, ESQ.
Attorney ID# 06817
CHAIRMAN, BOARD OF VIEWERS
211 East Pine Street
Clearfield, Pa., 16830
(814) 765-6416

EXHIBIT #3 Board of Viewers Report

our 3

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

REDEVELOPMENT AUTHORITY
OF THE CITY OF DUBOIS,
Condemnor

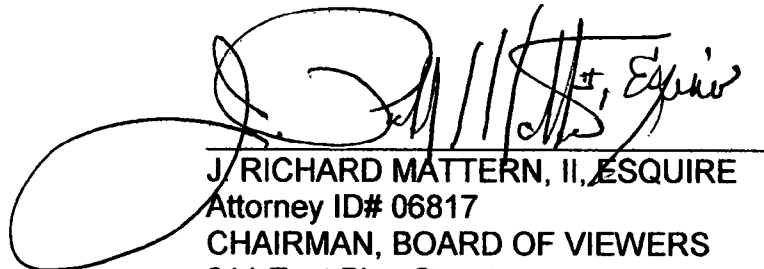
vs.

JAMES H. SWARTZ,
Condemnee

No. 00-591-CD

NOTICE OF VIEW AND HEARING

You are hereby notified that J. Richard Mattern, II, Esquire, Samuel B. Yost and Evo G. Facchine, Board of Viewers in the above captioned matter, will hold a View of the subject premises owned by James H. Swartz, located at 2 West Long Avenue, Dubois, Pennsylvania, 15801 on **August 22, 2003 at 10:00 AM**, and immediately following the View, there will be a Hearing to assess damages, if any, in the Condemnation at the Dubois Municipal Building located at 16 West Scribner Avenue, Dubois, Pa., 15801.



J. RICHARD MATTERN, II, ESQUIRE
Attorney ID# 06817
CHAIRMAN, BOARD OF VIEWERS
211 East Pine Street
Clearfield, Pa., 16830
(814) 765-6416

Date: July 14, 2003

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

James H Swartz
127 South Brady St.
Dubois, PA 15801

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

James Swartz

B. Date of Delivery

July 17 1999

C. Signature

James Swartz

☐ Agent☐ Addressee

D. Is delivery address different from item 1?

☐ Yes☐ No

If YES, enter delivery address below:

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number (Copy from service label)

7000 0520 0021 4258 6297

PS Form 3811, July 1999

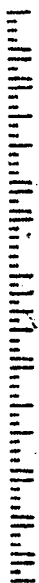
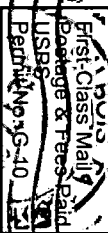
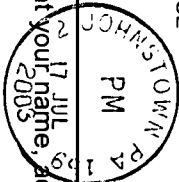
Domestic Return Receipt

102595-00-14-0952

UNITED STATES POSTAL SERVICE

• Sender: Please print your name, address, and ZIP+4 in this box.

T. Richard Maten, II, Esq.
211 East Pine St.
Clearfield PA 16830



CERTIFICATE OF SERVICE

I, J. RICHARD MATTERN, II, Esquire, Chairman of the Board of Viewers,
hereby Certify that true and correct copies of the foregoing NOTICE OF VIEW
AND HEARING were served on the 14th day of July, 2003, as follows:

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

James H. Swartz
127 South Brady Street
Dubois, Pa., 15801

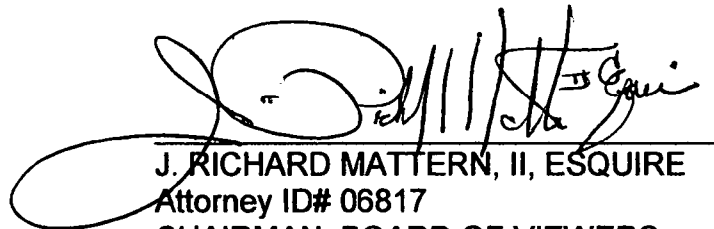
U. S. FIRST CLASS MAIL

Michael P. Yeager, Esq.
Solicitor, Redevelopment Authority of the City of Dubois
110 North Second Street
Clearfield, Pa., 16830

Samuel B. Yost
Board of Viewers
R. D. 2, Box 111
Clearfield, Pa., 16830

Evo G. Facchine
Board of Viewers
407 Patterson Avenue
Dubois, Pa., 15801

Date: July 14, 2003



J. RICHARD MATTERN, II, ESQUIRE
Attorney ID# 06817
CHAIRMAN, BOARD OF VIEWERS
211 East Pine Street
Clearfield, Pa., 16830
(814) 765-6416

APPRAISAL REPORT

December 18, 2002

For: Mr. Lance Marshall
City Of DuBois-Redevelopment Authority
16 W. Scribner Avenue
DuBois, PA 15801

I hereby certify that I have personally inspected the property described as

Owned by: James H. Swartz

Located at: 2-4 W. Long Avenue, DuBois, PA 15801

Map Reference: 7-2-1-65, City Of DuBois, Clearfield County, PA

The purpose of this appraisal is to estimate the Market Value of this property as of the 15th day of November, 2002 A.D. It is my opinion that the Market Value as of the aforesaid date is:

**SIXTEEN THOUSAND AND FIVE HUNDRED DOLLARS
(\$16,500.00)**

The property was appraised as a whole, owned in fee simple and unencumbered, subject to the assumptions and limiting conditions outlined herein.

BOMAR REAL ESTATE
APPRAISAL SERVICES



Robert J. Fleck, G.R.I.
PA Certified General
Real Estate Appraiser
Certificate #GA-000574-L

EX EXHIBIT 13 - BOARD OF VIEWERS' REPORT

COMPLETE SUMMARY REPORT

This is a SUMMARY Appraisal Report which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice (USPAP) for a Summary Appraisal Report. As such, it presents only summary discussion of the data, reasoning and analysis that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation concerning the data, reasoning and analyses is retained in the appraiser's file. The depth of discussion contained in this report is specific to the needs of the client and for the intended use. The appraiser is not responsible for unauthorized use of this report.

Client: City of DuBois Redevelopment Authority

Use: For the purpose of condemnation

PROPERTY DESCRIPTION

Owner: James H. Swartz

Location: 2-4 W. Long Avenue, DuBois, PA 15801

County Map Reference: 7-2-1-65, City Of DuBois, Clearfield County, PA

Deed Reference: Volume 1508 Page 102

Assessed Valuation:

Land	3925
Building	2675
Total	6600

Real Estate Taxes: \$1071.38 (2002)

LOT DESCRIPTION

Dimensions: 20' X 95' X 45' X 25' X 20' X 70' (Per Legal Description)

Size: 2400+/- S.F.

Zoning: Commercial Central

Highest & Best Use: Commercial

Available Utilities: Electric, Gas, Water & Sewer

Road Access: Public, Paved

Road Maintenance: Public

Topography: Basically Level

Shape: Irregular

Drainage: Appears Adequate

F.E.M.A. Designated Flood Hazard Area - Zone C

F.E.M.A. Map #420303 0002 B Effective Date - 12/1/78

BUILDING DESCRIPTION

Construction: Two Story Brick

Age: 1900+/-

Use: First Floor - Commercial - Retail
Second/Third Floors - Apartments

Condition: Fair To Poor

Size: 2392+/- S.F. Per Floor
Total - 7176+/- S.F.

Exterior Wall: Brick With Partial Stone Veneer

Basement Walls: Exposed Material - Brick

Roof Design: Flat

Roof Cover: Composition (Estimated)

Basement: 2392+/- S.F.

Floors: Basement & First Floor - Concrete
Upper Floors - Wood

Windows: First Floor - Stationary
Upper Floors - Wood Double Hung With Single Pane Glass

Exterior Doors: Steel With Insulated Glass

Interior Finish: Walls - Plastered & Paneled
Floor Cover - Hardwood, Resilient Tile, & Carpet
Ceilings - Suspended Tile & Plaster

Plumbing: Approximately 12 Fixtures Including Hot Water Tank

Electrical: See Comments Regarding Condition

Lighting: Fluorescent & Incandescent

Heat: See Comments Regarding Condition

Cooling:

None

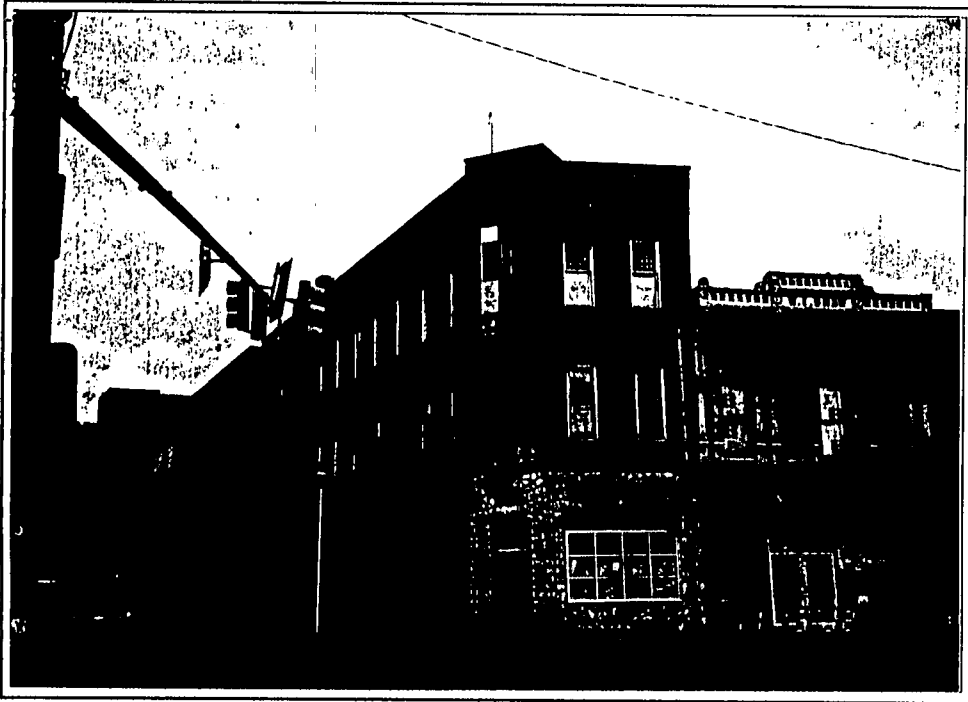
Insulation:

See Comments Regarding Condition

SUBJECT PHOTO ADDENDUM

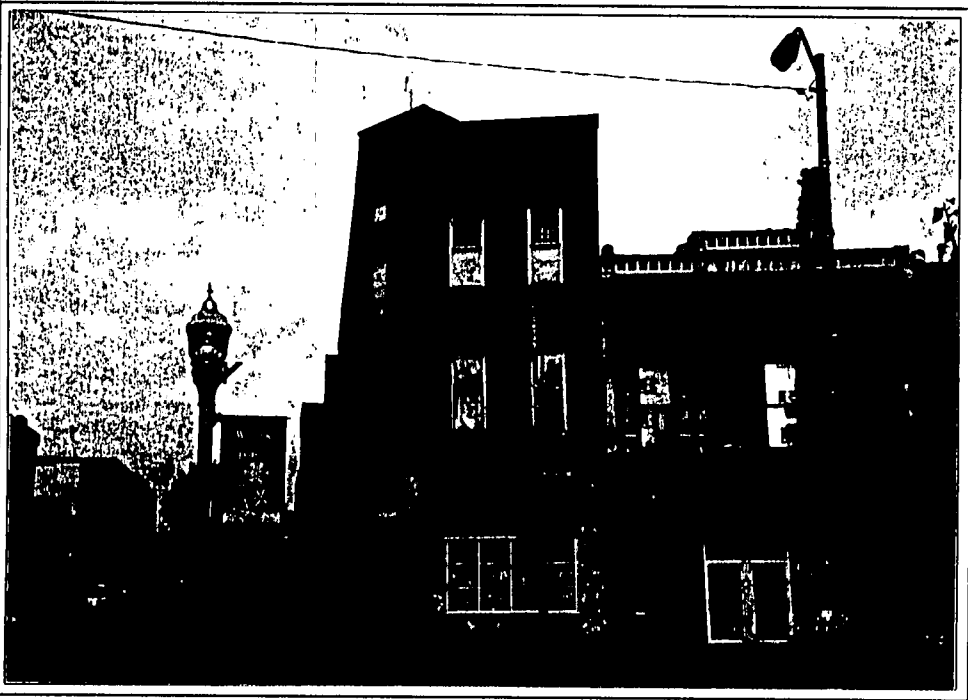
□

File No. DRA-SWARTZ



FRONT VIEW OF BUILDING

FACING NORTH



FRONT VIEW OF BUILDING

FACING NORTHWEST

SUBJECT PHOTO ADDENDUM

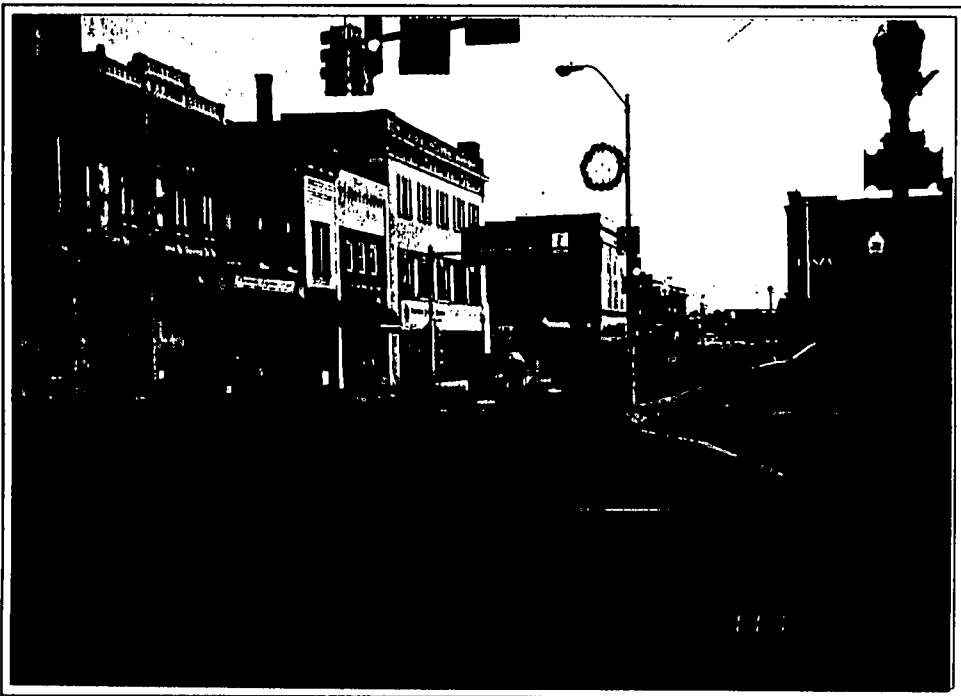
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File No. DRA-SWARTZ

SIDE VIEW OF BUILDING

FACING EAST



STREET SCENE

**FACING NORTHEAST
ALONG N. BRADY STREET**

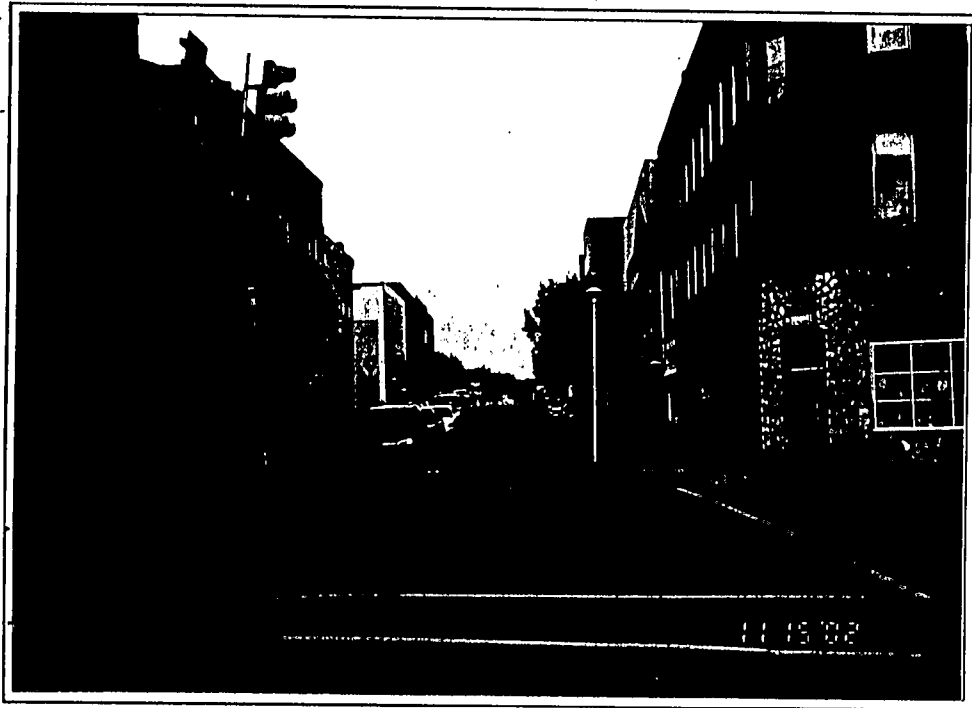
SUBJECT PHOTO ADDENDUM

□

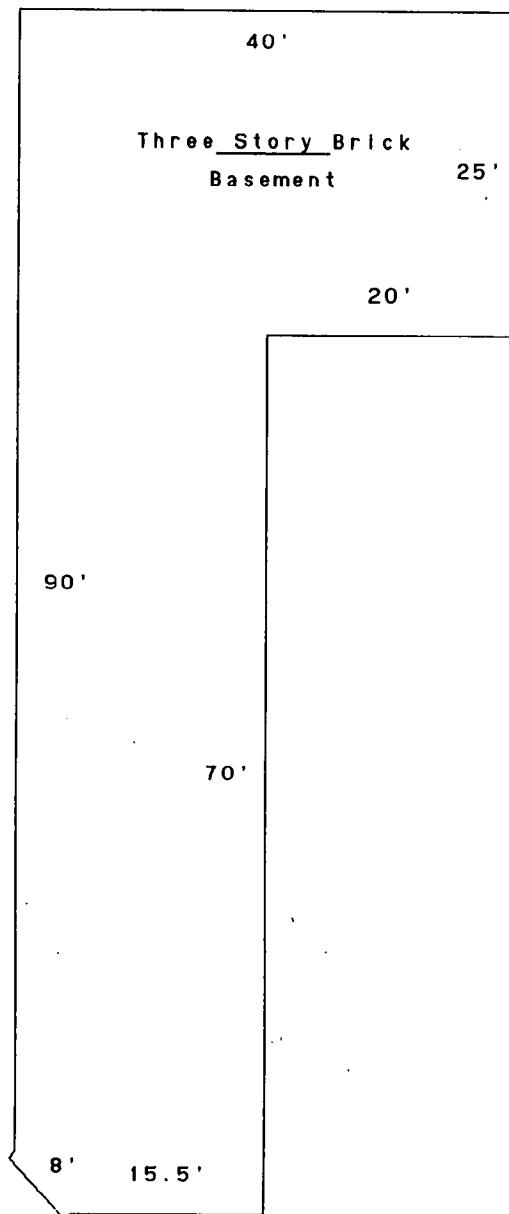
File No. DRA-SWARTZ

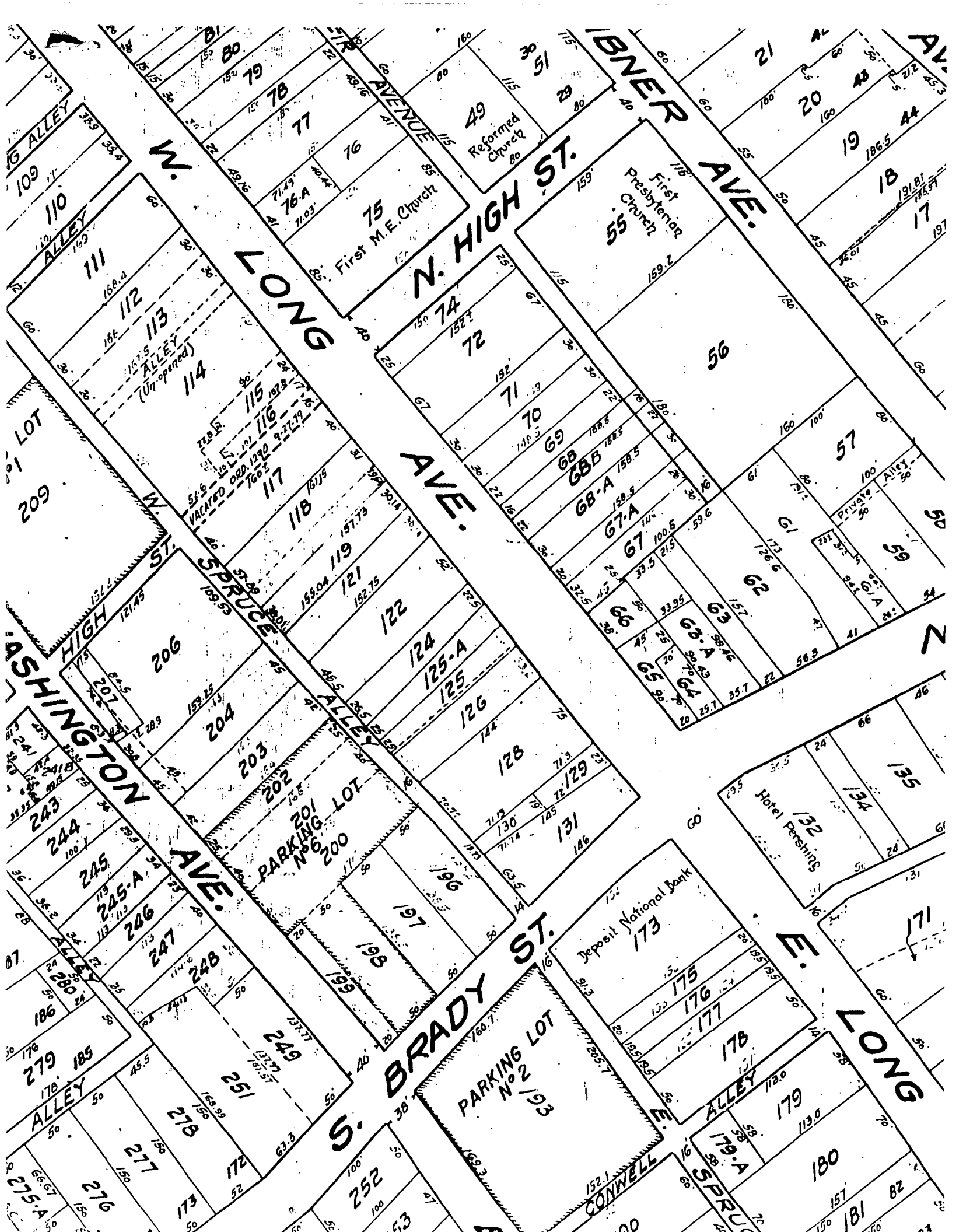
STREET SCENE

**FACING NORTHWEST
ALONG W. LONG AVENUE**

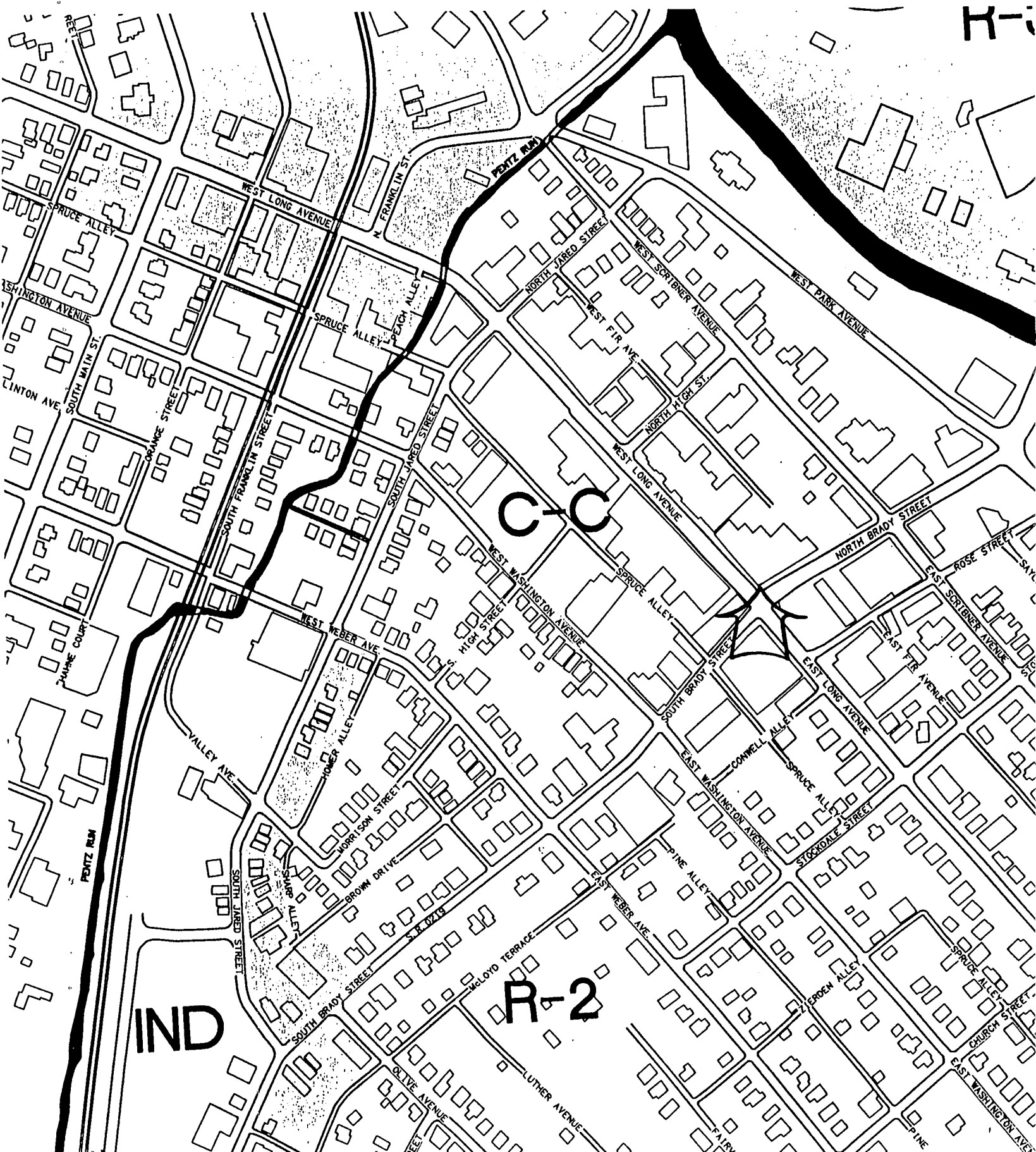


File No. DRA-SWARTZ

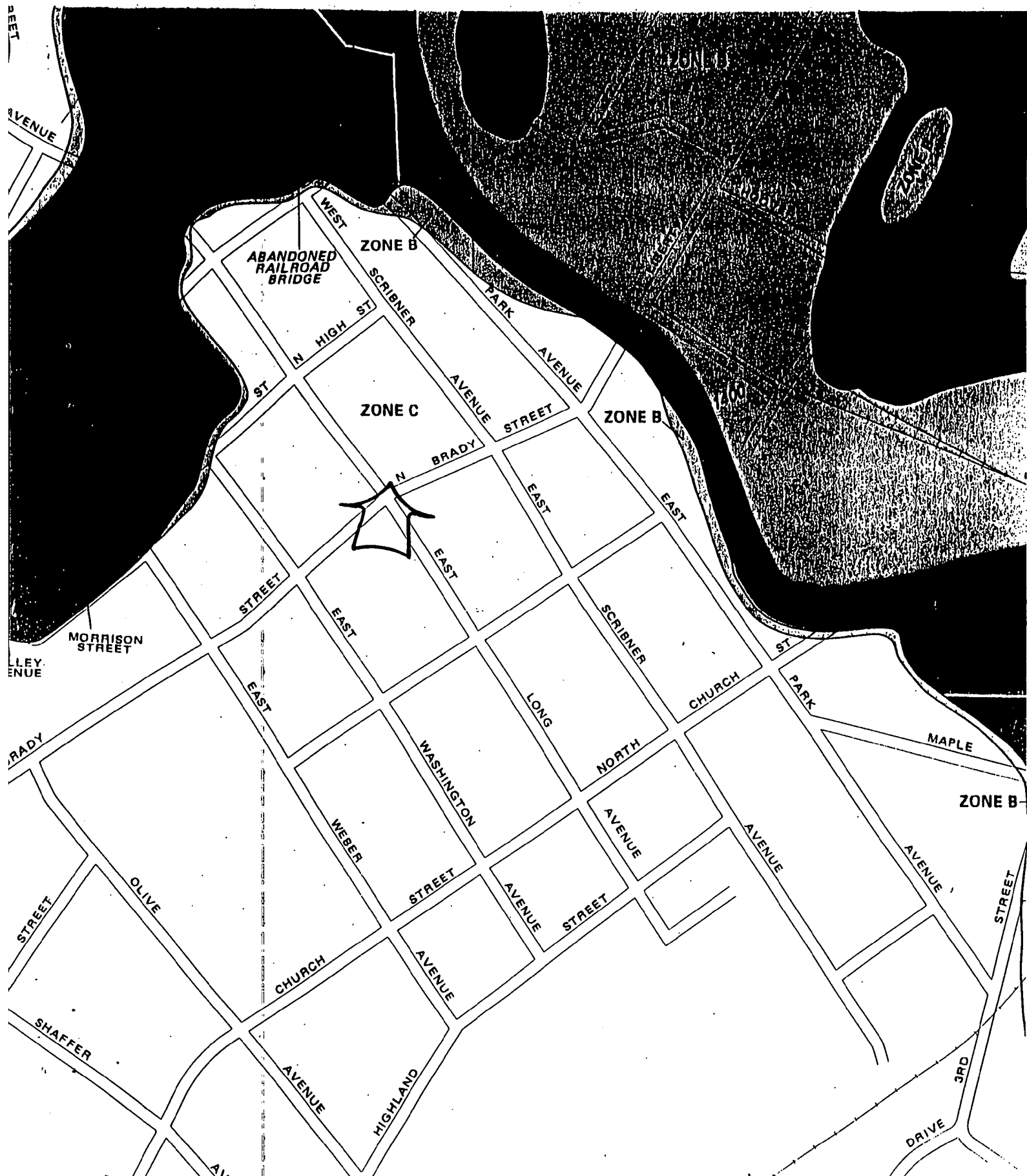




K-5



FLOOD MAP



WARRANTY DEED - 1988

PLANKENBORN CO., WILLIAMSPORT, PA.

County Parcel No. _____

This Deed,

MADE the 30th day of December
in the year nineteen hundred and ninety-two (1992)

BETWEEN GARY J. SIERZEGA And C. MICHAEL ROSIO, both of the City of DuBois,
Clearfield County, Pennsylvania, hereinafter called the grantors,

A
N
D

JAMES H. SWARTZ, single, of R. D. #1, Reynoldsville, Jefferson County, Pennsyl-
vania, hereinafter called the Grantee.

WITNESSETH, That in consideration of Sixteen Thousand
(\$16,000.00) Dollars,
in hand paid, the receipt whereof is hereby acknowledged, the said grantor s do hereby grant
and convey to the said grantee , his heirs and assigns

ALL that certain piece or parcel of land situate, lying and being in the City of
DuBois, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at a post at the corner of North Brady Street and West
Long Avenue; thence by line of West Long Avenue, 95 feet to a
post at the corner of lands of the S & T Bank, formerly The Union
Banking and Trust Company (formerly J. A. Vasbinder); thence by
lands of said S & T Bank, formerly The Union Banking and Trust
Company, 45 feet to post at lands now or formerly of Philip
Weaver; thence by line of lands now or formerly of Philip Weaver,
25 feet to a post; thence by lands now or formerly of Philip
Weaver and lands now or formerly of Annie Hoot (formerly W. I.
Shaw) 20 feet to a post at lands conveyed by W. I. Shaw and wife
to George R. Vosburg; thence by line of lands now or formerly
of said George R. Vosburg, 70 feet to a post at North Brady
Street; thence by line of North Brady Street 20 feet to a post
at corner of North Brady Street and West Long Avenue, the place
of beginning.

Being the same premises which vested in the Grantors herein by
deed of Horacio L. Sardou and Gary C. Crawford, dated January
19, 1987, recorded January 26, 1987 in Clearfield County Deeds
& Records Book 1135, page 590.

CONDITION OF IMPROVEMENTS

The subject's structure was considered to be in substandard condition due to deferred maintenance. This is evident from the exterior having several windows being broken, boarded up, and wood trim being in need of paint.

According to tenant, the majority of the building has gone without heat for approximately ten years. A small rented storefront is heated with a portable electric unit. Condition of furnace and plumbing, due to the lack of heat, could not be determined by the appraiser lacking expertise in these matters.

Upon inspection of the third floor, the appraiser found numerous pots and pans at top of staircase, apparently placed to collect water from roof leak. The ceiling in this area was partially destroyed with insulation visible. This is also the only area in the building where insulation was visible.

There have been some attempts to improve the electrical system in the structure. A new electrical box had been installed and some new wiring was visible in ceilings, although, ceilings required repairs from this installation.

In general, the structure's condition was considered substandard with extensive repairs and renovations required for total occupancy.

LOCATION

The subject is located within the City of DuBois, in its older commercial shopping district. This business area is presently in a transitional stage. The growth of outlying malls and shopping areas has reduced the retail appeal for the downtown. Parking in this area is limited, further reducing future retail potential. Even though in the past this area has undergone a program of revitalization, known as "the Renaissance", marketability and

value have merely stabilized.

In recent years, however, local investors have purchased various properties in this location in hopes of restoring the buildings and generating prosperity to this area of town. Work has been completed on several of these properties and additional parking has been made available. Property use has been altered to some degree with restaurants, specialty shops, and office space replacing more general retail establishments. Public opinion toward this change has been favorable.

PROPERTY HISTORY

According to the most recent recorded Deed and Clearfield County assessment office records, the subject property has not incurred a change in ownership within the past three years. Previous sale occurred on December 30, 1992 with grantor being Gary J. Sierzega and Michael Rosio, and the grantee being the present owner. Recorded consideration was \$16000.00.

PURPOSE OF THE APPRAISAL

The purpose of the appraisal is to estimate the Market Value of the fee simple interest of the subject property as of the effective date.

SCOPE OF THE APPRAISAL

The scope of the report included a physical inspection of the subject property, its neighborhood and its general geographic area, a search of the market area and outlying areas for relevant comparable data, verification of the data, and an analysis of the traditional approaches to value.

FUNCTION OF THE APPRAISAL

The function of this report is to assist the Redevelopment Authority of the City of DuBois with an estimate of the subject's market value for damages to be paid the property owner incurred through property condemnation.

PERSONAL PROPERTY

In this appraisal, no personal property, inventory, nor equipment was included, unless otherwise described in the building description section of this report. No value was included for the "Goodwill" which may contribute to the value of an on going business.

EFFECTIVE DATE OF VALUATION

The effective date of the appraisal is the date of the property's physical inspection which took place on November 15, 2002.

MARKETING TIME

Interest rates are presently competitive among area lenders and money is readily available to qualified buyers. Considering the subject's location, condition, and utility, marketing time will most likely exceed six months, although, should be limited to a one year period of time.

HIGHEST AND BEST USE

Highest and best use is that use of the land which, at the time of the appraisal, is the most profitable likely use of a property. It may also be defined as that available use and program of future utilization which produces the highest present land value; or that use which fully develops the site's potential. The American institute of Real Estate Appraisers defines Highest and Best Use as follows:

"The most profitable, likely use to which a property can be put. The opinion of such use may be based on the highest and most profitable continuous use to which the property is adapted and needed, or likely to be in demand in the reasonable near future. However, elements affecting value that depend on events or a combination of occurrences that, although in the realm of possibility, are not fairly shown to be reasonably probable, should be excluded from consideration. Also, if the intended use is dependent on an uncertain act of another person, the intention cannot be considered. That use of the land that may be reasonably expected to produce the greatest net return to land over a given period of time. That legal use that will yield to land the highest present value, sometimes called 'optimum use'."

In estimating Highest and Best Use, there are essentially four stages of analysis:

1. Possible use. What uses of the site are physically possible?
2. Permissible Use. What uses are permitted by zoning and deed restrictions on the site in question?
3. Feasible use. Which possible and permissible uses will produce a net return to the owner of the site?
4. Highest and Best Use. Among the feasible uses, which will produce the highest net return or highest present worth?

The highest and best use of the land, if vacant and available for use, may be different from the highest and best use of the improved property. To render a sound estimate of the highest and best use, the appraiser, in all cases, must consider the location and physical characteristics of the subject's site, condition and probable economic life of any existing improvements, character of the neighborhood and zoning, in light of the principles

of real property valuation.

Commercial utility of the property improved represents its highest and best use. This use is the most profitable, likely use which the property can attain, considering its location, zoning, and the physical characteristics of the structure. Continued use is reasonable, although, repairs to the structure are required due to deferred maintenance.

As an unimproved parcel of land, the property's utility would also be commercial. This is based on the premise that zoning accepts this use, its location is within a downtown commercial district, all municipal services and utilities are available to the site, and neighboring properties have similar utility. However due to the limited size of the site, it is unlikely that construction of a permanent structure would occur.

MARKET VALUE

Defined by the federal financial institutions' regulatory agencies means the most probable price, estimated in terms of money, which a property should bring in a competitive and open market under all conditions requisite to a fair sale, both buyer and seller each acting prudently and knowledgeably, and assuming that price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- 1) Buyer and seller are typically motivated;
- 2) Buyer and seller are well informed or well advised, and are acting in what they consider their own best interest;
- 3) A reasonable time is allowed for exposure in the open market;
- 4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- 5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

RECONCILIATION

In this appraisal, the Direct Sales Analysis was considered the only applicable technique in estimating the value of the subject property.

The Cost Approach is a method in which the value of a property is indicated by estimating the reproduction cost new of the improvements, subtracting therefrom all applicable depreciation and adding the estimated value of the site, derived from market data. This method of valuation is reliable when improvements are relatively new, lacking substantial accrued depreciation which is estimated. This technique often sets the upper limit of value with replacement new an alternative once price is exceeded.

The subject's structure is that of an older building considered to be in substandard condition being adversely affected from deferred maintenance. In order to utilize the entire, or even the majority of the building for profitable purposes, extensive repairs and renovations would be required. Reducing the reliability and use of this technique is two fold. Estimating the reproduction cost new is nearly impossible due to the materials used and the original workmanship found in the structure. Secondly, the degree of applicable accrued depreciation is substantial. Since this depreciation is estimated, variations in the depreciation considered applicable could vastly distort the property's indicated value. Therefore, the Cost Approach was not used in this report.

In this appraisal, use of the Income Approach was also discounted. This method of valuation is based on the premise that a property's value is derived from the net income it can generate in terms of rent. A small portion of the building's first floor is leased.

However, the larger first floor storefront and the entirety of the upper floors are owner occupied, lacking historical rent. This approach can be considered, even though the structure is owner occupied, by estimating applicable rent derived from a market analysis of rents paid for comparable space. In the capitalization process, the appraiser assumes the property is leasable in its present condition. In the event repairs were required, cost to rehabilitate the structure into a rentable condition would be subtracted from the indicated value. Due to the degree of physical and functional inadequacies affecting this property which prevents immediate occupancy by a tenant(s), any estimate of cost to cure would be merely conjecture by the appraiser. Therefore, this method of valuation was also deleted from this report.

The Direct Sales Analysis was considered the only applicable means of estimating the value of the subject property. Value of a property can be estimated by comparing the subject to others of similar design and utility that have sold in the recent past. To indicate a value for the property, adjustments are made to the comparable for variations with the subject.

In this analysis, the appraiser analyzed five properties located within the downtown commercial district. All properties were reduced to a price per square foot of building and adjustments were made to liken these properties to the subject.

Numerous recent sales of downtown commercial properties exist, although, most of these sales involve buildings that have experienced varying degrees of renovation. Being utilitarian to a prospective buyer, these properties sell for between \$10 to \$15 per square foot when considering land and improvements. The appraiser's past experience

analyzing such properties has revealed that the upper range of value is attributable primarily to the cost of renovations made. Even so, cost incurred in the remodeling process is only partially recovered through property sale.

Sales of commercial properties requiring repairs or alternate use are more scarce. This required use of older sales in order to have sufficient data for comparison.

Comparable #1 & #3 are properties previously used as private social clubs. Both were purchased for alternate use which required extensive renovations. The first is presently being remodeled in its entirety, with the latter having renovations made as time and money permits. Sale #2 used for comparison represents the highest indication of value. This is due to the fact that this is the only property used as a comparable sold while occupied and retaining most of its tenants after transfer. The property's physical condition was considered merely average, being repaired when necessary, although, lacking extensive renovation. Comparable #4 was a property which was vacant for an extended period of time prior to being sold. Renovations made after sale totally altered the physical condition and utility of the building. The final sale used is that of a property which eventually encountered razing of the building. At time of sale, first floor was in above average condition and used as a retail store. Upper floors had suffered from deferred maintenance offering minimal utility.

It is to be noted that the estimated value of the sites used in this analysis, with exception of comparable #4, was based on the market analysis of recent lot sales which was also used in estimating the subject's site value. Estimated value of Comparable #4's site was made from an analysis of larger sites since this parcel offered superior utility due to its size and complimented the renovated building by offering off street parking.

It is to be noted that no one sale was a conclusive indicator of the subject's value. The adjusted price per square of all comparables used results in a range of value from \$.58 to \$4.49 per square foot. The upper most indication of value, however, was that of the building occupied at time of sale and in superior condition to that of the subject property. Therefore, the appraiser eliminated its indication from analysis. Since this property was not used, the appraiser also discounted the lowest indication. As such, the range of value was now reduced from \$.61 to \$2.74 per square foot. Utilizing a mean indication from these three sales revealed \$1.49, rounded to \$1.50 per square foot. Applied to the subject's size above grade and adding the estimated site value, an indicated property value of \$16500 appears appropriate as of the date of this appraisal. The property was appraised in "as is" condition as of November 15, 2002.

SITE ANALYSIS

COMPARABLE #1

Parcel	7-2-1-209, City of DuBois
Location	W. Washington Avenue
Grantor	City Of DuBois
Grantee	Shuttleworth
Sale Date	1/02
Sale Price	\$41175
Inflationary Adjusted Price	\$42000
Lot Size	27954 S.F.
Indicated Price/S.F.	\$1.50
Corner Lot Adjustment	+.53
Adjusted Price/S.F.	\$2.03

COMPARABLE #2

Parcel	7-2-1-124/125, City of DuBois
Location	West Long Avenue
Grantor	Wingert
Grantee	DuBois Redevelopment Authority
Sale Date	8/27/01
Sale Price	\$25000
Inflationary Adjusted Price	\$25750
Lot Size	11460 S.F.
Indicated Price/S.F.	\$2.25
Corner Lot Adjustment	+.79
Adjusted Price/S.F.	\$3.04

COMPARABLE #3

Parcel	7-2-1-89/90/90A, City of DuBois
Location	West Long Avenue
Grantor	City Of DuBois
Grantee	Palumbo
Sale Date	2/12/02
Sale Price	\$12144
Inflationary Adjusted Price	\$12370
Lot Size	8900 +/- S.F.
Indicated Price/S.F.	\$1.39
Corner Lot Adjustment	\$.49
Adjusted Price/S.F.	\$1.88

SITE ANALYSIS

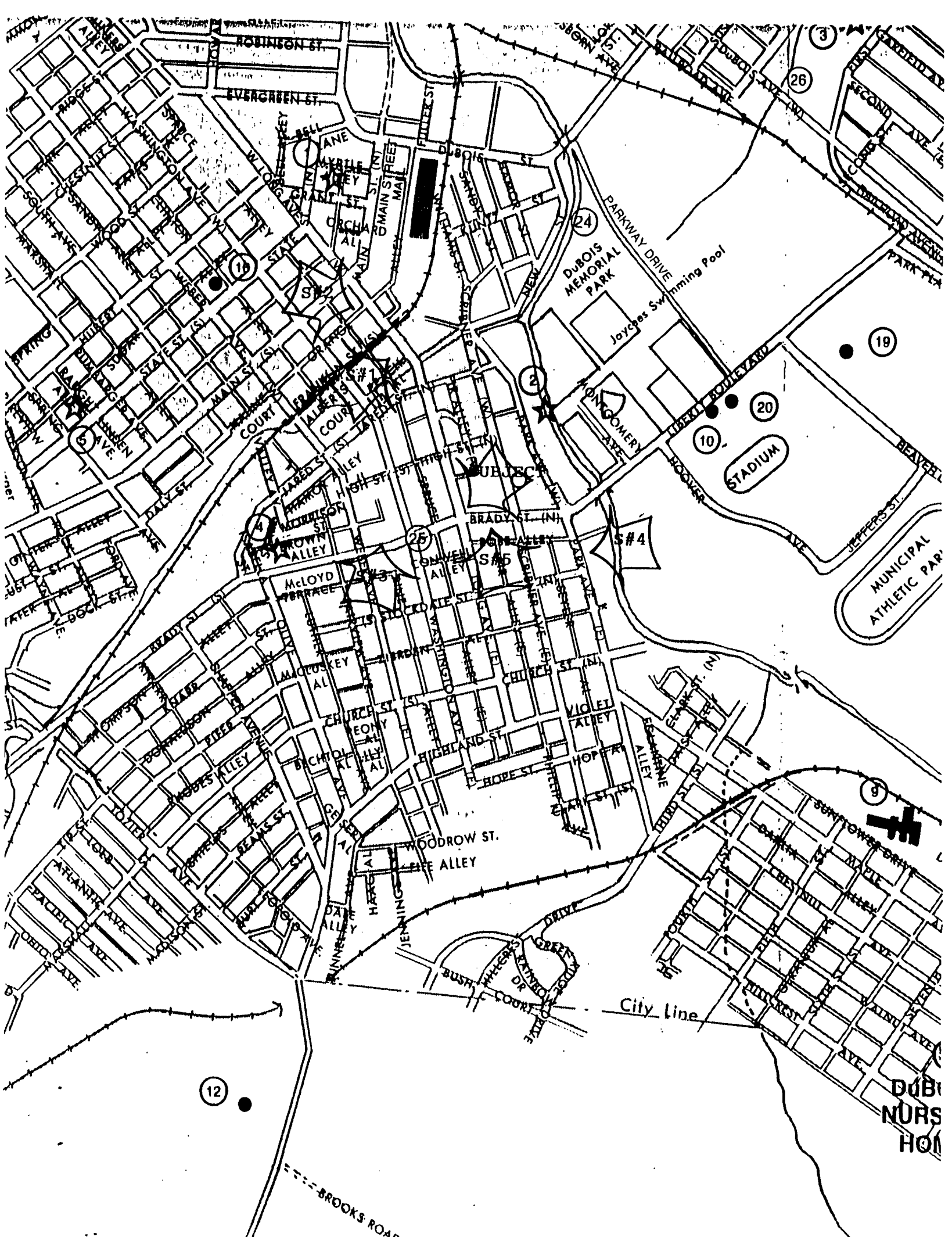
Indicated Price Per Square Foot From Analysis	\$2.32
Subject's Lot Size	2400 S.F.
Indicated Site Value	\$5570
Say	\$5600

DIRECT SALES ANALYSIS

COMPARABLE	#1	#2	#3
Address:	229 W. Long DuBois, PA	331 W. Long DuBois, PA	132 S. Brady DuBois, PA
Sale Price:	\$25000	\$65000	\$30000
Sale Date:	5/18/01	2/16/01	7/10/98
Inflationary Adjusted Price:	\$25750	\$66790	\$32700
Estimated Site Value:	\$12500	\$6600	\$21000
Residual Building Value:	\$13250	\$60190	\$11700
Building Size Above Grade:	21618 S.F.	6704 S.F.	14940 S.F.
Indicated Price/S.F.:	\$.61	\$8.98	\$.78
Adjustments			
Condition:	----	-4.49	-.20
Utility (Parking):	----	----	----
Adjusted Price/S.F.:	\$.61	\$4.49	\$.58

DIRECT SALES ANALYSIS

COMPARABLE	#4	#5
Address:	25 E. Park Ave. DuBois, PA	20 N. Brady DuBois, PA
Sale Price:	\$80000	\$35000
Sale Date:	5/1/98	12/4/96
Inflationary Adjusted Price:	\$87200	\$39200
Estimated Site Value:	\$45000	\$16400
Residual Building Value:	\$42200	\$22800
Building Size Above Grade:	11540 S.F.	15360 S.F.
Indicated Price/S.F.	\$3.66	\$1.48
Adjustments		
Condition:	-----	-----
Utility (Parking):	-.92	-.37
Adjusted Price/S.F.	\$2.74	\$1.11
Subject's Square Footage Above Grade		7176 S.F.
Mean Indicated Price Per S.F. (Rounded):		\$1.50
Indicated Value Of Building:		\$10760
Estimated Site Value:		\$5600
Indicated Property Value From Direct Sales Analysis:		\$16360
Say:		\$16500



DIRECT SALES ANALYSIS

Comparable #1

Location: 229 W. Long Avenue, DuBois, PA
Sale Date: 5/18/01
Sale Price: \$25000
Zoning: Commercial Highway
Grantor: VFW
Grantee: Palumbo
Lot Size: 49.7 X 180 = 8946 S.F.
Building: Three Story Masonry
Building Size: 21620 S.F.
Building Age/Condition: 100+/- Years - First Floor - Fair
Second Floor - Fair
Building Use: Social Club

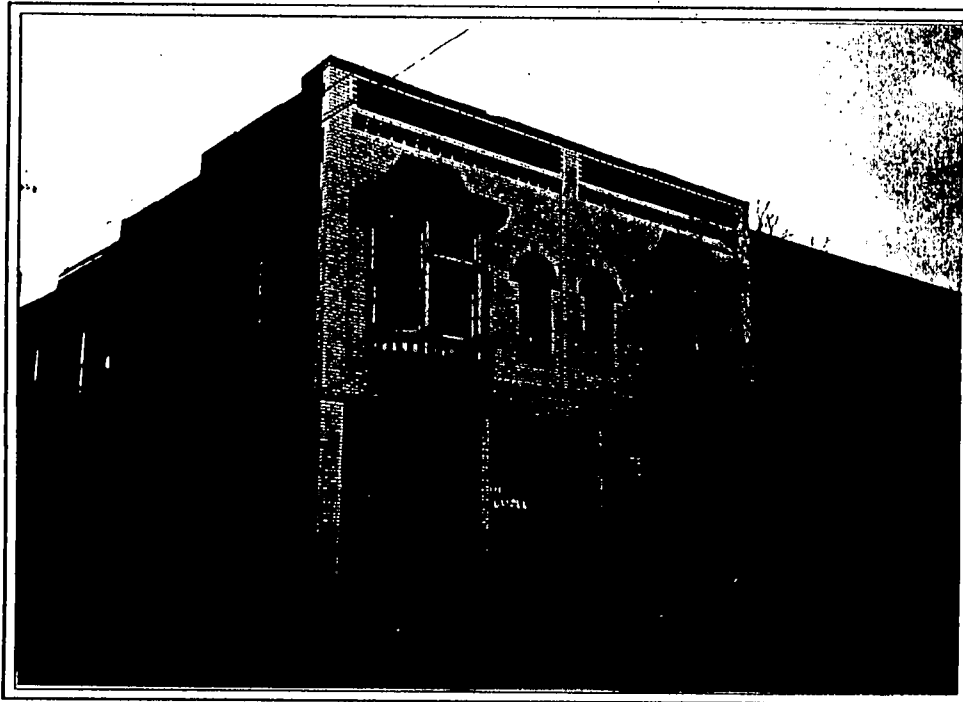


*Photo taken after exterior renovations were made

DIRECT SALES ANALYSIS

Comparable #2

Location:	331,333, 335 W. Long Avenue, DuBois, PA
Sale Date:	2/16/01
Sale Price:	\$65000
Zoning:	Commercial Highway
Grantor:	Stoyek
Grantee:	Pringle
Lot Size:	44.5 X 106 = 4717 S.F.
Building:	Two Story Masonry
Building Size:	6704 S.F.
Building Age/Condition:	100+/- Years - First Floor - Below Average Second Floor - Below Average
Building Use:	Retail Storefront & Apartments



DIRECT SALES ANALYSIS

Comparable #3

Location:	132 S. Brady Street, DuBois, PA
Sale Date:	7/10/98
Sale Price:	\$30000
Zoning:	Commercial Central
Grantor:	Lindberg/KRS
Grantee:	Brosky
Lot Size:	100 X 150 = 15000 S.F.
Building:	Three Story Masonry
Building Size:	14940 S.F.
Building Age/Condition:	100+/- Years/Fair
Building Use:	Social Club/Apartments

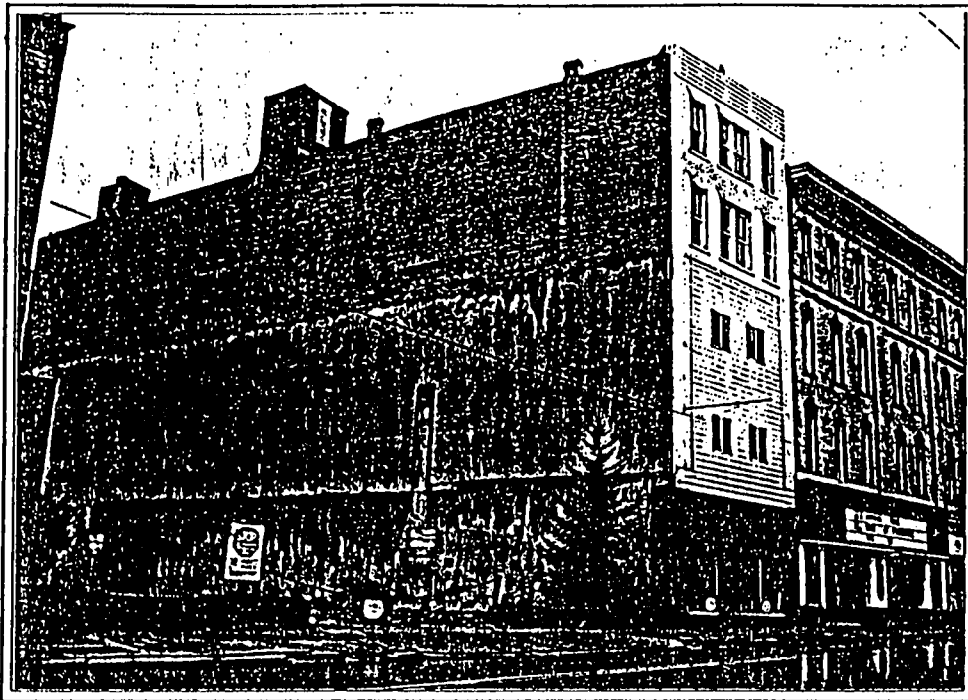


*Photo taken after some exterior renovations were made

DIRECT SALES ANALYSIS

Comparable #5

Location:	12 N. Brady Street, DuBois, PA
Sale Date:	12/4/96
Sale Price:	\$35000
Zoning:	Commercial Central
Grantor:	Way
Grantee:	Rice
Lot Size:	90' X 130' = 11700 S.F.
Building:	Five Story Masonry
Building Size:	15360 S.F.
Building Age/Condition:	100+/- Years/Fair
Building Use:	Retail Store/Storage



*Photo not available. Building razed after sale

QUALIFICATIONS OF APPRAISER

ROBERT J. FLECK

Graduated with a B.S. Degree in Business from the Pennsylvania State University

Affiliated with a national appraisal firm from 1972 to 1979 in the position of residential review appraiser and appraiser of commercial real property.

Licensed as a salesperson in the state of Pennsylvania since 1979.

Licensed as a Real Estate Broker in 1983, #RB-044066L.

Certified as Residential Appraiser 12/2/91 #RL-000651-L

Certified as General Appraiser 1/3/92 #GA-000574-L

Broker/Owner of Bomar Real Estate Appraisal Services.

Member of the Local, State, and National Association of Realtors.

President of the Tri-County Board of Realtors. (1988-1989, and 1989-1990)

Vice-President of the Tri-County Board of Realtors. (1987, 1985, and 1984)

Past Director of the Tri-County Board of Realtors.

Past Director of the Clearfield-Jefferson Association of Realtors

Director for the Pennsylvania Association of Realtors. (1988-1990)

Graduate Realtors Institutes (G.R.I.)

Member of the Council of Pennsylvania Real Estate Appraisers.

Approved Instructor for the Pennsylvania Real Estate Commission.
License Number RI-000801L.

Past Instructor for the Myra Gress School of Career Development.

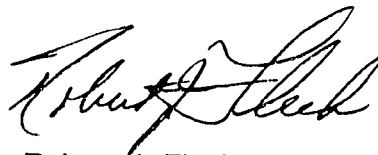
Approved appraiser for the Pennsylvania Department of Transportation.

Qualified as Expert Witness in Courts within Clearfield/Elk/Jefferson Counties of PA

mortgagee or its successors and assigns, mortgage insurers, consultants, professional appraisal organizations, any state or federally approved financial institutions, any department, agency, or instrumentality of the United States or any state or the District of Columbia, without the previous written consent of the Appraiser; nor shall it be conveyed by anyone to the public through advertising, public relations, news, sales, or other media, without the written consent and approval of the Appraiser.

- 10) On all appraisals subject to satisfactory completion, repairs, or alterations, the appraisal report and value conclusions are contingent upon completion of the improvements in a workmanlike manner.

- c) The appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan.

A handwritten signature in black ink, appearing to read "Robert J. Fleck". The signature is stylized with a large, looping initial "R" and a cursive "Fleck".

Robert J. Fleck
PA Certified General
Real Estate Appraiser
Certificate # GA-000574-L

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,

Condemnor

vs.

JAMES H. SWARTZ,

Condemnee

No. 00-591-CD

Type of Case: **CONDEMNATION**

Counsel of Record for this Party:

J. RICHARD MATTERN, II, ESQ.

Attorney ID# 06817

CHAIRMAN, BOARD OF VIEWERS

211 East Pine Street

Clearfield, Pa., 16830

(814) 765-6416

TYPE OF PLEADING :
OBJECTIONS TO REPORT and
ERRORS IN APPRAISAL

Filed on Behalf of:

JAMES H. SWARTZ,

COUNSEL OF RECORD FOR THIS PARTY

JAMES SWARTZ

127 SOUTH BRADY ST

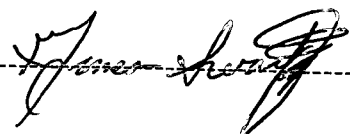
DU BOIS PA. 15801

FILED

NOV 03 2003

William A. Shaw
Prothonotary/Clerk of Courts

filed on behalf of



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8. THE CITY OF DU BOIS AND THE REGIONAL DEVELOPMENT AUTHORITY BROKE MY CIVIL RIGHTS BY TAKING A BUILDING IN USE AND NOT FOLLOWING STATE LAWS AND GUIDELINES.

***** INVOICE *****

April 30, 2003

REAL ESTATE APPRAISAL
James Swartz Property
2 West Long Ave.
DuBois, PA 15801

FOR: James Swartz
2 West Long Ave.
DuBois, PA. 15801

BY: Richard J. Provost, IFAS
302 East Pine Street
Clearfield, Pa. 16830

Real Estate Appraisal : 2 West Long Ave.
DuBois, PA 15801
Clearfield, County, PA.
Commercial Property.

Appraisal Fee: \$2,000.00 (not including expert testimony)
It would seem an offer of \$16,000.00 is below market value.

PLEASE MAKE CHECK PAYABLE TO:

PROVOST REAL ESTATE APPRAISERS
302 EAST PINE STREET
CLEARFIELD, PA. 16830

"THANK YOU FOR YOUR BUSINESS"

TERMS: 1.5% interest on any balance due over 30 days.

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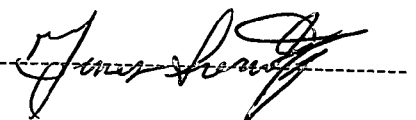
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8. THE CITY OF DU BOIS AND THE REGIONAL DEVELOPMENT AUTHORITY BROKE MY CIVIL RIGHTS BY TAKING A BUILDING IN USE AND NOT FOLLOWING STATE LAWS AND GUIDELINES.

***** INVOICE *****

April 30, 2003

REAL ESTATE APPRAISAL
James Swartz Property
2 West Long Ave.
DuBois, PA 15801

FOR: James Swartz
2 West Long Ave.
DuBois, PA. 15801

BY: Richard J. Provost, IFAS
302 East Pine Street
Clearfield, Pa. 16830

Real Estate Appraisal : 2 West Long Ave.
DuBois, PA 15801
Clearfield, County, PA.
Commercial Property

Appraisal Fee: \$2,000.00 (not including expert testimony)

It would seem an offer of \$16,000.00 is below market value.

PLEASE MAKE CHECK PAYABLE TO:

PROVOST REAL ESTATE APPRAISERS
302 EAST PINE STREET
CLEARFIELD, PA. 16830

"THANK YOU FOR YOUR BUSINESS"

TERMS: 1.5% interest on any balance due over 30 days.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,

Condemnor

vs.

JAMES H. SWARTZ,

Condemnee

No. 00-591-CD

Type of Case: **CONDEMNATION**

Counsel of Record for this Party:

J. RICHARD MATTERN, II, ESQ.

Attorney ID# 06817

CHAIRMAN, BOARD OF VIEWERS

211 East Pine Street

Clearfield, Pa., 16830

(814) 765-6416

TYPE OF PLEADING :
OBJECTIONS TO REPORT and
ERRORS IN APPRAISAL

Filed on Behalf of:

JAMES H. SWARTZ,

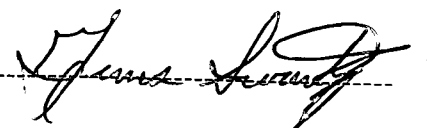
COUNSEL OF RECORD FOR THIS PARTY

JAMES SWARTZ

127 SOUTH BRADY ST

DU BOIS PA. 15801

filed on behalf of



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

: NO. 00 - 591 - CD

:
: Type of Case: Condemnation
:
:
:
:
:

VS

JAMES H. SWARTZ,
Condemnee

CONTENTS LISTING OF PAGES

1. ERRORS AND OBJECTIONS TO REPORT OF VIEWERS
2. COPY OF STATEMENT

ERRORS AND OBJECTIONS TO REPORT OF VIEWERS

1. IN MY OPINION WHEN ONLY ONE PERSON HAS GOTTEN ALL THE GOVERNMENT BUSINESS REFURBISHING GRANTS FOR ALL THE BUILDINGS IN DOWNTOWN AREA OF DU BOIS THAT HE WANTS AND THE REDEVELOPMENT AUTHORITY LIED TO ME AND SAID THE MONEY WAS NOT THERE WHEN AS HERESAY ONE PERSON GOT OVER A TEN YEAR PERIOD GOT OVER 800,000 in GOVERNMENT GRANTS FOR BUILDINGS IN THE DOWNTOWN DU BOIS AREA AND THESE GRANTS ARE FOR BETWEEN FIFTY TO ONE HUNDRED THOUSAND DOLLARS PER BUILDING THIS AS HELP IN THE USE OF THE BUILDING WAS NOT TAKEN INTO ACCOUNT IN THE APPRAISAL .

2. CLEARLY IN MY OPINION WHEN LANCE MARSELL WORKED WITH MR RICE AND KNEW THE MONEY WAS THERE HE SHOULD HAVE HELPED ME GET SOME OF IT FOR THE BUILDING WHEN I OWNED IT BUT SOME HIDDEN KIND OF PARTNER SHIP SEEMS TO BE HERE

3. THE FACT THAT THERE WERE TWO RENTABLE STORE UNITS ON THE FIRST FLOOR WAS NOT AS INCOME TAKEN INTO ACCOUNT .

4 THE NATIONAL KNOWN CARTON SHEETS REALESTATE COURSE SAYS THAT A PIECE OF PROPERTY GOES UP IN VALUE ABOUT FIVE PERCENT A YEAR NOT STAYS THE SAME.

5. THERE IS A NEW SIDEWALK OUTSIDE THE BUILDING AND A NEW PARKING LOT ON THE OTHER SIDE OF THE STREET FROM IT THESE WERE NOT THERE WHEN I GOT THE BUILDING THESE ADD TO THE USE AND VALUE OF THE PROPERTY.

6. THREE OF THE WINDOWS ON THE FIRST FLOOR WERE REPLACED WITH SMALLER SECTIONS OF GLASS DUE TO VANDAL PROBLEMS IN THE AREA., ONE WITH A NEW METAL FRAME AT A COST OF ABOUT 1,495.00 DOLLARS

7. THE ONE FRONT CORNNOR OF THE BUILDING BETWEEN BRADY ST AND WEST LONG AVE HAD BEEN REMOVED AND REPAIRED AT A COST OF \$ 3,500.00

8. TWO NEW SETS OF ELECTRIC WIRE ING WERE PUT INTO THE BUILDING ONE FOR AN APARTMENT ON THE THIRD FLOOR ONE FOR AN INTERNET OFFICE COMPLETE WITH A SEPERATE FUSE BOX ON THE SECOND FLOOR. AS WELL AS ALL OLD WIRE ING ON THE FIRST SECOND AND THIRD FLOOR BEING REMOVED AND WIRE ING ON THE FIRST FLOOR BEING PUT INTO CONDUIT FOR BOTH STORES ON THE FIRST

FLOOR , THESE IMPROVEMENTS COST ABOUT 1,900.00 IN TOTAL .

7. ROOF REPAIRS WERE DONE AT A COST OF ABOUT 1,700 BY PAT OGGERSHAW ABOUT 2 MONTHS LATER I WAS UP ON THE THIRD FLOOR AND AND WAS STARTELED BY HEARING FOOTSTEPS FROM SOMEONE ON THE ROOF ABOVE ME I YELLED AND WENT OUT TO LOOK IN MY OPINION IT LOOKED LIKE LANCE GOING DOWN THE BACK ALLEY LEAVING MY BUILDING THE NEXT DAY WE HAD A RAINSTORM I HAD EIGHT NEW ROOF LEAKS EXPLAIN THIS
!! WELL?"?????

8. THE CITY OF DU BOIS AND THE REGIONAL DEVELOPMENT AUTHORITY BROKE MY CIVIL RIGHTS BY TAKING A BUILDING IN USE AND NOT FOLLOWING STATE LAWS AND GUIDELINES.

***** INVOICE *****

April 30, 2003

REAL ESTATE APPRAISAL
James Swartz Property
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
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CONDEMNOR

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00 - 591 - CD,,

: Type of Case: Condemnation

: Type of Pleading:

Notice of Service

: Filed on Behalf of: Condemnee.

: Counsel of Record for this Party:

: James H. Swartz

: 2 West Long Avenue

: DuBois Pa 15801

: (814) 375-4453

filed on behalf of

James H. Swartz

FILED

NOV 05 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

VS

JAMES H. SWARTZ,
Condemnee

: NO. 00-591-CD

: Counsel of Record for this Party:

Rick Mattern

211 east Pine St.

Clearfield, Pa 16830

: type of case : Condemnation -viewing appraisal

RESPECTFULLY SUBMITTED

BY

COUNSEL OF RECORD FOR THIS PARTY
CONDEMNEE, APPELLANT

James H. Swartz

127 South Brady st

DU BOIS, PA. 15801

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the legal brief objections and errors in appraisal
has been sent by certified mail to Rick Mattern 211 East Pine st, Clearfield, Pa. 16830

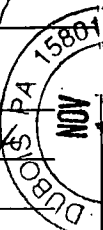
On this 1 st. day of November, 2003

BY

Counsel of Record for this party
Condemnee, Appellant

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Clearfield Pa	
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

: NO. 00 - 591 - CD

: Counsel of Record for this Party:

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211 east Pine St.

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: type of case : Condemnation -viewing appraisal

VS

JAMES H. SWARTZ,
Condemnee

RESPECTFULLY SUBMITTED

BY

COUNSEL OF RECORD FOR THIS PARTY
CONDEMNEE, APPELLANT

James H. Swartz

127 South Brady st

DU BOIS, PA. 15801

CERTIFICATE OF SERVICE

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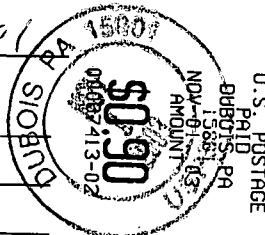
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BY

Counsel of Record for this party
Condemnee, Appellant

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10/31/04
NOV 05 2003

left in file, no ret. env

JB
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

vs

JAMES H. SWARTZ,
Condemnee

: NO. 00-591-CD,,

: Type of Case: Condemnation

: Type of Pleading:

Notice of Service

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: Counsel of Record for this Party:

: James H. Swartz

: 2 West Long Avenue

: DuBois Pa 15801

: (814) 375-4453

filed on behalf of

James H. Swartz

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

NOV 05 2003

Attest.

L. J. [Signature]
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

V3

JAMES H. SWARTZ,
Condemnee

: NO. 00-591-CD

: Counsel of Record for this Party:

: Rick Mattern

: 211 east Pine St.

: Clearfield, Pa 16830

: type of case :Condemnation -viewing appraisal

: RESPECTFULLY SUBMITTED
: BY *James Swartz*

: COUNSEL OF RECORD FOR THIS PARTY
: CONDEMNEE, APPELLANT

: James H. Swartz

: 127 South Brady st

: DU BOIS, PA. 15801

CERTIFICATE OF SERVICE

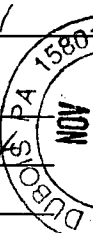
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On this 1 st. day of November, 2003

BY

James Swartz
Counsel of Record for this party
Condemnee, Appellant

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<i>Clearfield Pa</i>	
<i>16830</i>	



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
CONDEMNOR

: NO. 00-591-CD

: Counsel of Record for this Party:

Rick Mattern

211 east Pine St.

Clearfield, Pa 16830

: type of case : Condemnation -viewing appraisal

VS

JAMES H. SWARTZ,
Condemnee

RESPECTFULLY SUBMITTED

BY

COUNSEL OF RECORD FOR THIS PARTY
CONDEMNEE, APPELLANT

James H. Swartz

127 South Brady st

DU BOIS, PA. 15801

CERTIFICATE OF SERVICE

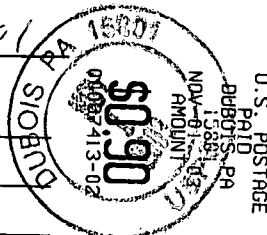
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16830 On this 1 st. day of November, 2003

BY

Counsel of Record for this party
Condemnee, Appellant

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Clearfield Courthouse	
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Clearfield Pa. 16830	



CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JAMES H. SWARTZ,	:	NO. 00 - 591 - CD
Condemnee	:	
	:	
vs	:	Type of Case: Condemnation
	:	
REDEVELOPMENT AUTHORITY OF THE	:	Type of Pleading: Petition to Dismiss
CITY OF DUBOIS,	:	Condemnee's Objections to Report and
Petitioner/Condemnor	:	Errors in Appraisal; or to Confirm the
	:	Report of Viewers
	:	
	:	Filed on Behalf of: Defendant/Condemnor
	:	
	:	Counsel of Record for this Party:
	:	
	:	Michael P. Yeager, Esq.
	:	Supreme Court No.: 15587
	:	
	:	P.O. Box 752
	:	110 North Second Street
	:	Clearfield, PA 16830
	:	
	:	(814) 765-9611

FILED

NOV 24 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES H. SWARTZ,	:	
Condemnee	:	
	:	
vs	:	No. 00-591-CD
	:	
REDEVELOPMENT AUTHORITY OF	:	
THE CITY OF DUBOIS,	:	
Petitioner/Condemnor	:	

**PETITION TO DISMISS CONDEMNEE'S
OBJECTIONS TO REPORT AND ERRORS IN APPRAISAL; OR
TO CONFIRM THE REPORT OF VIEWERS**

COMES NOW, the Redevelopment Authority of the City of DuBois, ("Petitioner") by its undersigned counsel and moves your Honorable Court to dismiss Condemnee's Objections to Report and Errors in Appraisal; or in the alternative to confirm the Report of Viewers, representing the following:

1. The Petitioner is the Redevelopment Authority of the City of DuBois with its principal place of business located at P.O. Box 171, DuBois, PA 15801.
2. The Respondent is James H. Swartz with a principal residence located at 127 South Brady Street, DuBois, PA 15801 ("Condemnee").
3. Petitioner incorporates Paragraphs 2 through 21 in its previously-filed Petition for the Appointment of Board of Viewers in the above-captioned matter as if the same were more fully set forth at length herein.
4. By Order dated July 1, 2003, the Board of Viewers was appointed to hear and determine the above-captioned matter.
5. The View and Hearing were scheduled by the Viewers for August 22, 2003.

6. A Notice of View and Hearing was forwarded to the Condemnee on July 14, 2003 and received by the Condemnee on July 17, 2003 as is confirmed by the ultimate Report of the Viewers.

7. The View and Hearing were conducted as scheduled on August 22, 2003.

8. On September 24, 2003 and again on September 26, 2003, the Viewers forwarded their Notice of Filing Report of Viewers indicating the intent to file that Report on October 13, 2003.

9. As previously indicated, on October 13, 2003, the Viewers filed their Report.

10. On November 3, 2003, Condemnee filed a document purported to be "Objections to Report and Errors in Appraisal".

11. By Order dated October 13, 2003, your Honorable Court acknowledged filing of the Report of Viewers and approved their Findings of Fact and Conclusions together with setting compensation for those Viewers.

COUNT I

12. Petitioner incorporates its previous Paragraphs 1 through 11 as though the same were more fully set forth at length herein.

13. Condemnee's Objections to Report and Errors in Appraisal do not comply with the procedure outlined in the Eminent Domain Code of 1964, Sp. Sess., June 22 P.L. 84 (26 P.S. §1-101 et seq.) ("Code") with regard to appeals from the decision of Viewers (26 P.S. §1-515 and 1-516 et seq.) in the following particulars:

(a) The Appellant and Appellee are not named.

(b) There is no brief description or identification of the property.

(c) The only reference as to the proceeding is contained within the caption and the Report of Viewers is not specifically identified.

(d) The Condemnee did not serve a copy of this purported Objections to Report and Errors in Appraisal on all of the parties within five days of filing the same. On the contrary, Condemnee only served a copy upon the Chairman of the Board of Viewers.

WHEREFORE, Petitioner requests that the Objections to Report and Errors in Appraisal filed by the Condemnee be dismissed; or in the alternative:

COUNT II

14. Petitioner incorporates its previous Paragraphs 1 through 13 as though the same were more fully set forth at length herein.

15. The Code and particularly Section 1-517 thereof indicates as follows relative to disposition of appeals:

(a) "All objections, other than to the amount of the award, raised by the appeal shall be determined by the court preliminarily. The court may confirm, modify, change the report or refer it back to the same or other viewers. A decree confirming, modifying or changing the report shall constitute a final order.

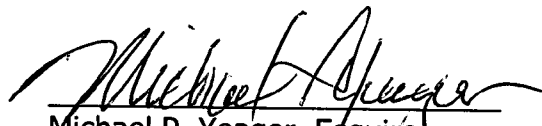
The amount of damages shall be determined by the court unless a jury trial has been demanded.

At the trial of the case, the condemnee shall be the plaintiff and the condemnor shall be the defendant."

16. In the alternative, Petitioner requests that a Rule be issued scheduling a hearing relative to this Petition; and failing dismissal as requested in Count I, that all objections be determined and that the Court confirm the Report of Viewers as filed on October 13, 2003.

WHEREFORE, in the alternative, Petitioner requests that a Rule be issued scheduling a hearing relative to this Petition; and failing dismissal as requested in Count I, that all objections be determined and that the Court confirm the Report of Viewers as filed on October 13, 2003.

Respectfully submitted:


Michael P. Yeager, Esquire
Attorney for Condemnor

FILED
4cc
8/3/17
NOV 24 2003
Amy Yeager
William A. Shaw
Prothonotary/Clerk of Courts
KRB

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Condemnor

vs.

JAMES H. SWARTZ,
Condemnee

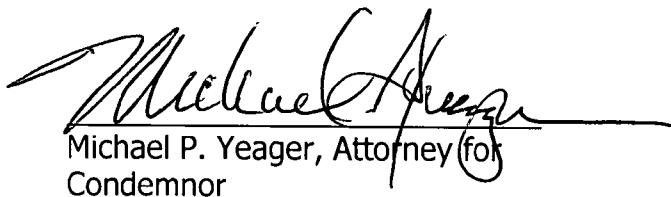
No. 00-591-CD

AFFIDAVIT OF SERVICE

I, MICHAEL P. YEAGER, attorney for the Redevelopment Authority of the City of DuBois, depose and say that I forwarded the Decree and Order of Court dated December 30, 2003 by First Class Mail as well as by certified mail, return receipt requested on December 31, 2003 to the following:

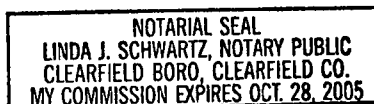
James H. Swartz, Condemnee
127 South Brady Street
DuBois, PA 15801.

Copies of the Certificate of Mailing as well as the receipt and return receipt card from the certified mailing are attached hereto, made part hereof and incorporated herein by reference.


Michael P. Yeager, Attorney for
Condemnor

Sworn to and subscribed before me this 9th day of January, 2004.



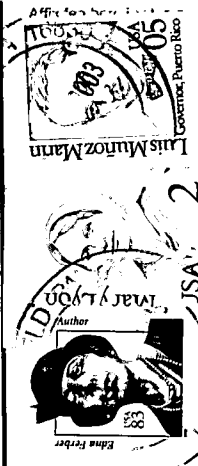


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JAN 12 2004

William A. Shaw
Prothonotary/Clerk of Courts

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PS Form 3817, January 2001

U.S. Postal Service		CERTIFIED MAIL RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)			
OFFICIAL USE			
Postage	\$.60		
Certified Fee	2.30		
Return Receipt Fee (Endorsement Required)	1.75		
Restricted Delivery Fee (Endorsement Required)			
Total Postage & Fees	\$ 4.65		
Sent To			
James H. Swartz			
Street, Apt. No.; or PO Box No. 127 S. Brady St.			
City, State, ZIP+ 4 DuBois, PA 15801			
PS Form 3800, January 2001		See Reverse for Instructions	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. - Print your name and address on the reverse so that we can return the card to you. - Attach this card to the back of the mailpiece, or on the front if space permits.		A. Received by (Please Print Clearly) <i>James H. Swartz</i> B. Date of Delivery <i>JAN 8 2004</i>	
1. Article Addressed to:		C. Signature <i>James H. Swartz</i> ☐ Agent ☐ Addressee	
James H. Swartz 127 South Brady Street DuBois, PA 15801		D. Is delivery address different from item 1? ☐ Yes ☒ No If YES, enter delivery address below:	
2. Article Number (Copy from service label) 7001 0360 0001 7574 6823		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
		4. Restricted Delivery? (Extra Fee) ☐ Yes	

FILED

10/21/58
JAN 12 2004

William A. Shaw

Prothonotary/Clerk of Courts

N/O
cc

10/21/58
JAN 12 2004

CA
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JAMES H. SWARTZ,
Plaintiff/Condemnee

vs

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Defendant/Condemnor

No. 00-591-CD

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NOV 26 2003

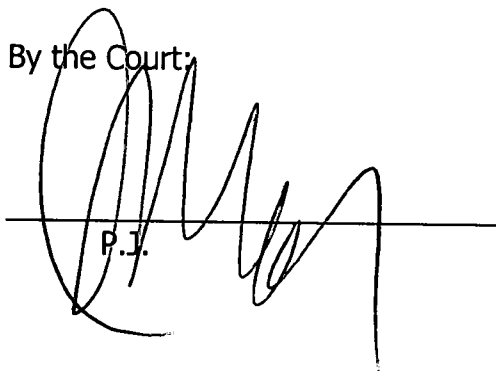
William A. Shaw
Prothonotary/Clerk of Courts

ORDER

AND NOW, this 26 day of November, 2003, upon consideration of the Condemnee's Objections to Report and Errors in Appraisal as well as Condemnor/Petitioner's Petition to Dismiss Condemnee's Objections to Report and Errors in Appraisal; or to Confirm the Report of Viewers, a Rule is issued upon Condemnee, James H. Swartz to show cause why the prayer of Condemnor/Petitioner's Petition to Dismiss Condemnee's Objections to Report and Errors in Appraisal should not be granted; or why, in the alternative, the Report of Viewers should not be confirmed.

Rule Returnable (and Hearing, if necessary) on December 30, 2003 at 2:30 o'clock P M. in Courtroom 1 in the Clearfield County Courthouse, Clearfield, PA.

By the Court:


P.J.

FILED 4CC
2/2:07/21
NOV 26 2003
Atty Yeager
CPL

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JAMES H. SWARTZ,
Plaintiff/Condemnee

vs

REDEVELOPMENT AUTHORITY OF
THE CITY OF DUBOIS,
Defendant/Condemnor

No. 00-591-CD

FILED

DEC 31 2003

William A. Shaw
Prothonotary/Clerk of Courts

DECREE AND ORDER OF COURT

I. PROCEDURAL HISTORY.

This Eminent Domain (Condemnation) action was initiated by the Redevelopment Authority of the City of DuBois, Condemnor ("Condemnor"). On May 18, 2000, the Condemnor filed a Declaration of Taking seeking to acquire the property ("Property") of James H. Swartz ("Condemnee") through Eminent Domain proceedings (Eminent Domain Code of 1964, 26 P.S. §1-101, et seq.) ("Code"). Notices of that filing were duly recorded and forwarded to Condemnee.

On June 19, 2000, Condemnee filed his "Objections and Defense" pro se. Denial of those Objections and Defense (as Preliminary Objections) by the Honorable John K. Reilly, Jr., President Judge of Clearfield County by Orders dated October 11, 2000 and March 8, 2001, ultimately lead to an appeal to the Commonwealth Court.

On September 11, 2001, the Commonwealth Court affirmed the October 11, 2000 Order of the Court of Common Pleas of Clearfield County (Docket No. 300 CD 2001); and on July 9, 2002, the Pennsylvania Supreme Court denied the Condemnee's Petition for Allowance of Appeal (Supreme Court No. 25 WAL 2002).

Condemnor ultimately secured possession of the Property on or about April 22, 2003 after having paid its "Estimate of Just Compensation" into Court pursuant to the provisions of the Code (26 P.S. §1-522).

By Order dated July 1, 2003, the Board of Viewers was appointed to hear and determine damages in this matter.

The View and Hearing were scheduled by the Viewers for August 22, 2003. A Notice of View and Hearing was forwarded to the Condemnee on July 14, 2003 and

received by the Condemnee on July 17, 2003 as is confirmed by the ultimate Report of the Viewers. The View and Hearing were conducted as scheduled on August 22, 2003. Condemnee was not present at the View or Hearing.

On September 24, 2003 and again on September 26, 2003, the Viewers forwarded their Notice of Filing Report of Viewers to all parties indicating the intent to file that Report on October 13, 2003; with the Report having been so filed.

On November 3, 2003, Condemnee filed a document purported to be "Objections to Report and Errors in Appraisal".

On November 24, 2003, Condemnor filed its Petition to Dismiss Condemnee's Objections or, in the alternative, to Confirm the Report of Viewers. By Order of Court that same date, a Rule to Show Cause was issued upon the Condemnee to show cause why Condemnor's Petition to Dismiss the Objections to Report and Errors in Appraisal should not be granted; or why, in the alternative, the Report of Viewers should not be confirmed. The Rule Returnable was scheduled for December 30, 2003 at 2:30 P.M. in Courtroom 1 of the Clearfield County Courthouse.

The Condemnee was given notice of the scheduling of the Rule to Show Cause as is evidenced by an Affidavit of Service filed by Michael P. Yeager, Attorney for Condemnor noting that the said Condemnee had been served with such notice by first class mail as well as by certified mail return receipt requested on November 26, 2003. Copies of the Certificate of Mailing as to the First Class mail and the return receipt card indicating receipt by James Swartz on December 6, 2003 are attached to the Affidavit of Service.

Accordingly, on the date and time schedule for the hearing on the Rule to Show Cause, the Condemnor appeared while the Condemnee failed to appear sending only an oral statement presented in written form (the same being attached hereto as "Exhibit A").

II. ISSUE SUMMARY.

This matter is now before the Court for determination as to Condemnor's Petition to Dismiss Condemnee's Objections or, in the alternative, to confirm the Report of Viewers.

III. DISCUSSION.

A. Petition to Dismiss.

Condemnor correctly points out that the Code provides a procedural outline for objections or appeals by a party aggrieved by the Decision of a Board of View. Those Code Sections (Section 1-515 and 1-516 (26 P.S. §1-515 and 1-516)) were, in the opinion of this Court sufficiently complied with in Condemnee's pleading entitled "Objections to Report and Errors in Appraisal";

and that Condemnor's Errors in procedure, while true, were "diminimus"; and that Condemnee's intentions were sufficiently clear.

Accordingly, Condemnor's Petition to Dismiss Condemnee's Objections to Report and Errors in Appraisal based upon the procedural errors as set forth in the Code is hereby dismissed.

B. Confirmation of Report of the Board of View.

Condemnor requests in its Petition that if the Court dismisses its Petition to Dismiss as has been done, that this Court entertain a request to confirm the Report of the Board of View as filed on October 13, 2003. For the reasons as are hereinafter discussed, this Court is inclined to confirm that Report.

1. Determination of Objections & Damages.

Although most of Condemnee's Objections are either entirely unclear or irrelevant, nowhere within that document does Condemnee request a jury trial. Accordingly, this Court may now proceed with regard to a determination of damages or value (in view of the Condemnation of the entire property). See Code Section 1-516(a)(5) which indicates that:

"...if no party makes a demand for a jury trial as set forth herein, the right to jury trial shall be deemed to have been waived and the Court shall try the case without a jury..." (26 P.S. §1-516(a)(5)).

Given that authorization, this Court is also mindful of what the Code provides relative to disposition of appeals. Section 1-517(a) provides as follows:

"(a) All objections, other than to the amount of the award, raised by the appeal shall be determined by the court preliminarily. The court may confirm, modify, change the report or refer it back to the same or other viewers. A decree confirming, modifying or changing the report shall constitute a final order.

The amount of damages shall be determined by the court unless a jury trial has been demanded.

At the trial of the case, the Condemnee shall be the plaintiff and the Condemnor shall be the defendant." (26 P.S. §1-517(a)).

2. Damages/Fair Market Value

In an Eminent Domain Action liability is irrelevant. The Condemnor has the absolute right to acquire the property and has a constitutional duty to pay just compensation. That condemnation of private property for

public purposes is not only not evil or wrong; but, instead, the Condemnor may have a legal obligation to pursue the public good through condemnation. The only issue remaining for discussion then is the amount of damages; or in this case with regard to the condemnation of the entire property, the value of that property. Value in these instances is otherwise referred to as "Fair Market Value".

Fair Market Value is the price that would be agreed to by a willing and informed Seller and Buyer taking into consideration, but not limited to, the following factors:

(a) The present use of the property and its value for such use;

(b) The highest and best reasonably available use of the property and its value for such highest and best use (26 P.S. §1-603).

Additionally, we must equate this matter to the total condemnation. In that regard, by the phrase "Fair Market Value of the land owner's entire property interest", the law contemplates the valuation of the entire property in question as a whole and as all being sold to one buyer (Snitzer, Pa. Eminent Domain, §602-2). In other words, you must consider the position of a potential purchaser of the entire property in question. Werner v. Cmnlth. Pa. Dept. of Highways, 432 Pa. 280, 247 A.2d 444 (1968).

Furthermore, in determining Fair Market Value, no consideration should be made as to the sentimental or personal value of the property to any one individual or entity; but, you must consider only its value to an impartial buyer in the market. Baker v. Commonwealth, 401 Pa. 512, 515-516, 165 A.2d 243, 245 (1960).

3. Board of View/Fair Market Value Determination

As noted in the Report of Viewers, Condemnee did not appear at the View or Viewers Hearing despite Notice. At that hearing, the principal evidence as to Fair Market Value of the Property was provided by Robert J. Fleck, GRI, Bomar Real Estate Appraisal Services.

A review of the Appraisal Report dated December 18, 2002 and prepared by Mr. Fleck, indicates that the appraiser did consider the present use of the property, its value in that use and the highest and best reasonably available use. In that regard, he describes in detail the "Condition of Improvements" and notes "in general, the structure's condition is considered substandard with extensive repairs and renovations required for total occupancy".

He also noted that the property is located in an area within the City of DuBois that is in a "transitional stage". In that regard, he describes the revitalization and notes some success.

Finally, Mr. Fleck goes to great lengths to discuss the "Highest and Best Use" concept and how the same applies to the Property. He notes that "commercial utility of the property improved represents its highest and best use. This use is the most profitable, likely use which the property can attain, considering its location, zoning, and the physical characteristics of the structure. Continued use is reasonable, although repairs to the structure are required due to deferred maintenance".

Ultimately, Mr. Fleck utilized the Direct Sales Analysis as the only applicable means of estimating the value of the Property. He furthermore considered and analyzed five properties located within the Downtown DuBois Commercial District. He then reached a range of values from \$.61 to \$2.74 per square foot. Utilizing a mean indication resulted in \$1.49, rounded to \$1.50 per square foot. Applying this formula to the Property results in an indicated property value of \$16,500.

4. Burden of Proof/Damages & Fair Market Value

We must remember the dictate of the Code relative to disposition of appeals. "At the trial of the case, the Condemnee shall be the Plaintiff and the Condemnor shall be the Defendant" (26 P.S. §1-517(a)). With that in mind, if you consider Condemnee's Objections to Report and Errors in Appraisal as an appeal of the Report of the Board of Viewers, Condemnee becomes the Plaintiff; and as such, the burden of proof is on the Condemnee to show the extent of damages and the value of his property (*Glider v. Dept. of Highways*, 435 Pa. 140, 146, 255 A.2d 542, 545 (1966); *Sweeney v. Urban Redevelopment Authority of Pgh*, 427 Pa. 367, 235 A.2d 143, 144 (1967); and *Fink v. Commonwealth*, 482 A.2d 281, 286-287 Pa. Cmwlth Ct. (1984).

A careful review of Condemnee's Objections to Report & Errors in Appraisal indicates the following, respectively:

1. His first premise is entirely irrelevant and does not discuss valuation of the property.
2. Again, this premise is entirely irrelevant and does not discuss valuation.
3. Condemnee baldly states as his third premise that the two rentable store units on the first floor were not as income taken into account. On the contrary, Mr. Fleck noted the highest and best use of the

Property as a commercial property once improved and noted the first floor commercial retail space and 2,392 ± square feet per floor. However, in any case, Fair Market Value in this case is related to the Property as a whole rather than based upon consideration of any one or two factors. (Snitzer, PA Eminent Domain, §602-2).

4. Condemnee's fourth premise based upon an unsubstantiated publication indicating that a property increases in value as a regular percentage per year, is again irrelevant. The Fair Market Value of the Property as described above is the only determining factor.

5. Condemnee's fifth premise as to miscellaneous improvements outside the Property are only relevant in the analysis of the highest and best use and whether the Property can attain that use within its location.

6, 7, 8 & 7(9) Condemnee's premise in these paragraphs notes various improvements to the property, apparently since his purchase. Again, these improvements, are only relevant in the analysis as to the overall fair market value of the property as a whole. In fact, Mr. Fleck, in his Appraisal, notes the attempts to improve the electrical system.

8 (10). Condemnee's final premise that his civil rights have somehow been violated are entirely irrelevant with regard to valuation of the Property.

Additionally, Condemnee's Oral Statement presented through a representative at the time set for the Rule to Show Cause ("Exhibit A") is also irrelevant or otherwise fails to provide competent evidence as to a Fair Market Value different than that set forth in the Appraisal relied upon by the Board of View. A careful review of Condemnee's Oral Statement indicates the following:

1(a) Condemnee essentially rehashes No. 4 above relative to the unsubstantiated publication which, as noted above, is irrelevant.

1(b) Condemnee does not present evidence as to this statement and it accordingly will not be considered.

2. Condemnee's second Oral Statement is, for the most part, irrelevant or undecipherable. Condemnee has failed to move forward with regard to a Motion to Tax Costs.

3. Condemnee's third Oral Statement is a restatement of Condemnee's Objections Nos. 6, 7, 8 and 7(9) above and do not otherwise provide evidence as to a Fair Market Value different than that relied upon by the Board of View.

4. Condemnee's fourth Oral Statement is entirely unsubstantiated and will not be considered. Otherwise, the same is a restatement of Condemnee's

Objection No. 5 discussed above and remains irrelevant.

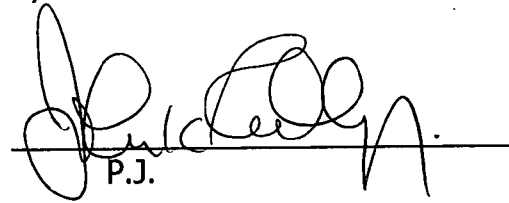
5. Condemnee's fifth oral statement is also, for the most part, irrelevant and is otherwise undecipherable.

IV. DECREE AND ORDER.

Upon consideration of the all of the foregoing, this Court is of the opinion that Condemnee has failed to meet his burden of proof with regard to establishing a valuation of the Property contrary to the valuation of Robert J. Fleck as relied upon by the Board of View (Viewer's Report Nos. 11 and 14).

Accordingly, and in the alternative as requested by Condemnor, the conclusion of the Board of Viewers indicating a Fair Market Value of \$16,500 be and is hereby confirmed absolutely subject to the liens and encumbrances as paid and deducted in the Schedule of Proposed Distribution filed by Condemnor and approved by the Order of this Court dated March 25, 2003, resulting in an amount remaining for distribution to Condemnee of \$5,798.11 (said sum having already been paid to Condemnee and received by Condemnee as noted by Check No. 1168 drawn on the account of the Prothonotary of Clearfield County in that amount and cashed by Condemnee on September 15, 2003).

By the Court:



P.J.

Dec 30, 2003

FILED

1cc

DEC 31 2003

Attg Yeager

William A. Shaw

Prothonotary/Clerk of Courts

W
KS

copy to Judge

00-591-CD

ORAL STATEMENT

1. Facts don't match on value of building (a) carton sheets real estate course shows that real estate goes up in value every year (b) several other buildings in the downtown went up in value when the new parking lot was put right across the street on corner of long ave and brady st. from the stores at 2 west longave.
2. Refuse-ing to grant motion to tax costs request for a fair appraisal was in my opinion a civil rights volitation under state laws .the PA / human relations act as amended shows discrimination under act of oct 1955 PL 744 the reason to fair self employment you took a prime building site without giving fair replacement value
3. It was a matter of public record that new wiring was put into both stores on the first floor, in order for the city code enforcement to allow the 2 stores on the first floor to reopen up to code .Also the one front side over -hang was taken off at a cost of over 3,500. dollars by the time the one improvement requested by the city of Du bois was compleated
4. the property is worth several times what the building itself is and you had your friends in the city government unfairly say the property not go up in value with (1) a new parking lot right across the street (2) new sidewalks on both sides of the street and (3) it is in the center of the downtown ALL the downtown property is slowly going up in value
- 5 .in my opinion breaking state law by evasion of fees will result in a federal lawsuit in Pittsburg court with a difference in my opinion of between 60 to eighty thousand dollars for the intended use of tearing down the building to at some time in the future build a high rise using three buildings in my opinion this is what happened over by the dollar general store but they could not get enough land

Exhibit A

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Michael P.
Yeager, Esq.

REDEVELOPMENT AUTHORITY OF

THE CITY OF DUBOIS

MAY 18, 2000, DECLARATION OF TAKING, filed by Michael P. Yeager,
Esq., Attorney for the Plaintiff
No Certified Copies

(1)

MAY 18, 2000, BOND WITHOUT SURETY, filed.
No Certified Copies

(2)

00-591-CD

MEMORANDUM OF RECORDED NOTICE OF DECLARATION OF TAKING, filed
by Michael P. Yeager, Esq., Attorney for the PlaintiffJUN 19, 2000, OBJECTIONS AND DEFENSE, filed by s/JAMES H.
SWARTZ ONE (1) CC DEF.

(3)

JUN 26, 2000, MEMORANDUM OF RECORDED NOTICE OF DECLARATION OF TAKING
filed by s/MICHAEL P. YEAGER, ESQ. NO CC

(4)

JAMES H. SWARTZ

JUN 26, 2000, AFFIDAVIT OF SERVICE, NOTICE OF FILING DECLARATION
OF TAKING: filed by, s/MICHAEL NO CC

(5)

Pro BY ATTY 80.00

JUL 06, 2000, ANSWER TO PRELIMINARY OBJECTIONS and DEFENSE,
filed by s/MICHAEL P. YEAGER, ESQ.

(6)

Pro by Cond. 45.00

JUL 06, 2000, MOTION FOR RIGHT OF ENTRY FOR PURPOSES OF FORMING
STUDIES, SURVEYS, TESTS, SOUNDINGS and APPRAISALS, filed by
s/MICHAEL P. YEAGER, ESQ.

(7)

JUL 06, 2000, MOTION TO STRIKE, filed by s/MICHAEL P. YEAGER, ESQ.

(8)

JUL 26, 2000, AFFIDAVIT OF SERVICE, ANSWER TO P.O.'s, ETC., UPON
JAMES SWARTZ: s/MICHAEL P. YEAGER, ESQ.

(9)

AUG. 01, 2000, REQUEST FOR THIRTY DAY EXTENSION TO DO LEGAL BRIEF,
filed by s/JAMES H. SWARTZAUG. 03, 2000, OBJECTION and DEFENSE to MOTION to STRIKE, filed by
s/JAMES H. SWARTZAUG. 21, 2000, REQUEST FOR THIRTY DAY EXTENSION TO DO ADDITIONS TO
LEGAL BRIEF, filed by s/JAMES H. SWARTZAUG. 23, 2000, OBJECTION TO CONDEMNOR'S REQUEST FOR ANOTHER THIRTY
DAY EXTENSION, filed by s/MICHAEL P. YEAGER, ESQ.

(13)

SEP. 01, 2000, AFFIDAVIT OF SERVICE, REPLY BRIEF/OBJECTION UPON
JAMES H. SWARTZ: s/Michael P. Yeager, Esq.OCTOBER 11, 2000, ORDER, filed. Cert. to Yeager & Swartz
AND NOW, this 11th day of Oct. , 2000, RF: Motion filed 7/6/00
s/JKR, JR. P.J.OCTOBER 11, 2000, ORDER, filed. Cert. to Yeager & Swartz
NOW, this 11th day of October, 2000, RF: Objections, it is
ORDER that said preliminary objections are denied. s/JKR, JR, P.J.NOV. 9, 2000, MOTION FOR A JUDGMENT NOTWITHSTANDING THE VERDICT, filed
by James H. Swartz, Two Cert. to CondemneeNOV. 13, 2000, APPEAL TO TRIAL COURT, filed by James H. Swartz
One Cert. to Swartz and One Cert. to Superior CourtNOTICE OF APPEAL RETURNED BY THE SUPERIOR COURT OF
PENNSYLVANIA. Filed

PLEASE REFER TO COMPUTER

FOR FURTHER ENTRIES

Date	Selected Items	Judge
05/18/2000	New Case Filed. Please refer to docket book for entries prior to November, 2000.	No Judge
11/14/2000	Order, filed. NOW, this 14th day of November, 2000, upon consideration of Motion for Judgment Not Withstanding The Verdict filed by Defendant pro se above named, it is the Order of this Court that said Motion be and is hereby dismissed. BY THE COURT: /s/John K. Reilly, Jr., P.J. One Certified Copy to Defendant One Certified Copy to Attorney Yeager	No Judge
11/20/2000	Notice of Appeal returned for defects from Superior Court	No Judge
11/27/2000	APPEAL TO TRIAL COURT SUPERIOR COURT, PITTSBURGH, filed by s/James H. Swartz 2 CC to Condemnee 1 CC to Superior Court	No Judge
12/01/2000	Notice of Appeal returned for defects from Superior Court	No Judge
02/05/2001	Order from Superior Court, re: Transferred to Commonwealth Court. filed.	No Judge
02/20/2001	Objections and Defense, filed by James Swartz 3 Cert. to Swartz Notice of Appeal, filed. Cert. copy of Appeal to Commonwealth Court w/\$55.00 Check 5 Cert. Copies to J. Swartz	No Judge No Judge
02/22/2001	RULE 904 Notice of Appeal. Filed by James H. Swartz to Commonwealth Court. 6 cc to Mr. Swartz Certificate of Service, Notice of Appeal upon President Judge John K. Reilly, Jr. and Michael P. Yeager, Esq. s/James H. Swartz 2 cc to Mr. Swartz, 1 cert to Commonwealth Court	No Judge No Judge
03/05/2001	Noticing of Docketing Appeal. Filed. Commonwealth Court of Penna. Docket No. 300 CD 2001 Filed.	No Judge
03/07/2001	CORRECTED NOTICE, Notice of Docketing Appeal and Notice to Counsel. Filed.	No Judge
03/09/2001	OPINION AND ORDER, By the Court, s/JKR,JR.,P.J. 8 Mar. 01 cc to Yeager & Swartz	No Judge
03/12/2001	Complete Record mailed to Commonwealth Court by Cert. Mail #7000 0600 0023 63994265	No Judge
03/19/2001	Domestic Return Receipt. Filed. Notice of Forwarding to Commonwealth Court mailed to Mr. Swartz returned by USPS "ATTEMPTED, NOT KNOWN" Filed.	No Judge No Judge
09/14/2001	MEMORANDUM OPINION by Senior Judge JIuliane. Trial Court's Order is AFFIRMED no cc	No Judge
01/17/2002	Supreme Court of Pennsylvania, Date Petition for Allowance of Appeal Filed: December 21, 2001	John K. Reilly Jr.
06/19/2002	Petition for Access for Appraisal Purposes, filed by Atty. Yeager 1 cert. to Atty.	No Judge
06/21/2002	RULE RETURNABLE, AND NOW, this 21st day of June, 2002, issued upon JAMES H. SWARTZ, returnable by appearance and hearing on the 4th day of Sept., 2002, at 3:00 p.m. by the Court, s/JKR,JR., P.J. 1 cc Atty Yeager	John K. Reilly Jr.
07/02/2002	Affidavit of Service, Petition for Access for Appraisal Purposes w/Rule Returnable upon JAMES H. SWARTZ Filed by s/Michael P. Yeager, Esq. no cc	John K. Reilly Jr.
07/29/2002	ORDER, AND NOW, this 9th day of July, 2002, the Petition for Allowance of Appeal is DENIED. SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT no cc	John K. Reilly Jr.
08/05/2002	Certificate of Service, Legal Brief to Michael P. Yeager, Esq. and Judge John K. Reilly, Jr., P.J. s/James H. Swartz	John K. Reilly Jr.

Date		Judge
08/06/2002	Memorandum Opinion and Order from Commonwealth Court, filed. AND NOW, this 11th day of September, 2001, the October 11, 2000 order of the Court of Common Pleas of Clearfield County is hereby affirmed. s/Jess S. Juliante, Sr. Judge	John K. Reilly Jr.
	ORDER from Commonwealth Court, filed. NOW, November 21, 2001, having considered appellant's application for reconsideration, and appellee's answer, the application is denied. s/Joseph T. Doyle, P.J.	John K. Reilly Jr.
	ORDER from Supreme Court, filed AND NOW, this 9th day of July 2002, the Petition for Allowance of Appeal is denied.	John K. Reilly Jr.
	Contents of Original Record returned from Commonwealth Court. copy to Commonwealth Court.	John K. Reilly Jr.
09/17/2002	ORDER: AND NOW, this 17th day of September, 2002 Condemnee is to grant access for purposes of conducting and appraisal within ten days of service of this Order. 1 CC Atty. Yeager.	John K. Reilly Jr.
09/27/2002	Affidavit of Service, Order of Court granting the Petition for Access for Appraisal Purposes dated Sept. 17, 2002 upon JAMES H. SWARTZ. s/Michael P. Yeager, Esq. no cc	John K. Reilly Jr.
01/13/2003	Refuse Offer As Not Replacement Cost, filed by James H. Swartz 3 cert to Swartz	John K. Reilly Jr.
01/21/2003	Certificate of Service, Refuse Offer upon MICHAEL P. YEAGER, ESQ. s/James H. Swartz, Esquire 3 cc to Swartz	John K. Reilly Jr.
02/05/2003	Petition For Payment Into Court and Distribution. filed by s/Michael P. Yeager, Esquire 10 cc Atty Yeager	John K. Reilly Jr.
	Petition For Reimbursement of Real Estate Taxes, Penalties and Interest. filed by s/Michael P. Yeager, Esq. 10 cc to Atty Yeager	John K. Reilly Jr.
02/07/2003	RULE RETURNABLE, AND NOW, this 7th day of Feb. 2003, upon consideration of the foregoing Petition for Payment into Court and Distribution, a Rule is hereby issued upon JAMES H. SWARTZ, appearance and Hearing scheduled for 3rd day of March, 2003 at 1:30 p.m. by the Court, s/JKR, Jr, P.J. 10 cc to atty	John K. Reilly Jr.
	Rule Returnable, AND NOW, this 7th day of February, 2003, upon consideration of the foregoing Petition for Reimbursement of Advance of Real Estate Taxes, Penalties, and Interest, a Rule is hereby issued upon James H. Swartz to show cause why the prayer of the Petitioner should not be granted. Rule returnable by appearance and hearing the 3 day of March, 2003, at 1:30 p.m. BY THE COURT: /s/John K. Reilly, Jr., P.J. Ten CC Attorney Yeager	John K. Reilly Jr.
02/12/2003	Schedule of Proposed Distribution, filed.	John K. Reilly Jr.
	RULE RETURNABLE, AND NOW, this 12th day of February, 2003. Issued upon JAMES H. SWARTZ, Rule Returnable by appearance and hearing on the 25th day of March, 2003, at 9:00 a.m. by the Court, s/JKR,JR.,P.J. 10 cc to Atty Yeager	John K. Reilly Jr.
	RULE RETURNABLE, AND NOW, this 12th day of February, 2003. Issued upon JAMES H. SWARTZ, Rule Returnable by appearance and hearing on the 25th day of March, 2003, at 9:00 a.m. by the Court, s/JKR,JR.,P.J.	John K. Reilly Jr.
02/26/2003	Affidavit of Service, Petition for Payment into Court and Distribution and Petition for Reimbursement of Advance of Real Estate Taxes, Penalties and Interest with Rules Returnable for both Petitions upon: JAMES H. SWARTZ, LANCE MARSHALL, RICHARD KUBKLE, CLEARFIELD COUNTY TAX CLAIM BUREAU AND NATIONAL FUEL GAS. s/Michael P. Yeager, Esq. no cc	John K. Reilly Jr.
02/28/2003	Certificate of Service, Addition to Legal Brief and Additional Matter upon JUDGE JOHN REILLY, JR. and MICHAEL P. YEAGER, ESQ. filed by s/James H. Swartz	John K. Reilly Jr.

Date		Judge
03/03/2003	Affidavit of Service, Petition for Payment Into Court and Distribution as well as the Petition for Reimbursement of Advance Real Estate Taxes, Penalties and Interest with Rule Returnable for both Petitions on the Condemnee, James H. Swartz. s/Lance Marshall no cc	John K. Reilly Jr.
03/11/2003	Motion for Writ of Possession, filed by Atty. Yeager 5 cert. to Atty.	John K. Reilly Jr.
03/14/2003	ORDER, AND NOW, this 14th day of March, 2003, Rule issued upon Condemnee JAMES H. SWARTZ to show cause why a Writ of Possession should not be issued. Rule Returnable April 17, 2003. Evidentiary Hearing (should the same be necessary) is hereby scheduled for April 17, 2003 p.m. by the Court, s/JKR,JR.,P.J. 5 cc Atty Yeager	John K. Reilly Jr.
03/25/2003	ORDER OF COURT, AND NOW, this 25th day of March, 2003, re: Petition for Payment into Court and Distribution. by the Court, s/JKR,JR.,P.J. 10 cc to Atty Yeager w/attached schedule 1 cc Nat'l Fuel, Commonwealth, Redevelopment Auth., Tax Claim Bureau, and James Swartz (all w/attached schedule) Checks issued and mailed with cert. copy of Order to all listed on Schedule of Proposed Distribution.	John K. Reilly Jr.
	ORDER OF COURT, AND NOW, this 25th day of March, 2003, re: Prothonotary shall reimburse the Redevelopment Authority of the City of DuBois in the amount of \$3,434.09, said sum to be deducted from the payment of estimated just compensation in the above-captioned matter and be listed on the Schedule of Proposed Distribution previously filed by Condemnor. by the Court, s/JKR,JR.,P.J. 10 cc Atty Yeager	John K. Reilly Jr.
03/26/2003	Affidavit of Service, Motion for Writ of Possession upon JAMES H. SWARTZ, Condemnee. s/Michael P. Yeager, Esq. no cc	John K. Reilly Jr.
04/15/2003	Motion For Request of 15 Day Extension of Time on Hearing Date. s/James H. Swartz 3 cc to Swartz	John K. Reilly Jr.
04/17/2003	✓ ORDER OF COURT, NOW, to wit, this 17th day of April, 2003, re: Motion for Writ of Possession. by the Court, s/JKR,JR.,P.J. 2 cc Atty Yeager	John K. Reilly Jr.
05/02/2003	✓ Verdict Notwithstanding with Appraisers Statement, filed by J. Swartz. 3 ✓ Cert. to Swartz. (Original to C/A) Motion To Tax Costs. filed by s/James H. Swartz	John K. Reilly Jr.
05/05/2003	✓ Response To Motion To Tax Costs. filed by s/Michael P. Yeager, Esq. no cc	John K. Reilly Jr.
05/06/2003	✓ Affidavit of Service, Response to Motion to Tax Costs upon: JAMES H. SWARTZ, CONDEMNEE. filed by s/Michael P. Yeager, Esq. no cc	John K. Reilly Jr.
05/07/2003	✓ Notice of Service of Addition to Legal Brief and Additional Matter, filed by James Swartz. No cc	John K. Reilly Jr.
	✓ Notice of Service of Addition to Legal Brief and Additional Matter, filed by James Swartz. No cc.	John K. Reilly Jr.
06/25/2003	✓ Petition For Appointment of Board of Viewers. filed by s/Michael P. Yeager, Esq. 4 cc Atty Yeager	John K. Reilly Jr.
07/01/2003	✓ ORDER, AND NOW, this 1st day of July, 2003, re: Appointment of Board of Viewers. by the Court, s/JKR, JR., P.J. 4 cc Atty Yeager	John K. Reilly Jr.
07/29/2003	✓ Affidavit of Service, Petition for the Appointment of Board of Viewers and Order upon JAMES H. SWARTZ, CONDEMNEE/PLAINTIFF filed by s/Michael P. Yeager, Esquire no cc	John K. Reilly Jr.
10/13/2003	✓ Report of Viewers, Schedules of Costs and Order of Payment. filed by s/J. Richard Mattern, II, Esq. ORDER, AND NOW, this 13th day of October, 2003, re: Court acknowledges the filing of the Board of Viewers Schedule of Costs and Fees, approves such, and Orders that the Redevelopment Authority of the City of DuBois pay for the Professional Services rendered and costs incurred. by the Court, s/JKR,JR.,P.J. 3 cc Atty Mattern	John K. Reilly Jr.
11/03/2003	✓ Filing Objections to Report and Errors in Appraisal filed by James Swartz. 1 CC to Def.	John K. Reilly Jr.

Date		Judge
11/05/2003	Notice of Service: Certificate of Service, I hereby certify that a true and correct copy of the legal brief objections and errors in appraisal has been sent by certified mail to Rick Mattern, 211 East Pine St., Clearfield, PA 16830 on this 1st day of November, 2003. s/James Swartz ✓ Certificate of Service, I hereby certify that a true and correct copy of the legal brief objections and errors in appraisal has been sent by certified mail to Judge John K. Reilly, Jr., Clearfield Courthouse, Clearfield, PA 16830 on this 1st day of November, 2003. s/James Swartz One CC remains in file-Defendant did not provide return envelope	John K. Reilly Jr.
11/24/2003	Petition to Dismiss Condemnee's Objections to Report and Errors in Appraisal; or to Confirm the Report of Viewers. filed by, s/Michael P. Yeager, Esquire 4 cc Atty Yeager	John K. Reilly Jr.
11/26/2003	✓ ORDER, AND NOW, this 26th day of November, 2003, re: Rule Returnable (and Hearing, if necessary) on December 30, 2003 at 2:30 p.m. in Courtroom 1 in the Clearfield County Courthouse, Clearfield, Pa. by the Court, s/JKR,JR.,P.J. 4 cc Atty Yeager	John K. Reilly Jr.
12/09/2003	★ Affidavit of Service, Petition to Dismiss Condemnee's Objections to Report and Errorin Appraisal; or to Confirm the Report of Viewers as well as the Order of Court containing the Rule Returnable upon: JAMES H. SWARTZ, Condemnee. filed by, s/Michael P. Yeager no cc	John K. Reilly Jr.
12/31/2003	✓ DECREE AND ORDER, Upon consideration of the all of the foregoing, this Court is of the opinion that Condemnee has failed to meet his burden of proof with regard to establishing a valuation of the Property contrary to the valuation of Robert J. Fleck as relied upon by the Board of View (Viewer's Report Nos. 11 and 14). Accordingly, and in the alternative as required by Condemnor, the conclusion of the Board of Viewers indicating a Fair Market Value of \$16,500 be and is hereby confirmed absolutely subject to the liens and encumbrances as paid and deducted in the Schedule of Proposed Distribution filed by Condemnor and approved by the Order of this Court dated March 25, 2003, resulting in an amount remaining for distribution to Condemnee of \$5,798.11 (said sum having already been paid to Condemnee and received by Condemnee as noted by Check No. 1168 drawn on the account of the Prothonotary of Clearfield County in that amount and cashed by Condemnee on September 15, 2003). by the Court, s/JKR,JR.,P.J. 1 cc Atty Yeager	John K. Reilly Jr.

out when
file returned
1/19/04

-Date: 01/19/2004

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 12:42 PM

ROA Report

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Case: 2000-00591-CD

Current Judge: John K. Reilly Jr.

City of Dubois vs. James H. Swartz

Civil Other

Date

Judge

01/12/2004

✓ Affidavit Of Service, Decree and Order of Court dated Dec. 30, 2003, upon: John K. Reilly Jr.
JAMES H. SWARTZ, CONDEMNEE. filed by, s/Michael P. Yeager, Esq.
no cc