

01-691-CD
84 LUMBER COMPANY, L.P. -vs- BOROUGH OF CLEARFIELD et al

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

84 LUMBER COMPANY, L.P.,

Civil Division

Appellant,

No. 01-691-CO

v.

NOTICE OF APPEAL

BOROUGH OF CLEARFIELD,
JAMES E. KLING, and GREGORY W.
LINGLE,

Filed on behalf of:
84 Lumber Company, L.P.

Appellees.

Counsel of Record for this party:

Gordon W. Schmidt
Pa. I.D. No. 21265

John R. Gotaskie, Jr.
Pa. I.D. No. 81143

DOEPKEN KEEVICAN & WEISS
PROFESSIONAL CORPORATION
58th Floor, USX Tower
600 Grant Street
Pittsburgh, PA 15219
(412) 355-2600

Firm No. 870

FILED

MAY 10 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

84 LUMBER COMPANY, L.P.,

Civil Division

Appellant,

No. _____

v.

BOROUGH OF CLEARFIELD,
JAMES E. KLING, and GREGORY W.
LINGLE,

Appellees.

NOTICE OF APPEAL

TO: The Prothonotary of Clearfield County, Pennsylvania

PLEASE TAKE NOTICE that, pursuant to the Right-to-Know Act (the "Act"), 65 P.S. sections 66.1 *et seq.*, Appellant 84 Lumber Company, L.P. ("84 Lumber"), by and through its attorneys, Doepken, Keevican & Weiss, P.C., hereby files Notice of Appeal of the denial of its right to access, view and copy public records of the Borough of Clearfield by and through the actions of James E. Kling and Gregory W. Lingle. A Statement of Appeal is attached hereto at Tab "1."

Respectfully submitted,

DOEPKEN KEEVICAN & WEISS, P.C.

Date: May 9, 2001

Gordon W. Schmidt
Gordon W. Schmidt
Pa. I.D. No. 21265
John R. Gotaskie, Jr.
Pa. I.D. No. 81143

Counsel for Appellant,
84 Lumber Company, L.P.

58th Floor, USX Tower
600 Grant Street
Pittsburgh, PA 15219
(412) 355-2600

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

84 LUMBER COMPANY, L.P.,

Civil Division

Appellant,

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v.

APPEAL

BOROUGH OF CLEARFIELD,
JAMES E. KLING, and GREGORY W.
LINGLE,

Filed on behalf of:
84 Lumber Company, L.P.

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Counsel of Record for this party:

Gordon W. Schmidt
Pa. I.D. No. 21265

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DOEPKEN KEEVICAN & WEISS
PROFESSIONAL CORPORATION
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Firm No. 870

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

84 LUMBER COMPANY, L.P.,

Civil Division

Appellant,

No. _____

v.

BOROUGH OF CLEARFIELD,
JAMES E. KLING, and GREGORY W.
LINGLE,

Appellees.

APPEAL

Pursuant to the Right-to-Know Act (the "Act"), 65 P.S. sections 66.1 *et seq.*, Appellant 84 Lumber Company, L.P. ("84 Lumber"), by and through its attorneys, Doepken, Keevican & Weiss, P.C., hereby files this Appeal:

1. Appellant 84 Lumber is a limited partnership organized under the laws of the Commonwealth of Pennsylvania, with its principal place of business located at Route 519, Eighty Four, Pennsylvania 15330.

2. Appellee the Borough of Clearfield (the "Borough") is a political subdivision of the Commonwealth of Pennsylvania, with its municipal offices located at 14 South Front Street, Clearfield, Pennsylvania 16830. The Borough is an agency with the provisions of the Act, 65 P.S. section 66.1(1).

3. Individual Appellee James E. Kling ("Kling") is the Enforcement Code Officer for the Borough. At all times relevant to the matters complained of in this appeal, Kling purported to act with the full authority and permission of the Borough.

4. Individual Appellee Gregory W. Lingle (“Lingle”) is the Borough Manager for the Borough. At all times relevant to the matters complained of in this appeal, Lingle purported to act with the full authority and permission of the Borough.

5. Appellees the Borough, Kling and Lingle have possession, custody, and control over the records to which 84 Lumber seeks access and which are the subject matter of this action.

6. On January 25, 2001, 84 Lumber requested, in accordance with the Act, 65 P.S. sections 66.2, 66.3, access to public records, specifically building permit applications and building permits, in the possession or control of Appellees the Borough, Kling and Lingle. The documents requested are detailed in that request, which is attached as Exhibit “A,” and incorporated by reference.

7. Appellees the Borough, Kling and Lingle at all times have refused 84 Lumber’s request for access to and copies of the above-described records.

8. 84 Lumber has exhausted all administrative remedies provided by Appellees the Borough, Kling and Lingle, in that the written requests of undersigned counsel for access to the above-described records have gone unanswered by the Borough’s Solicitor, F. Cortez Bell, III, Esquire. Copies of those requests, and the express direction of Appellee Lingle regarding those requests, are attached as Exhibit “B.”

9. Appellees the Borough, Kling and Lingle lack a reasonable basis in law for withholding the above-described records from 84 Lumber. The records are not exempt under the Act, 65 P.S. section 66.1(2), and the public interest would not be served by nondisclosure of the records.

10. 84 Lumber has no plain, speedy and adequate remedy at law, other than the relief sought in this Notice of Appeal.

11. A Notice of Appeal is the only procedure by which an aggrieved party under the Act is authorized to enforce its rights. *See* 65 P.S. § 66.4, *Knopsnider v. Derry Township Bd. of Supervisors*, 725 A.2d 245, 247 (Pa.Cmwlt. 1999).

WHEREFORE, Appellant 84 Lumber Company, L.P., respectfully requests:

- (a) Judgment against Appellees ordering and directing Appellees the Borough of Clearfield, James E. Kling and Gregory W. Lingle to permit 84 Lumber Company, L.P., to inspect and copy the records in Appellees' custody to which access has been denied;
- (b) Costs of suit; and
- (c) Such other and further relief as this Honorable Court may deem proper.

Respectfully submitted,

DOEPKEN KEEVICAN & WEISS
PROFESSIONAL CORPORATION

Date: May 9, 2001

Gordon W. Schmidt
Gordon W. Schmidt
Pa. I.D. No. 21265

John R. Gotaskie, Jr.
Pa. I.D. No. 81143

58th Floor, USX Tower
600 Grant Street
Pittsburgh, PA 15219
(412) 355-2600

Counsel for Appellant,
84 Lumber Company, L.P.



LUMBER COMPANY, L.P.

LEGAL DEPARTMENT

**BOX 8484
BUILDING NO. 2
EIGHTY FOUR, PENNSYLVANIA 15384-8484
PHONE: (724) 228-8820 FAX: (724) 225-6039**

**ROBERT J. BOSILOVIC
General Counsel
E-Mail Address:
Bosil@84Lumber.com**

January 25, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

James E. Kling
Enforcement Code Officer
Clearfield Borough
14 South Front Street
Clearfield, PA 16830

**RE: 84 Lumber Company ("84") - Access to Building
Permit Applications**

Dear Mr. Kling:

Personnel at 84's Woodland store location have made periodic requests to obtain access to building permit applications that have been recently filed with the Borough of Clearfield. The requests have been denied on the grounds that the information requested is not "public information". Your name was referred to me as the person to communicate with regarding this matter. The right to obtain access to public records in the Commonwealth of Pennsylvania was established by the Legislature by adoption of the Right-To-Know Act (the "Act") which is set forth in 65 P.S. Section 66 et. seq. of the Pennsylvania statutes. According to 65 P.S. Section 66.2:

"Every public record of an agency shall, at reasonable times, be open for examination and inspections by any citizen of the Commonwealth of Pennsylvania."

The Borough of Clearfield clearly meets the definition of "agency" as set forth in the Act. Under Section 1(1) of the Act, 65 P.S. Section 66.1(1), an agency is:

"...any municipal authority or similar organization created by or pursuant to a statute which declares in substance that such organization performs or has for its purpose the performance of an essential government function."

Section 1(2) of the Act, 65 P.S. Section 66.1(2), defines "public record" as:

"...any minute, order or decision by an agency fixing the person or property rights, privileges, immunities, duties or obligations of any person or group of persons..."

James E. Kling
January 25, 2001
Page 2

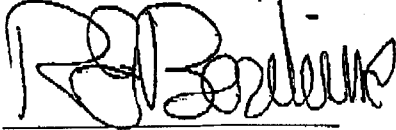
There is no question that building permit applications are public records.

84 would like to obtain access, on a regular bi-weekly basis, to files containing building permit applications that have recently been filed. 84 is not requesting actual copies of the building permit applications, but only requesting access to information contained on the building permit applications to take handwritten notes. I believe that 84 is entitled to this information as a matter of law, and would like a clarification on the policy of your department with respect to this matter. It is 84's sincere desire to avoid unnecessary legal action to obtain this information.

I shall look forward to your response.

Very truly yours,

84 LUMBER COMPANY

A handwritten signature in black ink, appearing to read "R. Bosilovic", written over a horizontal line.

By: Robert J. Bosilovic
General Counsel

RJB/cm

cc: Mike Scruggs (0292)



BOROUGH OF CLEARFIELD

14 SOUTH FRONT STREET

CLEARFIELD, PA 16830

clearfieldboro@penn.com

PHONE (814) 765-7817

FAX (814) 765-9507



January 31, 2001

84 Lumber Company, L.P.
Box 8484
Building No. 2
Eighty Four, PA 15384-8484

Dear Mr. Robert J. Bosilovic,

Reference your attached letter, the Clearfield Borough does not agree that building permits are public records; therefore, we have no choice but to turn this over to our Solicitor. Please address any farther correspondence to:

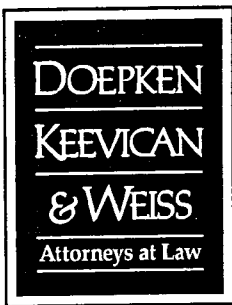
Mr. F. Cortez Bell III
P.O. Box 670
Clearfield, PA 16830

Sincerely,

Gregory W. Lingle
Borough Manager

Atch: 84 Lumber Letter

cc: Mr. F. Cortez Bell III



www.dkwlaw.com

CLEVELAND

DETROIT

HARRISBURG

PITTSBURGH

ST. LOUIS

WASHINGTON, D.C.

Writer's Direct Dial
412.355.2971
gschmidt@dkwlaw.com

March 19, 2001

Mr. F. Cortez Bell, III, Esquire
Solicitor, Borough of Clearfield
P.O. Box 670
Clearfield, PA 16830

Re: Access to Building Permits issued by the Borough of Clearfield

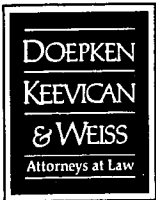
Dear Mr. Bell:

As you may know, the 84 Lumber Woodland store location ("84 Lumber") has made periodic requests to obtain access to review applications for building permits (the "applications") filed with the Borough of Clearfield (the "Borough") and building permits issued by the Borough (the "permits"). The Borough has consistently denied the requests of 84 Lumber to review such applications and permits. After Gregory W. Lingle denied the most recent request of 84 Lumber, indicating that permits are not public records as defined by the Pennsylvania Right-To-Know Act, 65 P.S. section 66 et seq. (the "Act"), this matter was referred to my attention. As directed by Mr. Lingle, I am sending this correspondence to you.

84 Lumber has a right to review the building permits and applications for building permits. The Act requires the disclosure of any "minute, order or decision by an agency fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of persons[.]" 65 P.S. § 66.1. The disclosure of such material is required when it:

1. was generated by an agency covered by the act;
2. constitutes a minute, order or decision of an agency or an essential component of the agency's decision;
3. fixes the personal or property rights or duties of any person or group of persons; and
4. is not protected by statute, order or decree of court.

Associated Builders & Contractors, Inc. v. Pennsylvania, Dep't of Gen. Servs., 747 A.2d 962, 965 (Pa. Commw. Ct. 2000) (citing *North Hills News Record v. Town of McCandless*, 555 Pa. 51, 56, 722 A.2d 1037, 1038 (1999)). Moreover, the determination of whether a document is a public record is to be given "a broad construction." *Della Franco v. Pennsylvania, Dep't of Labor and Indus.*, 722 A.2d 776, 777 (Pa. Commw. Ct. 1999).



www.dkwlaw.com

March 19, 2001

Page 2

Applying the *Associated Builders* factors to the facts of the instant case, it becomes clear that the applications and permits are public records subject to disclosure. First, the Borough is a political subdivision of the Commonwealth of Pennsylvania. Therefore, it fits the definition of "agency" set forth in the Right-To-Know Act. See 65 P.S. § 66.1(1). Second, the applications are "an essential component" of the Borough's decision because they provide the information upon which the Borough decides to issue or deny the permit. Likewise, permits are either a "decision" or an "order" of the Borough, as they allow property owners to proceed with building projects that require Borough approval. Third, in so doing, applications and permits patently fix the property rights of the individuals named in the permit. Finally, the disclosure of the information contained within the applications and permits is not protected by any statute, order or decree of court.

Moreover, while no Pennsylvania appellate court has specifically held that building permits are public records, at least two reported decisions of the Commonwealth Court did not object to the disclosure of such records. See *Scranton Times, L.P. v. Scranton Single Tax Office*, 736 A.2d 711, 713 (Pa. Commw. Ct. 1999) (stating that public agencies cannot be required to create lists based upon materials subject to disclosure pursuant to the Act); *Baravordeh v. Borough Council of Prospect Park*, 699 A.2d 789, 790 (Pa. Commw. Ct. 1997) (allowing the disclosure of a building permit). Additionally, the Commonwealth Court has held that "building records" that contained extensive information on construction specifications and that were maintained by a tax appeal authority were public records as defined by the Act. *Westmoreland County Bd. of Assessment Appeals v. Montgomery*, 321 A.2d 660 (Pa. Commw. Ct. 1974). Finally, many local governments across this Commonwealth disclose applications for building permits and the permits themselves pursuant to the Act.

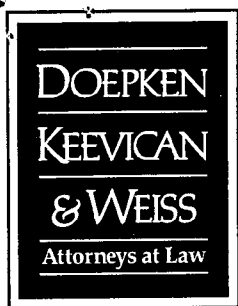
Therefore, 84 Lumber has a right under the Act to view the applications and permits of the Borough on a regular basis and, if necessary, will seek to enforce that right with all legal means. After you have had a chance to review this letter, please call me so that we can discuss this further.

Very truly yours,

Gordon W. Schmidt

GWS/jrg

cc: Gregory W. Lingle, Borough Manager, Borough of Clearfield
James E. Kling, Enforcement Code Officer, Borough of Clearfield



CLEVELAND

DETROIT

HARRISBURG

PITTSBURGH

ST. LOUIS

WASHINGTON, D.C.

Writer's Direct Dial
412.355.2971
gschmidt@dkwlaw.com

www.dkwlaw.com

May 2, 2001

Via FedEx

F. Cortez Bell, III, Esquire
Solicitor, Borough of Clearfield
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

Re: Access to Building Permits and Applications

Dear Mr. Bell:

Over one month ago, on March 19, 2001, I wrote to you regarding the above-referenced issue. In that letter, a copy of which I have enclosed, I outlined for you the reasons why 84 Lumber has the clear legal right, pursuant to the Pennsylvania Right-To-Know Act, 65 P.S. section 66 et seq. (the "Act"), to review building permits and applications for building permits issued by the Borough of Clearfield.

Thereafter, on April 2, 2001, we spoke by telephone regarding access to the building permits and applications. At that time, you informed me that you had received my letter of March 19, 2001, and that you would recommend disclosure of the building permits and applications to 84 Lumber at the Borough Committee meeting on April 12, 2001. You further promised to call me on April 13, 2001, and advise me as to whether the Borough had accepted your recommendation.

Despite numerous telephone calls that I have placed to your office and a letter which I sent to you on April 25, 2001, you have not provided me with the courtesy of a reply regarding the decision of the Borough Committee. Consequently, I must reluctantly demand that the Borough of Clearfield begin to allow employees of 84 Lumber to review building permits and applications on a regular basis within seven (7) days of the date of this letter, i.e. no later than May 9, 2001. Otherwise, I will recommend to 84 Lumber that it should enforce its rights under the Act by asserting a legal action against the Borough of Clearfield, Gregory Lingle and James Kling.


Very truly yours,

Gordon W. Schmidt

GWS/jrg

FILED

MAY 10 2001


William A. Shaw
Prothonotary

cc City Schmidt

City Schmidt

pd \$80.00

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

84 LUMBER COMPANY, L.P.,

Civil Division

Appellant,

No. _____

v.

BOROUGH OF CLEARFIELD,
JAMES E. KLING, and GREGORY W.
LINGLE,

Appellees.

ORDER

AND NOW, this _____ day of _____, 2001, it is hereby ORDERED, DECREED and ADJUDGED that, upon consideration of 84 Lumber Company's Appeal, Appellees the Borough of Clearfield, James E. Kling and Gregory W. Lingle are ORDERED and DIRECTED to permit employees, representatives and agents of 84 Lumber Company to inspect and copy the public records in the possession of Appellees to which 84 Lumber Company seeks access, to wit building permit applications and building permits issued by the Borough of Clearfield, on a regular basis.

_____, J.

CA

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

84 LUMBER COMPANY, L.P.

vs.

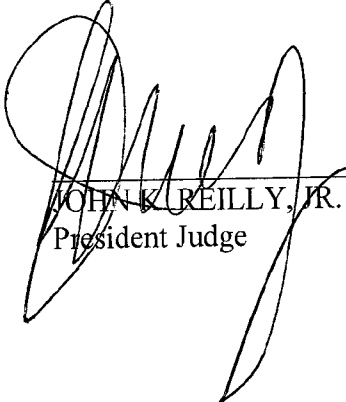
BOROUGH OF CEARFIELD,
JAMES E. KLING, and GREGORY
W. LINGLE

:
:
: No. 01-691-CD
:
:

ORDER

NOW, this 15th day of May, 2001, upon consideration of Plaintiff's Appeal filed in the above matter, a Rule is hereby issued upon Defendants to appear and Show Cause why the Motion should not be granted. Rule Returnable the 3rd day of July, 2001, at 9:30 A.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


JOHN K. REILLY, JR.
President Judge

FILED

MAY 15 2001

William A. Shaw
Prothonotary

FILED
013:3101
MAY 15 2001

4cc

Attg Schmidt

William A. Siney
Prothonotary

~~WAS~~

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

84 LUMBER COMPANY, L.P.,

Appellant,

v.

BOROUGH OF CLEARFIELD,
JAMES E. KLING, and GREGORY W.
LINGLE,

Appellees.

Civil Division

No. 01-691-CD

AFFIDAVIT OF SERVICE

Filed on behalf of:
84 Lumber Company, L.P.

Counsel of Record for this party:

Gordon W. Schmidt
Pa. I.D. No. 21265

John R. Gotaskie, Jr.
Pa. I.D. No. 81143

DOEPKEN KEEVICAN & WEISS
PROFESSIONAL CORPORATION
58th Floor, USX Tower
600 Grant Street
Pittsburgh, PA 15219
(412) 355-2600

Firm No. 870

FILED

MAY 18 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

84 LUMBER COMPANY, L.P.,

Civil Division

Appellant,

No. 01-691-CD

v.

BOROUGH OF CLEARFIELD,
JAMES E. KLING, and GREGORY W.
LINGLE,

Appellees.

AFFIDAVIT OF SERVICE

TO: The Prothonotary of Clearfield County

Please be advised that copies of the Order entering the Rule to Show Cause issued by the Honorable John K. Reilly, Jr., and the Notice of Appeal in the above-captioned matter were served pursuant to Local Rule of Civil Procedure 206(f) via First Class U.S. Mail, postage prepaid, on May 17, 2000, addressed as follows:

Borough of Clearfield
c/o F. Cortez Bell, III, Solicitor
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

James E. Kling
Enforcement Code Officer
Clearfield Borough
14 South Front Street
Clearfield, PA 16830

Gregory W. Lingle
Borough Manager
Borough of Clearfield
14 South Front Street
Clearfield, PA 16830

David S. Meholick, Court Administrator
Office of the Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

A copy of the letter which enclosed the copies of the Order and the Notice of Appeal is attached

hereto as Exhibit "A."

Respectfully submitted,

DOEPKEN KEEVICAN & WEISS, P.C.

Date: May 17, 2001



Gordon W. Schmidt

Pa. I.D. No. 21265

John R. Gotaskie, Jr.

Pa. I.D. No. 81143

Counsel for Appellant,
84 Lumber Company, L.P.

58th Floor, USX Tower
600 Grant Street
Pittsburgh, PA 15219
(412) 355-2600

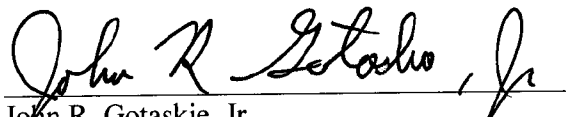
CERTIFICATE OF SERVICE

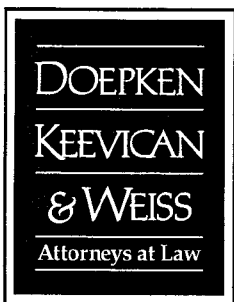
The undersigned hereby certifies that a true and correct copy of the foregoing Affidavit of Service was served this 17th day of May, 2001, via First Class U.S. Mail, postage prepaid, upon the following:

Borough of Clearfield
c/o F. Cortez Bell, III, Solicitor
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

James E. Kling
Enforcement Code Officer
Clearfield Borough
14 South Front Street
Clearfield, PA 16830

Gregory W. Lingle
Borough Manager
Borough of Clearfield
14 South Front Street
Clearfield, PA 16830


John R. Gotaskie, Jr.



www.dkwlaw.com

CLEVELAND

DETROIT

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PITTSBURGH

WASHINGTON, D.C.

Writer's Direct Dial
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jgotaskie@dkwlaw.com

May 17, 2001

Borough of Clearfield
c/o F. Cortez Bell, III, Solicitor
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

Gregory W. Lingle
Borough Manager
Borough of Clearfield
14 South Front Street
Clearfield, PA 16830

James E. Kling
Enforcement Code Officer
Clearfield Borough
14 South Front Street
Clearfield, PA 16830

David S. Meholick, Court Administrator
Office of the Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Re: 84 Lumber, L.P. v. Borough of Clearfield, et al.
Clearfield County Case No. 01-691-CD

Dear Gentlemen:

Pursuant to Local Rule of Civil Procedure 206(f) ("Local Rule"), enclosed please find copies of the Order entering a Rule to Show Cause issued by the Honorable John K. Reilly, Jr., and the Notice of Appeal in the above-captioned matter. As you will see, the Order sets a Rule Returnable for July 3, 2001, at 9:30 a.m. in Courtroom No. 1 of the Clearfield County Courthouse.

For your reference, I have also enclosed service copies of the Affidavit of Service which has been filed with the Clearfield County Prothonotary pursuant to Local Rule 206(g).

Very truly yours,

John R. Gotaskie, Jr.

Enclosures

FILED

10:36

MAY 18 2001

cc - G. Schmidt
JRS

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

84 LUMBER COMPANY, L.P.,

Civil Division

Appellant,

No. 01-691-CD

v.

ACCEPTANCE OF SERVICE

BOROUGH OF CLEARFIELD,
JAMES E. KLING, and GREGORY W.
LINGLE,

Filed on behalf of:
Borough of Clearfield, James E. Kling and
Gregory W. Lingle

Appellees.

Counsel of Record for this party:

F. Cortez Bell, III
Pa. I.D. No.

BELL, SILBERBLATT & WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

FILED

JUN 20 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

84 LUMBER COMPANY, L.P.,

Civil Division

Appellant,

No. 01-691-CD

v.

BOROUGH OF CLEARFIELD,
JAMES E. KLING, and GREGORY W.
LINGLE,

Appellees.

ACCEPTANCE OF SERVICE

I accept service of the Notice of Appeal filed at the above case number on behalf of Appellees, the Borough of Clearfield, James E. Kling and Gregory W. Lingle, and certify that I am authorized to do so.

Respectfully submitted,

Date: ~~May~~ ^{June} 20, 2001

F. Cortez Bell, III
F. Cortez Bell, III, Esquire

BELL, SILBERBLATT & WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

Counsel for Appellees, the Borough
of Clearfield, James E. Kling and
Gregory W. Lingle

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Acceptance of Service was served this 20th day of ~~May~~^{June}, 2001, via First Class U.S. Mail, postage prepaid, upon the following:

Gordon W. Schmidt
John R. Gotaskie, Jr.
Doepken Keevican & Weiss, P.C.
58th Floor, USX Tower
600 Grant Street
Pittsburgh, PA 15219

F. Cortez Bell III
F. Cortez Bell, III, Esquire

FILED

JUN 20 2001
O / 11:10 / W
William A. Shaw
Prothonotary

2 CENTS TO ATTORNEY

REP

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

84 LUMBER COMPANY, L.P.,

Appellant,

v.

BOROUGH OF CLEARFIELD,
JAMES E. KLING, and GREGORY W.
LINGLE,

Appellees.

Civil Division

No. 01-691-CD

**PRAECIPE TO SETTLE AND
DISCONTINUE**

Filed on behalf of: Appellant,
84 Lumber Company, L.P.

Counsel of Record for this party:

John R. Gotaskie, Jr.
Pa. I.D. No. 81143

DKW LAW GROUP, PC
58th Floor, USX Tower
600 Grant Street
Pittsburgh, PA 15221
Phone: 412.355.2600
Fax: 412.355.2609

Firm No. 870

FILED

SEP 05 2001

**William A. Shaw
Prothonotary**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

84 LUMBER COMPANY, L.P.,

Civil Division

Appellant,

No. 01-691-CD

v.

BOROUGH OF CLEARFIELD,
JAMES E. KLING, and GREGORY W.
LINGLE,

Appellees.

PRAECIPE TO SETTLE AND DISCONTINUE

TO THE PROTHONOTARY OF CLEARFIELD COUNTY:

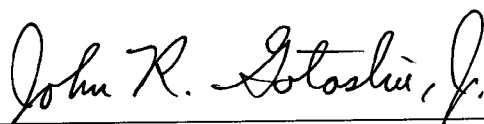
Kindly mark the above-captioned action settled and discontinued without prejudice.

Respectfully submitted,

DKW LAW GROUP, PC

Date: August 31, 2001

By:



John R. Gotaskie, Jr.

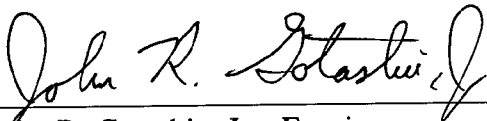
DKW LAW GROUP, PC
58th Floor, USX Tower
600 Grant Street
Pittsburgh, PA 15221
Phone: 412.355.2600
Fax: 412.355.2609

Counsel for Appellant,
84 Lumber Company, L.P.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Praeipue to Settle and Discontinue was served this 31ST day of August, 2001, via First Class U.S. Mail, postage prepaid, upon the following:

F. Cortez Bell, III, Esquire
BELL, SILBERBLATT & WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830



John R. Gotaskie, Jr., Esquire

FILED

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William A. Shaw
Prothonotary

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IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

84 Lumber Company, L.P.

Vs.

No. 2001-00691-CD

Clearfield Borough
James E. Kling
Gregory W. Lingle

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on September 5, 2001 marked:

Settled and discontinued without prejudice.

Record costs in the sum of \$80.00 have been paid in full by John R. Gotaski, Jr., Esquire.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 5th day of September A.D. 2001.

William A. Shaw, Prothonotary