

2003-261-CD
HARRY W. HAND ETAL

VS

CARL BELIN, JR. ETAL

original

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

HARRY W. HAND and
DOLLY E. HAND,

Plaintiffs

vs.

CARL A. BELIN Jr.
DANIEL D. DUCKETT
DONALD KELLY

Defendant

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No.: 03-261-cv

Code: Complaint

Filed on behalf of Plaintiffs:

Harry W. Hand and Dolly E. Hand

Harry W Hand + Dolly E Hand
Counsel of Record of this Party:

HARRY W. HAND
530 SPRUCE STREET
CLEARFIELD PA. 16830
PH. 814-765-8208

FILED

FEB 25 2003

William A. Shaw
Prothonotary

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

HARRY W. HAND and
DOLLY E. HAND,

Plaintiffs

vs.

CARL A. BELIN Jr.
DANIEL D. DUCKETT
DONALD KELLY

Defendant

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No.: _____

Code: Complaint

NOTICE

Your have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiffs. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator's Office
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641 Ext. 5982

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

HARRY W. HAND and
DOLLY E. HAND,

Plaintiffs

vs.

CARL A. BELIN Jr.
DANIEL D. DUCKETT
DONALD KELLY

Defendant

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No.: 03-261-CP


Code: Complaint

COMPLAINT

- 1) The plaintiffs are Harry W. Hand and Dolly E. Hand, husband and wife of 530 Spruce Street, Clearfield Pennsylvania 16830
- 2) The defendants Carl A. Belin Jr., OF 15 N. Front STREET Clearfield, Pa. 16830
Daniel D. Duckett, of 205 Poplar Ave CLEARFIELD, Pa 16830 and Donald Kelly of 518 Mt. Joy, Clearfield Pa. 16830
- 3) The plaintiffs are owners of real estate in Lawrence Township, where the defendants were in charge of Lawrence Township, Clearfield County Pennsylvania.
- 4) The laws they violated are as follows:
 - a) The Public Administration Crimes Act #18-5301
 - b) Lawrence Township Zoning Ordinance 1977
 - C) The suspension of all building permits against the plaintiffs pursuant to a letter of June 26, 1990.
- 5) Municipal; Zoning Code 9.3.10 which provides for a 60 day time limit to act.No action should provide for automatic approval.
- 6) Lawrence Township Zoning 1993.

- 7) Pennsylvania Municipal Cors 53 P.S. 10907-10908
- 9) The United States Constitution 14th Amendment (Equal Protection)
- 10) The United States Constitution 1st Amendment (Free Speech)
- 11) The United States Constitutional 5th Amendment (Due Process).
- 12) The Constitution of Commonwealth of Pennsylvania Article #11-26.

Wherefore the plaintiffs seek damages a jury trial and all other appropriate relief.


Harry W. Hand Pro Se

FILED

FEB 25 2003

0/8:34

William A. Shaw
Prothonotary

4 cc to PNY

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

HARRY W. HAND and
DOLLY E. HAND,

Plaintiffs

vs.

CARL A. BELIN, JR., DANIEL D.
DUCKETT, DONALD KELLY,

Defendants

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:
:

NO. 03-261-CD

PRELIMINARY OBJECTIONS

Filed on Behalf of:
Defendants

Counsel of Record for
This Party:

Kimberly M. Kubista, Esquire
PA I.D. #52782

BELIN & KUBISTA
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972

FILED

MAR 13 2003

William A. Shaw
Prothonotary

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

HARRY W. HAND and	:	
DOLLY E. HAND,	:	
Plaintiffs	:	
	:	NO. 03-261-CD
vs.	:	
	:	
CARL A. BELIN, JR., DANIEL D.	:	
DUCKETT, DONALD KELLY,	:	
Defendants	:	

PRELIMINARY OBJECTIONS

AND NOW comes Carl A. Belin, Jr., Daniel D. Duckett and Donald Kelly, by and through their attorneys Belin & Kubista, and files the following preliminary objections to the complaint filed by Harry W. Hand and Dolly E. Hand, and in support thereof aver as follows:

I - FAILURE TO STATE A CLAIM

1. The Plaintiffs merely allege who the Plaintiffs and Defendants are, that Plaintiffs were owners of real estate in Lawrence Township, and summarily allege that Defendants violated various laws of Pennsylvania, Ordinances of Lawrence Township and constitutional provisions. The complaint does not allege in what manner these violations occurred, nor does the complaint

allege in what manner Plaintiffs were entitled to protection under said laws, and the specific damages that were suffered. As a result, the complaint is completely deficient and must be dismissed for failing to state a cause of action.

II -MOTION TO DISMISS A VEXATIOUS ACTION
WHICH IS ARBITRARY AND HAS BEEN FILED IN BAD FAITH

2. While Plaintiffs fail to allege a basis for their action in their complaint, it is clear they seek to relitigate the same issues that they raised in prior actions which have been decided adversely to them as follows:

(a) Clearfield County Court of Common Pleas Lawrence Township v. Harry W. Hand and Dolly E. Hand, and Kenneth D. Veihdeffer and Gloria W. Veihdeffer No. 90-15. Synopsis of the case: Judgment and Decree were entered in favor of Plaintiff and Additional Defendants and against Harry W. Hand and Dolly E. Hand; Judgment was affirmed by the Commonwealth Court on April 11, 1996; and Petition for Allowance of Appeal was denied by the Pennsylvania Supreme Court on March 17, 1997.

(b) United States District Court for the Western District of Pennsylvania Harry W. Hand and Dolly E. Hand v. Lawrence Township, Daniel Duckett, George Clark and Donald Kelly

CA 97-241J. Synopsis of the case: District Court Judge Smith dismissed the action against Defendants Daniel Duckett, George Clark and Donald Kelly on June 25, 1998; Judge Smith dismissed action against the remaining Defendant, Lawrence Township, on May 26, 1999; and Judgment of the District Court was affirmed by the Court of Appeals for the Third Circuit on February 24, 2000. No petition for certiorari to the Supreme Court of the United States was filed.

III - FRIVOLOUS AND VEXATIOUS ACTION

Plaintiffs also request that this case be dismissed as being a frivolous and vexatious action in view of the prior decisions and judgments of the state and federal courts.

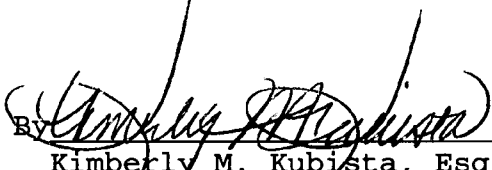
As a result of the foregoing, Defendants hereby request the imposition of counsel fees and costs as a result thereof pursuant to 42 Pa.C.S.A. § 2503(9).

WHEREFORE, Defendants request that Your Honorable Court

dismiss Plaintiffs' complaint and award counsel fees to Belin & Kubista.

RESPECTFULLY SUBMITTED,

BELIN & KUBISTA

By 
Kimberly M. Kubista, Esq.
Attorney for Defendants

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

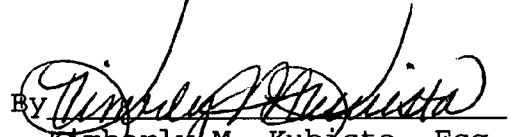
HARRY W. HAND and :
DOLLY E. HAND, :
Plaintiffs : NO. 03-261-CD
vs. :
CARL A. BELIN, JR., DANIEL D. :
DUCKETT, DONALD KELLY, :
Defendants :

CERTIFICATE OF SERVICE

This is to certify that the undersigned has sent a
certified copy of Defendants' Preliminary Objections to
Plaintiff in the above-captioned matter to the following parties
by postage prepaid First Class United States mail on
March 13, 2003:

Harry W. Hand
Dolly E. Hand
530 Spruce Street
Clearfield, PA 16830

BELIN & KUBISTA

By 
Kimberly M. Kubista, Esq.
Attorney for Defendants

BELIN & KUBISTA
ATTORNEYS AT LAW
15 NORTH FRONT STREET
P. O. BOX 1
CLEARFIELD, PENNSYLVANIA 16830

GA

FILED

4cc

2/4/04
MAR 13 2003

Atty Kubista

William A. Shaw
Prothonotary

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

HARRY W. HAND and
DOLLY E. HAND,
Plaintiffs

VS.

CARL A. BELIN, Jr.
DANIEL D. DUCKETT,
DONALD KELLY,
Defendants

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No: 2003-261-CD

Code: Civil Complaint

Filed on behalf of Plaintiffs
Harry W. Hand & Dolly E. Hand

PRO-SE

Harry W. Hand and
Dolly E. Hand
530 Spruce Street
Clearfield, PA 16830
(814)-765-8208

*CC. Honorable John K. Reilly Jr.
Kimberly M. Kubista Esquire*

FILED

A JURY TRIAL IS DEMANDED

JUN 23 2003

William A. Shaw
Prothonotary

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

HARRY W. HAND and	*	
DOLLY E. HAND,	*	No.: 2003-261-CD
Plaintiffs	*	
	*	
VS.	*	
	*	
CARL A. BELIN Jr.	*	JURY TRIAL DEMANDED
DANIEL D. DUCKETT	*	
DONALD KELLY,	*	
Defendants	*	

NOTICE TO DEFEND

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

HARRY W. HAND and	*	
DOLLY E. HAND,	*	No.: 2003-261-CD
Plaintiffs	*	
	*	
VS.	*	
	*	
CARL A. BELIN Jr.	*	JURY TRIAL DEMANDED
DANIEL D. DUCKETT	*	
DONALD KELLY,	*	
Defendants	*	

COMPLAINT

1. Plaintiffs are husband and wife, are competent adult individuals who rent mobile home lots residing in Lawrence Township with an address of 530 Spruce Street, Clearfield, PA 16830.

2. Defendant CARL A. BELIN, JR. is a competent adult individual who is an attorney at law licensed in Pennsylvania with an address of 15 North Front Street, Clearfield, PA 16830.

3. Defendant DANIEL D. DUCKETT is a competent adult individual who resides at 205 Poplar Avenue, Clearfield, PA 16830.

4. Defendant DONALD KELLY is a competent adult individual who resides at 518 Mt. Joy Road, Clearfield, PA 16830.

5. Defendants DANIEL D. DUCKETT and DONALD KELLY were formerly Supervisors of Lawrence Township, Clearfield County, Pennsylvania. Each of these individuals acted jointly with Carl

A. Belin, Jr. to bring the harms upon Plaintiffs set out in this Complaint.

6. The steel and iron plan and lots addition to Clearfield, Pa, was laid out Dec. 20. 1916 for Hyde Brothers and Co.

A. The total number of lots laid out in the addition is estimated to be 1,600.

B. Most of the lots in this addition are 40 X 120 feet in size.

7. In 1980 Plaintiffs bought and developed 7 lots specifically numbered as lots 18 through 24 on Robinson Avenue.

A. Each 40' X 120' lot was approved for the placement of 1 mobile home.

B. Plaintiffs incurred no objection to or problem with permits or zoning on these lots.

8. In 1991 Plaintiffs bought and developed 2 lots specifically numbered as lots 21 & 22, Block #19.

A. Each of said 40' X 120' lots was approved for the placement of 1 mobile home.

B. Plaintiffs incurred no objection to or problem with permits or zoning on these lots.

9. In 1982 Plaintiffs bought 2 lots specifically numbered as lots 17 & 18 Block #3 and in 1984 Plaintiffs bought lot 19 of Block #3.

A. Plaintiffs added fill to the 3 lots and developed them into 3 mobile home lots with one mobile home on each lot.

B. Plaintiffs incurred no objection to or problem with permits or zoning on these lots.

10. On October 17, 1986, Plaintiffs bought nine 40' X 120' lots from Lee Gray specifically identified by deed and maps shown in Exhibits "B", "B1" and "B2".

A. Plaintiffs filled in these lots and put water and sewer on them in 1988.

B. In January 1989 Plaintiffs leased lots 1 & 2 (identified by these numbers in Exhibits "B-2"). Plaintiffs incurred no objection to or problem with permits or zoning on these 2 lots.

C. In March 1989, Plaintiffs started to develop lots 5 through 11 (identified as such in Exhibit "B-2") for homes. For this project they were notified that they needed no permits and they had no objections or trouble with Lawrence Township.

D. Past Lawrence Township Supervisor Walter C. Haversack confirms in Exhibit "M" that Plaintiffs not have had to seek a variance to develop or rent out their lots.

11. In 1988 Lawrence Township by its employees or agents caused 1½ to 2 feet of fill to be put on top of the alley on the rear of the Veihdeffler lots thereby creating a dam effect.

12. Due to the fill on the alley water started to collect

on the Veihdeffler lots.

13. Carl A. Belin, Jr. said Plaintiffs were blocking the water from draining off the Veihdefflers' land and stated without factual basis that Plaintiffs had filed in a ditch on Plaintiffs' land causing the blockage. In fact Plaintiffs not filed in any ditch on their property but they had filled lots 17,18 & 19 of Block #3 by adding about 20" of fill. But with the fill on the alley placed by the Township, Plaintiffs lots were so low that they would have had to pump the water from their land.

14. On June 26, 1990, Defendant Belin sent Plaintiffs a letter which stated that if they didn't fix the water problem within 30 days Lawrence Township would withhold all permits for all mobile home applicants in the Township. This was a violation of basic constitutional law (See Constitution law #81 & 87 and Bill of Rights) *"SEE Q"*

15. As a consequence of the letter referred to above Lawrence Township officials wouldn't so much as give the citizens an application for placement of a mobile home but instead they just refused the applications verbally, and thus discriminated against all the applicants. Lawrence Township was losing from this also. This was illegal.

16. The effect of refusal to grant any mobile home permits to Plaintiffs was to close Plaintiffs' business of renting their trailer lots in Lawrence Township. As each lot became vacant

Plaintiffs were unable to get a permit for the next mobile home.

17. On May 14, 1991 Plaintiffs appealed this refusal of Lawrence Township to grant mobile home location permits to the Clearfield County Court.

18. On May 14, 1991 Judge John K. Reilly, Jr. held a hearing at which time Defendant Belin told Judge Reilly that the Township was releasing the hold on all permits. "NOTE:" This was not placed on the official record. In spite of Defendant Belin's assurance Lawrence Township didn't release all permits. Plaintiffs believe Carl A. Belin, Jr. lied in making such assurances.

19. August 26, 1991 Plaintiffs entered into a lease with Gene and Lynn McGee and Bonnie Bloom for lot 27, block 25. Permit application was verbally refused. They set home anyway.

20. October 26, 1991, Plaintiffs entered into a lease with Marion Brantner on Lot #9 on Block 25. Permit application was verbally refused. She set home anyway.

21. On May 26, 1992, at a hearing before Judge John K. Reilly, Jr. Plaintiff Harry W. Hand told the Judge everything that had happened.

22. On May 26, 1992 Defendant Belin told Judge John K. Reilly, Jr. that if Plaintiffs would apply for a variance they would get it.

23. Relying on Defendant Belin's promise before the court

on that same day (May 26, 1992) Plaintiffs applied for a variance with the Lawrence Township Zoning Board. Plaintiffs didn't believe they needed a variance for anything they were doing but applied nevertheless.

24. On August 25, 1992, a hearing was held before the Lawrence Township Zoning Board upon Plaintiffs' variance request. No decision was reached at this hearing but Plaintiffs believed that their request was going to be granted. No decision was made on August 25, 1992. The Zoning Board then held another hearing (at the request of Defendant Belin) on this issue on October 19, 1992 without consent of Plaintiffs.

25. Plaintiffs informed the Lawrence Township Zoning Board at the hearing on October 19, 1992 that they were in violation of Municipality Zoning code 9.3.10 53 P.S. §10907 (they were past the 60 day time limit as set out in 1.2 and 9. See Exhibits "J" & "K". Everything Plaintiffs asked for is permitted under this law.

26. The decision of the Zoning Board after the October 19, 1992 hearing was that Plaintiffs had to join 2 lots together for 1 mobile home, and they would not allow a 4 foot variance from the required 50 foot distance from the top of the creek bank

27. No one in this development ever previously had to join 2 lots to place 1 mobile home on it. The Hyde area of Lawrence Township is a special exemption from zoning (See D4 Section 402

of the Zoning Ordinance which states that minimum lot area regulations will not apply in Hyde.

28. All Hyde lots were grand-fathered (See Exhibit "M") and exempt from land area zoning.

29. Also see Exhibits "O-1" through "O-5" showing the Lawrence Township Zoning Ordinance.

30. The zoning Board was controlled by Defendant Belin and at his direction it violated Plaintiffs rights to a fair hearing. Following the October 19, 1992 hearing 2 zoning board members quit.

31. As to the requirement of being 50 feet from the creek in June 1994 (See Exhibit "N") Plaintiff Harry Hand told Ken Haney, Zoning officer, that he didn't need the 4 foot variance. Said Plaintiff stated to Ken Haney that Plaintiff could move the mobile home over and still comply with 8 foot side yard zoning requirement. Ken Haney said no matter what, Plaintiff was never going to use those 2 lots, (i.e. Lots #8 & 9). See Zoning sections D1-4. Lots #8 and 9 do comply with the zoning requirements.

32. Plaintiffs mobile home placement permits were refused and as a direct consequence they have lost rentals from June 26, 1990 though and including July 2001.

33. Plaintiffs were denied the rights to use their land in accordance with the law, even though the proposed uses complied

with all zoning laws. Defendants, together and individually have discriminated and used the Police Power against the Plaintiffs.

34. When Lawrence Township elected new supervisors (replacing Defendants Duckett and Kelly) and Carl A. Belin, Jr. quit representing Lawrence Township, Plaintiffs were able to obtain permits with no problem. "SEE P 13"

35. The laws violated by Defendants by their actions set forth herein are as follows:

- A. #1 Public Administration Crimes, #18-5301
- B. #2 Lawrence Township Zoning Ordinance 1977 D-1 to 3
- C. #3 Letter on June 26, 1990 suspending all building permits (see Exhibit "E") against me in the Township "without any legal action or hearings.
- D. #4 Municipalities Zoning Code ¶9.3.10 by violating the 60 day time limit (see Exhibits "J-K-M") and by controlling the Zoning Board by not letting this board do it's job.
- E. The United States Constitution law #81 & 87 (see Exhibit "C")
- F. The First and Fourteenth amendments of the U.S. Constitution and the Fifth amendment of the U.S. Constitution which states that NO PERSON SHALL BE DEPRIVED OF PROPERTY WITHOUT DUE PROCESS OF LAW.
- G. The Bill of Rights as enacted by the Legislative Branch of the United States and ratified by the Several States

H. Amendments #1, 4, 5, 7 and 11 to the U.S.
Constitution

36. Plaintiffs request that the jury award punitive damages and attorneys fees to them for the outrageous and illegal actions of the defendants in this case.

WHEREFORE Plaintiffs ask that they be awarded \$74,340.00 in consequential damages, also attorneys fees incurred and such punitive damages as determined sufficient to punish the defendants for their outrageous acts, plus interest at the maximum legal rate together with costs of this action and any other costs discovered by Plaintiffs before trial.

JURY TRIAL DEMANDED

June 23, 2003



Harry W. Hand

June 23, 2003



Dolly E. Hand

VOL 1115 PAGE 584

This Deed,

MADE THE seventeenth day of October in the year
of our Lord one thousand nine hundred eighty-six

BETWEEN LEE J. GRAY.(single)
Box 70
New Millport, Pa. 16861

and HARRY W. and DOLLY E. HAND, tenants by the entireties, of
530 Spruce Street, Clearfield, Pa. 16830

Grantees :

WITNESSETH, that in consideration of Eighteen Thousand (\$18,000.00)-----
-----Dollars,
in hand paid, the receipt whereof is hereby acknowledged, the said grantor does hereby grant
and convey to the said grantees ,

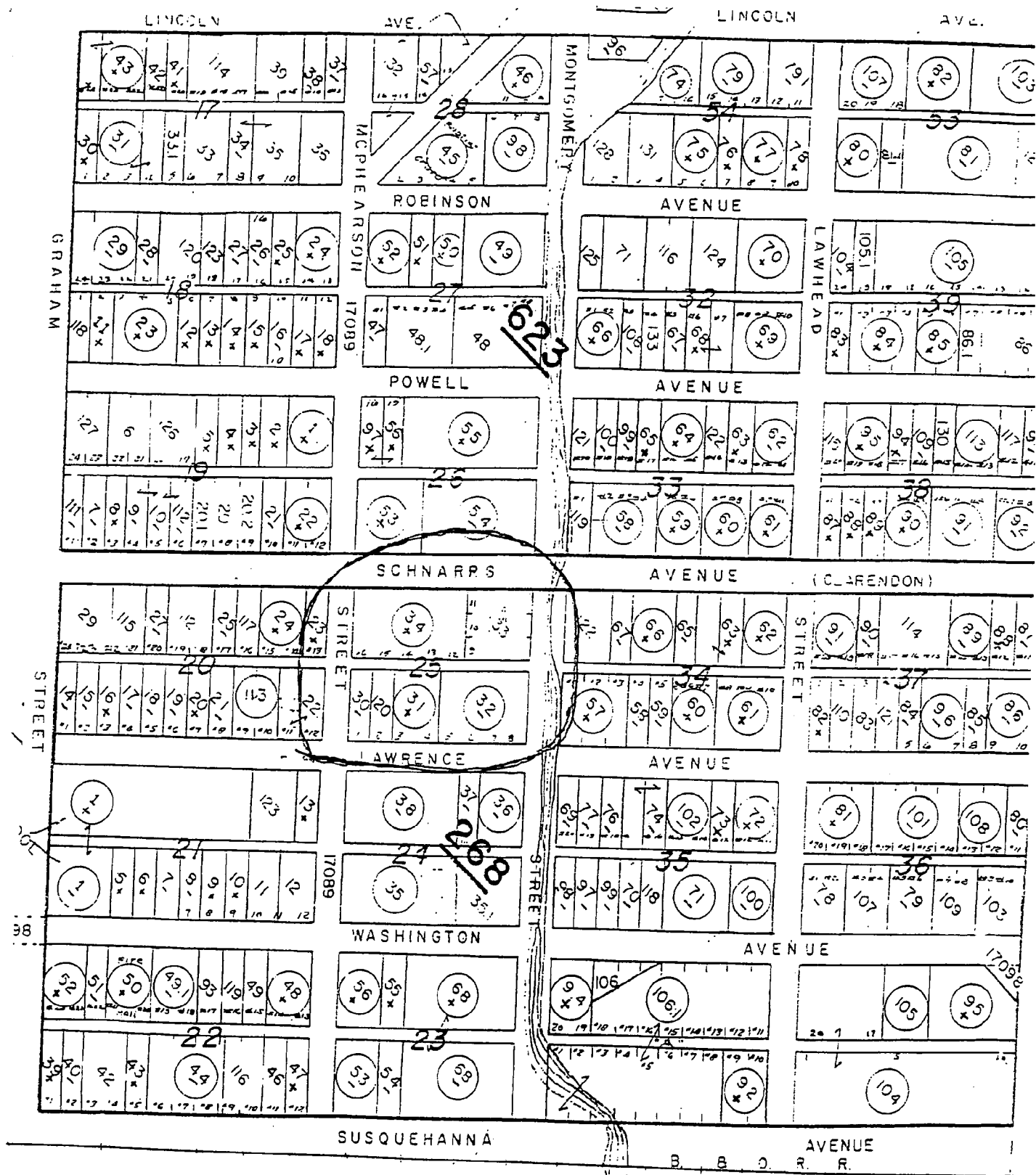
ALL that certain lot or tract of land situated in the Township of
Lawrence, County of Clearfield, Commonwealth of Pennsylvania, and
being designated in the plan of the Steel and Iron Works Addition
to Clearfield and being more particularly bounded and described as
follows:

Nine lots in Block 25, Lot Numbers 1, 2, 5, 6, 7, 8, 9, 10 and 11.

Lot No. 1	Map No. 123-J09-268-25	was 30
Lot No. 2	Map No. 123-J09-268-120	
Lots No. 5, 6, 7, & 8	Map No. 123-J09-268-32	
Lots No. 9, 10, & 11	Map No. 123-J09-268-33	

BEING the same premises conveyed to the Grantor herein by deed
of Elizabeth R. Smith, widow, dated March 18, 1976 and recorded
in Deed Book 716 page 330.

B



Clearfield Co Assessment Map of
Hydr PA Block # 25 - 268
B-1

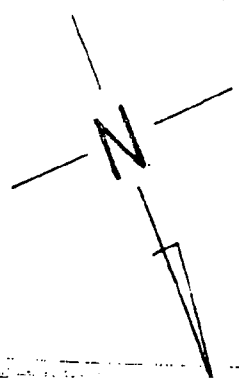
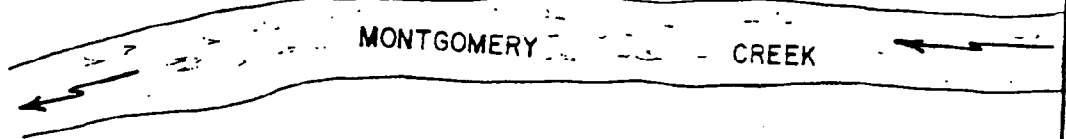
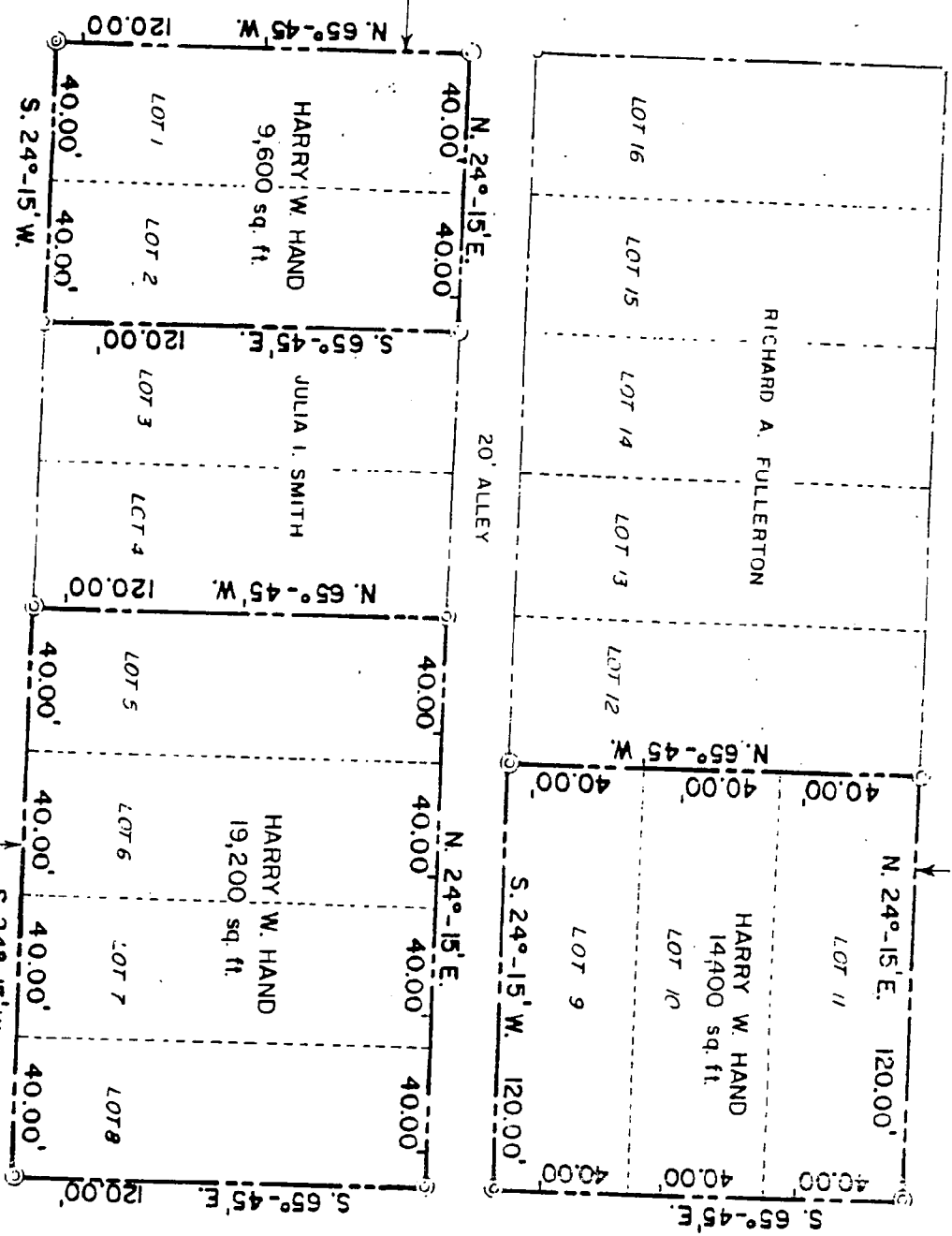
Mc FEARSON STREET

EDGE OF PAVEMENT

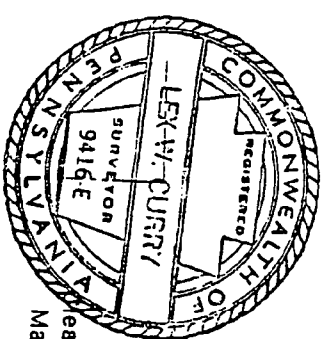
CLARENDON AVENUE

LAWRENCE AVENUE

LEONARD R. MARTELL



NOTE: ALL CORNERS
MARKED WITH
2" IRON PINS



HARRY W. HAND
Clearfield, Pennsylvania
SURVEY MAP OF
LOTS IN HYDE BLOCK 25
LAWRENCE TOWNSHIP
CLEARFIELD COUNTY
Scale: 1 inch = 50 Feet
Clearfield, Pa.
May 1, 1987
Office Of:
Lex W. Curry
Reg. Surveyor

6-28-724

COPY'S

EMINENT DOMAIN 2 (1)

COMPENSATION UNDER EMINENT DOMAIN CODE DOES NOT
EQUIVALE ACTUAL TAKING. RATHER A "TAKING" OCCURS WITHIN MEANING OF
DE AND COMPENSATION IS DUE, WHENEVER ENTITY CLOTHED WITH
POWER OF EMINENT DOMAIN SUBSTANTIALLY DEPRIVES OWNER OF
USE AND ENJOYMENT OF HIS PROPERTY 26 P.S. 1-601

3 CONSTITUTIONAL LAW 81

434 A2d 1209

WHEN THE COMMONWEALTH ATTEMPTS TO EXERCISE ITS POLICE
POWER, PRIVATE RIGHTS CANNOT BE DENIED BY THE ARBITRARY AND
INFETTERED EXERCISE OF ADMINISTRATIVE DISCRETION.
FIRE

4. SAME AS ABOVE 81

434 A2d 1209

IT IS FUNDAMENTAL THAT A LANDOWNER MAY NOT BE DEPRIVED OF
CONSTITUTIONALLY PROTECTED PROPERTY RIGHT BY COMMONWEALTH'S
EXERCISE OF ITS POLICE POWER WITHOUT A MEANINGFUL
OPPORTUNITY TO BE HEARD AND TO DEVELOP A PROPER EVIDENTIARY
RECORD BEFORE JUDICIAL REVIEW. EVIDENTIARY

Checked All Law 81

CONSTITUTIONAL LAW 87

UNLESS RIGHT TO ACQUIRE AND USE PROPERTY AND TO DEAL WITH
AND USE IT AS HE CHOOSES SO LONG AS THE USE HARMING NOBODY
A NATURAL RIGHT WHICH DOES NOT OWE ITS ORIGIN TO
INSTITUTIONS BUT IS PART OF CITIZEN'S NATURAL LIBERTY
WHICH IS GUARANTEED AS INVIOLENT BY EVERY AMERICAN
41 OF RIGHTS

C

ARTICLE III

R-U RESIDENTIAL URBAN DISTRICT

In R-U Residential Urban District, the following shall apply:

Section 300.

- A. A building may be used, erected, or altered and a lot or premises may be used for any of the following purposes:
1. One-family dwelling.
 2. Duplex (two-family dwelling)
 3. Multiple family dwellings.
 4. Conversion apartments.
 5. Educational, religious, or philanthropic use, in each case when authorized as a special exception (See Article XII, Section 1200, H).
 6. Public utility structures, including telephone, gas, and electric; municipal structures and structures used for, or in conjunction with, municipal recreation programs; when authorized as a special exception; provided the architecture is in harmony with the established trend for the districts; and in residential districts, no public business facilities, storage of materials, trucks or repair facilities, or housing of repair crews will be permitted. (See Article XII, Section 1200, G).
 7. Agriculture.
 8. Home occupation, to include professional offices, within a dwelling when such use is secondary and incidental to the major residential use of the structure; and further provided that no more than one employee other than the residents of the dwelling shall be permitted. Off-street service and parking area shall be required. See Article XIII, Section 1301, A, 1, e.
 9. Public parks and playgrounds when authorized by Township Supervisors.
 10. Accessory use on the same lot with and customarily incidental to any of the above permitted uses.
 11. Mobilehome as a permanent dwelling unit.

Section 301. Conditional Uses. (See Article VIII for procedures)

- A. Planned Residential Development.
- B. Clubs, Lodges and Fraternal Organizations.
- C. Domestic Commercial Uses.
- D. Professional Offices - Doctors Office - Medical and Dental Clinics.

Section 302. Lot Area.

- A. With public water and sewer:
 - 1. One-family dwelling - minimum 7,500 square feet.
 - 2. Two-family dwelling - minimum 4,500 square feet per family.
 - 3. Multiple family dwelling - a minimum lot area of 7,500 square feet plus 2,000 square feet for each family in excess of two, but not to exceed a density of twenty (20) families per acre.
- B. With either public water or sewer, but not both, and further subject to all rules and regulations of the Township and the Pennsylvania Department of Environmental Resources:
 - 1. One-family dwelling - minimum 12,000 square feet.
 - 2. Two-family dwelling - minimum 8,000 square feet per family.
- C. Neither water nor sewer facilities are provided; subject to all rules and regulations of the Township and the Pennsylvania Department of Environmental Resources but not less than the following:
 - 1. One-family dwelling - minimum 20,000 square feet per family.
 - 2. Two-family dwelling - minimum 12,000 square feet per family.

Section 303. Lot Coverage.

- A. The area of a building establishing the use of a lot shall not exceed an area equal to thirty percent (30%) of the lot area. Total coverage including accessory structures shall not exceed 35% of the lot area.

Section 304. Yards.

- A. There shall be a front yard, the depth of which shall be at least 30 feet from the front lot line, or 55 feet from the centerline of the street or road, etc., whichever is greater.

3

B. There shall be two (2) side yards, one on each side of the property, neither of which shall be less than 8 feet for one-family dwellings, 15 feet for a duplex and 20 feet for a multiple family dwelling. No accessory or supplementary structure shall be constructed closer to the side lot line than the distance of the required side yard. In the case of a Townhouse, a side yard of at least 18 feet shall be provided for each end unit.

C. Rear yard. No dwelling shall be constructed less than twenty percent of the lot depth from the rear property line; and no accessory or supplementary structure shall be constructed any closer than 5 feet to the rear lot line unless the lot abuts an alley in which case a 15 foot setback shall be required.

Section 305. Lot Width.

The lot shall have a width of at least seventy-five (75) feet at the building line and all corner lots shall be at least twenty percent wider than the interior lots of the same block.

Section 306. Height Regulations.

A. No Limit.

Section 307. Off-Street Parking.

See Article XIII..

Section 308. Building and/or Zoning Permit Application.

See Article XII, Section 1207, and Article XVI, Section 1602.

Section 309. Open Pit Mining.

Open Pit Mining shall not be permitted. (See Article I, Section 105, Definition of Terms.)

Section 310. Drainage Regulations.

See Article XII, Section 1206.

ARTICLE IV

R-S RESIDENTIAL SUBURBAN DISTRICT

In R-S Residential Suburban Districts the following regulations shall apply:

Section 400. Purpose

The purpose of the R-S Residential Suburban District is to provide the orderly continuation of existing, suburban type single family residential development in areas where this pattern has been firmly established and to exclude activities of a commercial or industrial nature and any activities not compatible with the existing pattern of development.

Section 401. Use Regulations.

- A. A building may be erected or used and a lot may be used or occupied for any of the following purposes:
1. One-family Dwelling.
 2. Home Occupations to include professional offices, within a dwelling when such use is secondary and incidental to the major residential use of the structure; and further provided that no more than one employee other than the residents of the dwelling shall be permitted. Off-street service and parking area shall be required. See Article XIII, Section 1301, A, 1, e.
 3. Mobilehome Permanent Dwelling Unit.
 4. Clubs, Lodges and Fraternal Organizations.

Section 402. Lot Area.

- A. In the case of land duly platted and recorded in the County Court House, minimum lot area regulations will not apply.
- B. Land which has not been platted or recorded will be subject to minimum lot area established in Article III, Section 302, concerning one-family dwellings.

Section 403. Lot Coverage.

The area of all buildings shall not exceed 35% of the lot area.

Section 404. Yards.

- A. There shall be a front yard, the depth of which shall be at least 30 feet from the front lot line or 55 feet from the centerline of the street or road, etc., whichever is greater.

7

June 26, 1990

Mr. William Hand
Spruce Street & Rt. 879
Clearfield, PA 16830

RE: Trailer Court

Dear Mr. Hand:

One February 22, 1990 we sent you a letter concerning the status of your trailer court and its impact on the adjoining property of Mr. Kenneth Veihdeffer. We assumed that this matter was going to be taken care of but we were informed at the township supervisors' meeting last week that it has not been.

The Supervisors instructed me to write and direct that the drainage problems on Veihdeffer's property be corrected within the next thirty (30) days. Pending correction of this problem, the Supervisors have suspended all building and occupancy permits to be issued to you in any part of the township.

In the event action is not taken within the next thirty (30) days, the Supervisors may revoke the permit for your trailer court as you are not complying with the appropriate ordinance in so far as the drainage requirements at the present time.

We hope you will give this letter your immediate attention so that further action will not be necessary.

Very truly yours,
BELIN, BELIN & NADDEO
By

Carl A. Belin, Jr.
Lawrence Township Solicitor

CABjr/jac
cc: Lawrence Township

Certified Mail No. P 265 206 884

Encl. 4 "E"

April 26, 1993

Honorable John K. Reilly, Jr.
President Judge
Clearfield County Courthouse
Clearfield, PA 16830

RE: Harry W. Hand & Dolly E. Hand vs. Lawrence Township
Zoning Hearing Board

Dear Judge Reilly:

May 6, 1992 - Hearing with Judge Reilly, Belin said variance would be granted.

May 6, 1992 - Application for variance to Lawrence Township.

May 22, 1992 - Sent letter to Chris Rowles for same thing. See #5 in Procedural History, Lawrence Township finds letter dated May 22, 1992 was application for variances.

August 25, 1992 - Hearing before Board.

October 19, 1992 - Hearing before Board.

November 23, 1992 - Letter from Board denying all variances.

As you can see this far exceeds the time limit of the Municipalities Planning Code. Also see Memorandum of Law filed September 1992 with the Court which says August 25, 1992 Hearing date with Zoning Board. Noted: Past ~~60~~ day time limit of Municipalities Zoning Code 9.3.10. I had hearing and they told me they had 45 days to answer, also in the conclusion part of the letter.

I hereby request that the Court make a decision on the hearing that we had on April 22, 1992.

3

Respectfully yours,

Harry W. Hand

J

Exhibit "T"

compensation exceed the rate of compensation authorized to be paid to the members of the governing body.
As reenacted and amended 1988, Dec. 21, P.L. 1329, No. 170, § 83, effective in 60 days.
1 Section 10906 of this title.

1. In general

Even when acting pursuant to an authorized function and even when due process requires that zoning be engaged for purposes of an appeal, zoning hearing board members do not have unilateral authority to hire legal counsel; power of the

Notes of Decisions

board to engage legal counsel pursuant to the municipalities planning code (53 P.S. § 10907), in circumstances prescribed by provisions of the borough code (53 P.S. § 46116). *Borough of Plymouth Council v. Olaszewski*, 477 A.2d 1322, 503 Pa. 176, 1984.

§ 10908. Hearings

The board shall conduct hearings and make decisions in accordance with the following requirements:

(1) Public notice shall be given and written notice shall be given to the applicant, the zoning officer, such other persons as the governing body shall designate by ordinance and to any person who has made timely request for the same. Written notices shall be given at such time and in such manner as shall be prescribed by ordinance or, in the absence of ordinance provision, by rules of the board. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing.

(1.1) The governing body may prescribe reasonable fees with respect to hearings before the zoning hearing board. Fees for said hearings may include compensation for the secretary and members of the zoning hearing board, notice and advertising costs and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the zoning hearing board, expenses for engineering, architectural or other technical consultants or expert witness costs.

(1.2) The hearing shall be held within 60 days from the date of the applicant's request, unless the applicant has agreed in writing to an extension of time.

(2) The hearings shall be conducted by the board or the board may appoint any member as a hearing officer. The decision, or, where no decision is called for, the findings shall be made by the board; however, the appellant or the applicant, at the case may be, in addition to the municipality, may, prior to the decision of the hearing, waive decision or findings by the board and accept the decision or findings of the hearing officer as final.

(3) The parties to the hearing shall be the municipality, any person affected by the application who has made timely appearance of record before the board, and any other person including civic or community organizations permitted to appear by the board. The board shall have power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the board for that purpose.

(4) The chairman or acting chairman of the board or the hearing officer presiding shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by the parties.

(5) The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues.

(6) Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.

(7) The board or the hearing officer, as the case may be, shall keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the applicant and the board. The cost of the original transcript shall be paid by the board if the transcript is ordered by the board or hearing officer or shall be paid by the person appealing from the decision of the board if

such appeal is made, and in either event the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases the party requesting the original transcript shall bear the cost thereof.

(8) The board or the hearing officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from their solicitor, unless the parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given an opportunity to be present.

(9) The board or the hearing officer, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within 45 days after the last hearing before the board or hearing officer. Where findings of fact and conclusions based thereon together with the reasons therefor, regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found. If the hearing is conducted by a hearing officer, and there has been no stipulation that his decision or findings are final, the board shall make his report and recommendations available to the parties within 45 days and the parties shall be entitled to make written representations thereon to the board prior to final decision or entry of findings, and the board's decision shall be entered no later than 30 days after the report of the hearing officer. Where the board fails to render the decision within the period required by this subsection, or fails to hold the required hearing within 60 days from the date of the applicant's request for a hearing, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the board to meet or render a decision as hereinabove provided, the board shall give public notice of said decision within ten days from the last day it could have met to render a decision in the same manner as provided in subsection (1) of this section. If the board shall fail to provide such notice, the applicant may do so. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

(10) A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him not later than the day following its date. To all other persons who have filed their name and address with the board not later than the last day of the hearing, the board shall provide by mail or otherwise, brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined. As amended 1974, Dec. 10, P.L. 822, No. 272, § 1; 1978, Oct. P.L. 1067, No. 249, § 4, ind. effective; 1979, July 13, P.L. 105, No. 43, § 1, ind. effective. As reenacted and amended 1988, Dec. 21, P.L. 1329, No. 170, § 84, effective in 60 days.

Historical and Statutory Notes

1974 Amendment: In subsection (1), added last sentence, relating to posting of notice, and in subsection (9), made substantial changes relating to decision deemed to have been rendered where hearing not timely held or where decision not timely made or not rendered at all.

Law Review Commentaries

Impact of Act 249 of 1978 upon pending ordinance doctrine in exclusionary zoning litigation. John M. Hyson (1980-81) 26 Vill. L. Rev. 372.

Underused form of land use control—advisory improvement band requirements. Donald P. McPherson, III (1974) 45 Pa.B.A.Q. 461.

PLEASE ATTACH PLOT
PLAN AND DRAWINGS
WITH APPLICATION

APPLICATION FOR BUILDING PERMIT
LAWRENCE TOWNSHIP

FILE COPY

Permit No. _____

P. O. Box 508

Clearfield, Pa. 16830

Date Dec 8, 1995

Property Located At Block #95 Lot #8

Owner's Name Ronald L. Caldwell

Assessment Map No. 123-009-268

Address P.O. Box 16 Hyde Park

SCHEDULE OF FEES

ESTIMATED COST

Building Permit Fee

Demolish

TOTAL

\$ 20,000
\$ _____
\$ _____
\$ _____
\$ _____
\$ _____

I hereby acknowledge that I have read this application and state the above is correct and agree to comply with all Township Ordinances and State Laws regarding construction.

X Ronald L. Caldwell
Signature of Applicant

12-8-
Date

Approved on (Date) _____ 19 _____

By _____
Building Official

Contractor's Name _____

Address _____

Phone _____

Eng. or Arch. _____

Address _____ Phone _____

Labor & Industry File No. _____

Class of Work: New X Addition _____

Repair _____ Demolish _____

Use of Buildings Home Site

Alteration _____ Move _____

No. of Buildings on Lot ONE

No. of Dwelling Units ONE

Type of Occupancy Single Family

No. of Stories ONE

Size of Lot 40 X 120

Type of Construction 14X70 Mobilehome

Total Floor Area 9,800 Sq. Ft.

Total Height 8'

Total Sq. Feet of Lot 4,800

Brief Description of Work: 1993 Mobilehome

NOTES: Land owned by Harry W. Hand. Mobilehome Rental Lot.

Application Turned down because
of Commonwealth Court of Penna.
ruling Dec. 13, 1993 - Case No 1406 C.D. 199

Kenneth Hand



K1

PLEASE ATTACH PLOT
PLAN AND DRAWINGS
WITH APPLICATION

APPLICATION FOR BUILDING PERMIT
LAWRENCE TOWNSHIP

FILE COP

Permit No. _____

P. O. Box 508

Clearfield, Pa. 16830

Date May 6, 1992

Property Located At LAWRENCE AVE Hyde Ps

Owner's Name Harry W. Hanel

Assessment Map No. 123-709-26 268-32

Address 530 SPRUCE ST. CLEARFIELD PA.

SCHEDULE OF FEES

ESTIMATED COST	\$ _____
Building Permit Fee	\$ _____
Demolish	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL	\$ _____

I hereby acknowledge that I have read this application and state the above is correct and agree to comply with all Township Ordinances and State Laws regarding construction.

X Harry W. Hanel May 6, 1992
Signature of Applicant Date

Approved on (Date) _____ 19 _____

By _____
Building Official

Contractor's Name _____

Address _____

Phone _____

Eng. or Arch. _____

Address _____ Phone _____

Labor & Industry File No. _____

Class of Work: New ☒ Addition _____

Repair _____ Demolish _____

Use of Buildings _____

Alteration _____ Move _____

No. of Buildings on Lot _____

No. of Dwelling Units _____

Type of Occupancy SINGLE FAMILY

No. of Stories ONE

Size of Lot 7-40X120' LOTS

Type of Construction MODULAR HOME
LOTS

Total Floor Area _____

Total Height _____

Total Sq. Feet of Lot 4800

Brief Description of Work: _____

NOTES: I REQUEST A VARIANCE FOR 7 LOTS TO PLACE A HOME ON EACH LOT ~~ADJACENT~~ ^{AVERAGE} SIZE LOT 40X120 WITH AVERAGE HOME BEING 14X70. SOME MAY BE SMALLER AND LARGER. - Rejected for the following Reasons
No side yard setbacks
No rear yard setbacks
Does not meet flood plain requirements

Kenneth Hanel

~~September 24, 1993~~

Oct. 2, 1993

I, Walter C. Haversack, of Hyde, PA was a supervisor for Lawrence Township, Clearfield County, PA from 1966 to 1984. Being so, I had full knowledge and control as to zoning permits and land use in the Township. In reference to Harry W. Hand's property, along Lawrence Avenue and Clarendon Avenue, Map #123-J09-268-32 & 33, being 7 lots in Block 25 in Hyde. I hereby state that permits should have been issued to his tenants and he should have not had to go before the Zoning Board. All lots in Hyde are grandfathered as to size and exempt from R-U district total lot size as to square footage. No one in Hyde has ever had to join two lots together. Mr. Hand should have been issued the permits with no problem.

Walter C. Haversack
Walter C. Haversack

Exhibit M

PLEASE ATTACH PLOT
PLAN AND DRAWINGS
WITH APPLICATION

APPLICATION FOR BUILDING PERMIT
LAWRENCE TOWNSHIP

13
FILE COPY

Permit No. _____

P. O. Box 508

Clearfield, Pa. 16830

Date JUNE 15, 1994

Property Located At LAWRENCE AVE HYDE PA

Owner's Name GREGORY S. PASTIR

Assessment Map No. 123-JP-268-32

Address RD #2 Box 41 CLEARFIELD PA 16830

SCHEDULE OF FEES

ESTIMATED COST	\$ <u>16,500.⁰⁰</u>
Building Permit Fee	\$ _____
Demolish	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL	\$ _____

I hereby acknowledge that I have read this application and state the above is correct and agree to comply with all Township Ordinances and State Laws regarding construction.

X Gregory S. Pastir 6/15/94
Signature of Applicant Date

Approved on (Date) _____ 19 _____

By _____
Building Official

Contractor's Name SELF
Address RD #2 Box 41 C/FD. PA 16830
Phone 765-4845

Eng. or Arch. _____
Address _____ Phone _____
Labor & Industry File No. _____

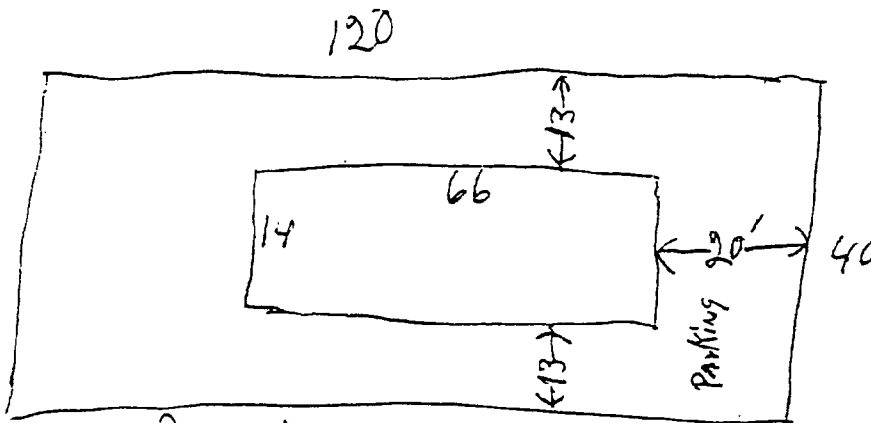
Class of Work: New VBS Addition _____
Repair _____ Demolish _____
Use of Buildings SINGLE FAMILY RESIDENCE

Alteration _____ Move _____
No. of Buildings on Lot ONE
No. of Dwelling Units ONE

Type of Occupancy SINGLE FAMILY
No. of Stories ONE
Size of Lot 40 X 120
Type of Construction MOBILEHOME

Total Floor Area 14 X 66 924 Sq. FT.
Total Height _____
Total Sq. Feet of Lot 4800
Brief Description of Work: PUTTING MOBILEHOME ON LOT

NOTES: Lot #8 Block #25 ON LAWRENCE AVE OWNED BY HARRY W. HAND
AND LEASED TO THE ABOVE



By NEW HANEX

Turned down because it does
not meet 50' from top of bank
requirements
N

ZONING ORDINANCE
LAWRENCE TOWNSHIP

ORDINANCE NO. 93-1

An Ordinance dividing the Township into various zoning districts and regulating the construction, alteration and use of structures and land within each such district. Be it hereby ordained by the Board of Supervisors of the Township of Lawrence, Clearfield County, Pennsylvania that:

Article 1

General Provisions

101 TITLE: The official title of this Ordinance shall be the Zoning Ordinance of the Township of Lawrence.

102 EFFECTIVE DATE: This Ordinance shall take effect on the 19th day of April, 1993.

103 PURPOSE AND AUTHORITY: This Ordinance is adopted by virtue of the authority granted to the Township under Article VI of the Pennsylvania Municipalities Planning Code, Act 247 of 1968, as amended by Act 170 of 1988 and as further amended. Also, this Ordinance is adopted under the provisions of Act 164 of 1984, known as the Aviation Code, codified at 74 Pa. Cons. Stat. Section 5101 et. seq., as well as to meet the requirements of Section 560.3(d) of the National Flood Insurance Program and the Pennsylvania Flood Management Act, Act 166 of 1973 Section 101 et. seq. The provisions of this Zoning Ordinance are designed:

(a) To promote, protect and facilitate one or more of the following: the public health, safety, morals, general welfare; coordinated and practical community development and proper density of population; emergency preparedness and operations, airports, and national defense facilities, the provisions of adequate light and air, access to incident solar energy, police protection, vehicle parking and loading space, transportation, water, sewage, schools, recreational facilities, public grounds, the provision of a safe, reliable and adequate water supply for domestic, commercial, agricultural or industrial use, and other public requirements, as well as preservation of the natural, scenic and historic values in the environment and preservation of forests, wetlands, aquifers and floodplains.

Article 3

District Regulations

301 ZONING MAP: A map entitled the Lawrence Township Zoning Map is hereby adopted as part of this Ordinance. The Zoning Map shall be kept on file and be available for examination at the Township offices. See also Article 8 and Article 9 for the Zoning Maps specifically related to the Airport Zoning and Floodplain Regulations of this Ordinance. Those maps are also adopted as part of this Ordinance and are considered zoning maps for Lawrence Township.

302 ZONING DISTRICTS: The Township is divided into the districts set forth by this Ordinance and as shown by the district boundaries on the Zoning Map. The districts are:

R-U Residential Urban Districts - These zones are designed for higher density residential uses, including multi-family dwellings, where public sewer and water systems are available or are in reasonable proximity.

R-SP Residential Special District - A special residential district created for the Hyde City area. It has the same use pattern as the R-U District.

R-S Residential Suburban Districts - These zones are designed to principally accommodate single-family residential uses in a lower density suburban environment as well as to allow complementary uses.

R-C Residential College District - A district which will permit the establishment and development of colleges and universities along with related and compatible residential uses.

R-A Rural Agricultural District - These zones are designed to accommodate agriculture, low-density residential, residential related uses, mineral extraction, timbering and related activities. This district is specifically designed to permit a wide variety of uses, in a rural setting, with a minimum of regulations.

V Village District - The purpose of this district is to provide for a variety of urban and limited commercial uses in areas designed to serve as a transition between older urban sections, commercial zones and traditional residential districts.

C Commercial District - The purpose of this district is to allow for the orderly growth and development of commercial uses in the Township.

TABLE 306.10
ZONING DISTRICTS

Permitted Uses, Conditional Uses and Special Exceptions

R-SP - Residential Special District
and
R-U - Residential Urban District

<u>Permitted Uses</u>	<u>Conditional Uses</u>
Individual Mobile Homes (411)	Schools (308.10)
Single-Family Dwellings	Rooming Houses (308.22)
Multi-Family Dwellings	Medical Clinics (308.21)
Two-Family Dwellings	Funeral Parlors (308.23)
Public Parks and Playgrounds	Bed and Breakfast (308.31)
Accessory Uses	Home Occupations (308.38)
Essential Services	Conversion Apartments (308.15)
Accessory Structures	Fraternities and Sororities (308.12)
Colleges and Universities	Clubs and Lodges (308.13)
	Professional Offices (308.14)
<u>Special Exceptions</u>	Nursing Homes (308.10)
Churches (308.10)	Personal Care Homes (308.29)
Public Utilities (308.11)	Day Care Services for Children, Family, and Group Day Care Homes (308.30)

R-S - Residential Suburban District

<u>Permitted Uses</u>	<u>Special Exceptions</u>
Single-Family Dwellings	Schools (308.10)
Public Parks and Playgrounds	Cemeteries (308.41)
Accessory Uses	Public Utilities (308.11)
Essential Services	
Accessory Structures	<u>Conditional Uses</u>
Individual Mobile Homes (411)	Home Occupations (308.38)
Clubs and Lodges	

R-C - Residential College District

<u>Permitted Uses</u>	<u>Conditional Uses</u>
Single-Family Dwellings	Fraternities and Sororities (308.12)
Colleges, Universities with Related and Accessory Uses and Structures	<u>Special Exceptions</u>
Accessory Uses	Public Utilities (308.11)
Accessory Structures	
Essential Services	

SECTION 307.10 LOT YARD AND HEIGHT REQUIREMENT TABLE

ZONING DISTRICT	Min. Lot* Areas (Sq. Ft.) or Acres	Min. Lot Width (Feet)	Min. Front Yard (Feet)	Min. Side Yard (Feet)	Min. Rear Yard (Feet)	Max.** Height Structure (Feet)	Max. Lot Coverage Percent
R-U Residential							
Urban	7,500	75	30	10	30	35	35
Single-Family*	7,500	75	30	10	30	35	35
Two-Family*	9,000	75	30	10	30	35	35
Multi-Family*	9,000+	75	30	10	30	35	35
	2,000 for each Family over 2						
R-SP Residential							
Special	4,800	40	10	8	20	35	50
Single-Family*	4,800	40	10	8	20	35	50
For Two-Family and Multi-Family Use, the same as the R-U Zone							
R-S Residential							
Suburban	15,000	100	30	10	50	35	25
Single-Family*	15,000	100	30	10	50	35	25
Two-Family*	20,000	125	30	15	50	35	25
R-C Residential							
College							
Single-Family*	15,000	100	30	10	50	35	25
Colleges and Universities	5 Acres	500	75	50	100	50	25
R-A Rural							
Agriculture	40,000	160	40	15	50	35**	20
Single-Family*	15,000	100	30	15	50	35	25
Two-Family*	20,000	125	30	15	50	35	25

40' x 120'

411

INDIVIDUAL MOBILE HOMES: All mobile homes shall be placed on a permanent foundation which will prevent shifting or settling from frost action, inadequate drainage, vibration, or other forces acting on the super structure (e.g. consisting of block pillars or cement pillars or similar construction). There shall be at least six (6) permanent piers with hook and eyebolt attachment extending from below frostline to grade level for each mobile home stand and there shall be blocking from pier top to trailer frame and the necessary cable or chain to secure the trailer to the permanent pier. Fire resistant or retardant skirting shall be installed around all mobile homes.

412

RESIDENCES AS A SECONDARY USE: Such uses will be allowed in the Village District if:

- (a) Required off-street parking is provided.
- (b) Residential units have at least two (2) separate ways to safely exit the premises.
- (c) No residential uses will be allowed in structures where quantities of inflammables are stored or used.

FILED

3cc

01:03 PM
JUN 23 2003

PISS

6/23

William A. Shaw
Prothonotary

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

HARRY W. HAND and :
DOLLY E. HAND, :
Plaintiffs :
: NO. 03-261-CD
vs. :
: PRELIMINARY OBJECTIONS
CARL A. BELIN, JR., DANIEL D. : TO AMENDED COMPLAINT
DUCKETT, DONALD KELLY, :
Defendants. :

PRELIMINARY OBJECTIONS (Filed on) Behalf of:

Defendants

AND NOW comes Carl A. Dolin, Jr., Daniel D. Duckett and
Counsel of Record for
Donald Kelly, by and through their Party: Bolin & Kubista,
and files the following preliminary Kimberly M. Kubista, Esquire
PA I.D. #52782
complaint filed by Harry W. Hand and Dolly E. Hand, and in
BELIN & KUBISTA
support thereof aver as follows: 15 North Front Street
P.O. Box 1

1. MOTION TO DISMISS A VERIFICATION Clearfield, PA 16830 TRARY
AND HAS BEEN FILED (814) 765-8972

1. The Plaintiffs seek to relitigate the same issues they
raised in prior actions that have been adversely decided against
them as follows:

a. Harry W. Hand and Dolly E. Hand v. Lawrence
Township, CA 97-2413 in the State
District Court for the West District of

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

HARRY W. HAND and	:	
DOLLY E. HAND,	:	
Plaintiffs	:	
	:	NO. 03-261-CD
vs.	:	
	:	
CARL A. BELIN, JR., DANIEL D.	:	
DUCKETT, DONALD KELLY,	:	
Defendants	:	

PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT

AND NOW comes Carl A. Belin, Jr., Daniel D. Duckett and Donald Kelly, by and through their attorneys Belin & Kubista, and files the following preliminary objections to the amended complaint filed by Harry W. Hand and Dolly E. Hand, and in support thereof aver as follows:

I - MOTION TO DISMISS A VEXATIOUS ACTION WHICH IS ARBITRARY
AND HAS BEEN FILED IN BAD FAITH

1. The Plaintiffs seek to relitigate the same issues they raised in prior actions that have been adversely decided against them as follows:

- a. Harry W. Hand and Dolly E. Hand v. Lawrence Township, CA 97-241J in the United States District Court for the Western District of

Pennsylvania: see Report and Recommendation attached hereto as Exhibit "A" that was adopted by the District Court in its judgment on May 26, 1999. The Court of Appeals for the Third Circuit affirmed the Judgment on February 24, 2000.

b. *Harry W. Hand and Dolly E. Hand v. Lawrence Township Zoning Hearing Board*, No. 92-2284-CD in the Court of Common Pleas of Clearfield County: See Opinion and Order of the Court of Common Pleas attached hereto as Exhibit "B-1" which was affirmed by the Opinion of the Commonwealth Court dated December 23, 1993 attached hereto as Exhibit "B-2."

c. *Lawrence Township v. Harry W. Hand and Dolly E. Hand and Kenneth D. Viehdeffer and Gloria Viehdeffer*, No. 90-15-EQU in the court of Common Pleas of Clearfield County: see Memorandum of Judge Kurtz, Specially Presiding, pages 8-9, attached hereto as Exhibit "C," which was

affirmed by the Commonwealth Court on April 11, 1996.

d. *Harry W. Hand and Dolly E. Hand v. Lawrence Township Board of Supervisors and Daniel Duckett, George Clark, and Donald Kelly*, No. 91-580-CD in the Court of Common Pleas of Clearfield County: see Order dated August 5, 1997 attached hereto as Exhibit "D," which was not appealed.

2. Harry and Dolly Hand were represented by counsel in the litigation of 1(a), 1(c), and 1(d). The litigation of 1(d) involved the very appeal under the Local Agency Act as to the 1990 letter of Belin. That case was dismissed for inaction.

3. The Hands have raised the same issues in 1(a), 1(b), and 1(d) as they seek to raise in the present action.

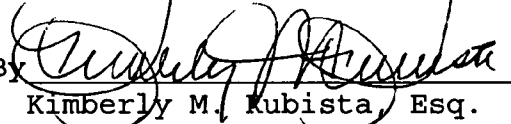
4. This latest complaint clearly constitutes a vexatious action by the Hands and is an abuse of the judicial process.

For these reasons, this action should be dismissed and

counsel fees should be awarded to the Defendants' counsel.

RESPECTFULLY SUBMITTED,

BELIN & KUBISTA

By 
Kimberly M. Kubista, Esq.
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HARRY W. HAND and DOLLY E. :
HAND, :
Plaintiffs :
v. : Civil Action No. 97-241J
LAWRENCE TOWNSHIP, :
Defendant :

Report and Recommendation

Recommendation

Defendant Lawrence Township has filed a motion for summary judgment, Fed.R.Civ.P. 56¹, docket no. 23. I recommend that the motion be granted, and the complaint dismissed.

Report

Plaintiffs Harry and Dolly Hand, husband and wife, reside in Clearfield County, and own several parcels of real property there. Two of the parcels, described as Lots 5 through 11 in Block 25, in the Village of Hyde, Lawrence Township, Clearfield County, abut the Montgomery Creek. The Hands have, since at least the late 1980s, sought to subdivide these parcels and rent the subdivisions to persons siting mobile homes on the lots. In August 1997, the Hands filed a civil rights complaint alleging that Lawrence

1. Fed.R.Civ.P. 56(c) requires the entry of summary judgment, see Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986), if and only if the record shows "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). "[T]he requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) (emphasis in original). An issue of fact is "genuine" if the evidence is such that a reasonable finder of fact correctly applying the substantive law might find for the non-moving party. 477 U.S. at 248, 257. Here, the relevant question is whether any reasonable factfinder could find that the defendants' actions violated any federal constitutional rights of the plaintiffs within the applicable limitations period.

Township and its supervisors (now dismissed as defendants) deprived them of various rights under the constitution by refusing the building permits necessary for their renters to site their mobile homes on the lots. According to the Hands, Lawrence Township has violated their rights in two ways: first, the decision to deny permits is simply without rational explanation, and so violates the "substantive" due process guarantee of the Due Process Clause of the Fourteenth Amendment; second, the decision to deny the permits is explicable as retaliation for a position the Hands took in unrelated litigation in the early 1990s involving a dispute with residents of Lawrence Township, the Viehdeffers².

The Hands' first theory invokes the constitutional principle arguably stemming from Harrah Independent School District v. Martin, 440 U.S. 194 (1979) (per curiam), in which a plurality of the Supreme Court suggested that all state action must meet some minimal rationality test, and Regents of University of Michigan v. Ewing, 474 U.S. 214, 222-23 (1985), in which the Court assumed arguendo in the course of finding no due process violation that there is a federal constitutional right to be free from arbitrary

2. The Hands also alleged that Lawrence Township denied them procedural due process because it summarily denied the permits, and denied them equal protection of law because permits were granted to other similarly situated landowners. Those claims can be summarily dismissed, since plaintiffs produce no evidence that they have any property right or liberty interest which entitles them to a hearing before their permits are acted on, and produce no evidence that there are in fact any similarly situated landowners, much less ones that have been granted permits. The claims which assert violations of the parallel provisions of the Fifth Amendment can also be summarily dismissed, because that Amendment is inapplicable to the actions of nonfederal governmental units.

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state action. The Court of Appeals for the Third Circuit has similarly stated that deliberate and arbitrary abuse of government power violates substantive due process. Bello v. Walker, 840 F.2d 1124, 1129 (3d Cir.), cert. denied, 488 U.S. 851, 868 (1988); see also Midnight Sessions, Ltd. v. City of Philadelphia, 945 F.2d 667, 683 (3d Cir.1991).

The Hands' second theory applies the rationale of the line of cases beginning with Pickering v. Board of Education, 391 U.S. 563 (1968), and Mt. Healthy City Board of Education v. Doyle, 429 U.S. 274 (1977), continuing through Rankin v. McPherson, 483 U.S. 378 (1987), and most recently discussed in Board of County Commissioners v. Umbehr 518 U.S. 668 (1996), which is that government may not retaliate against persons, either by imposing hardships or denying benefits, for activity protected by the First Amendment. This rationale has been extended fairly broadly by the Court of Appeals for the Third Circuit: activity protected by the First Amendment from retaliation can include, for instance, simply filing a workers compensation claim. Bradley v. Pittsburgh Board of Education, 913 F.2d 1064, 1074-75 (3d Cir.1990)³.

Defendant, without disputing the existence of these causes of action, argues that summary judgment must be entered in

3. On the other hand, not every person engaged in First Amendment activity can claim that his constitutional rights are violated even by retaliatory governmental action. See McClintock v. Eichelberger, 169 F.3d 812 (3d Cir.1999). There must be some recognized interest in liberty or property affected by the governmental action. There is no dispute in the present matter that the Hands' development of their property constitutes such an interest.

its favor for two reasons. First, defendant claims, the Rooker-Feldman doctrine⁴ bars what defendant asserts is an attempt to relitigate the issues decided adversely to the Hands in Harry W. Hand and Dolly E. Hand v. Lawrence Township Zoning Hearing Board, No. 92-2284 CD, slip opinion in support of Order of May 17, 1993, (Clearfield Co. C.P.) (Reilly, P.J.), docket no. 27 (plaintiffs' Brief in Opposition to Summary Judgment), Exhibit I, and Lawrence Township Zoning Hearing Board and Lawrence Township v. Harry W. Hand and Dolly E. Hand, No. 1406 C.D. 1993, slip opinion (Pa. Cmwlth. Ct. December 23, 1993) (Palladino, J.), docket no. 22 (defendant's Brief in Support of Motion for Summary Judgment), Exhibit F. Related to that argument are the principles that, since plaintiffs and defendant here were the same parties as in the Pennsylvania Commonwealth Court, plaintiffs had a fair opportunity and every incentive there to raise the same legal arguments and prove the same factual issues that they allege here, even if the relief they seek in this suit is money damages and not simply award of a variance or other injunctive relief allowing them to develop their property, and there was a final judgment on the merits, plaintiffs are precluded from relitigating the facts found necessary to the legal conclusions reached by the Pennsylvania Commonwealth Court, see Bradley v. Pittsburgh Board of Education, 913 F.2d 1064, 1073-74 (3d Cir. 1990); Allen v. McCurry, 449 U.S. 90 (1980), relitigating the issues raised in the Pennsylvania

4. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923).

Commonwealth Court, see Kelley v. TYK Refractories Co., 860 F.2d 1188, 1194 (3d Cir.1988), and from raising constitutional claims that were or could have been raised in the state court. See Guarino v. Larsen, 11 F.3d 1151, 1160-61 (3d Cir.1993) (A party is presumed to have a full and fair opportunity to present federal constitutional claims in state court proceedings; failure to present them constitutes a waiver.)

Second, defendant argues that even if plaintiffs are not barred by the Rooker-Feldman doctrine, they have simply waited too long and are barred by the statute of limitations. Pennsylvania's two year statute of limitations, codified at 42 Pa.C.S. § 5524, applies to the plaintiffs' federal claims. Rose v. Bartle, 871 F.2d 331, 347 n.13 (3d Cir.1989); see Wilson v. Garcia, 471 U.S. 261 (1985). The statute begins to run "from the time the cause of action accrued," see generally 42 Pa.C.S. § 5502(a), that is, at "the occurrence of the final significant event necessary to make the claim suable." Ross v. Johns-Manville Corp., 766 F.2d 823, 826 (3d Cir.1985), quoting Mack Trucks, Inc. v. Bendix-Westinghouse Automotive Air Brake Co., 372 F.2d 18, 20 (3d Cir.1966), cert. denied, 387 U.S. 930 (1967).

Turning to the record, it appears that on June 26, 1990, during the Viehdeffer-Hand litigation, Lawrence Township's solicitor, Carl Belin, Esq., sent the Hands a letter, docket no. 27, Exhibit D, informing the Hands in effect that so long as the dispute with the Viehdeffers was not resolved (in favor of the Viehdeffers) the Township would not approve any building or

occupancy permits for them anywhere in the township. This would be prima facie evidence of a retaliatory policy, which would injure plaintiffs every time it was implemented. According to plaintiffs, they or persons who wished to rent from them were denied permits for various lots in Block 25 on the occasions listed in docket no. 27, Plaintiffs' Brief, Exhibit F. See id., Plaintiffs' Brief at 4, see also docket no. 1 (Complaint), ¶16. Five occasions are listed in the complaint: 1) denials in 1990 to Neil Thomas Plubell, Karla L. Kifer, John Gisewhite, and Terry Reynolds; and 2) a denial in December 1995, to Ronald L. Caldwell. Four occasions of permit denials in Block 25⁵ are supported by evidence in the opposition to summary judgment: 1) denials in October 1991 to Mariam J. Brantner, in May 1992 to Harry Hand, and in July 1992 to either Harry Hand as owner or Randy Frisco as tenant; and 2) a denial in December 1995, of a permit for Lot 9, to Ronald L. Caldwell. docket no. 27, Plaintiffs' Brief, Exhibit F. After the May 1992 denial, Harry Hand requested a variance for all seven lots in Block 25 from the Code Enforcement Officer, which was denied. Hand appealed to the Lawrence Township Zoning Hearing Board, which denied the variance in a written decision. docket no. 27, Plaintiffs' Brief, Exhibit H. The Zoning Hearing Board discussed the applications for variances, which were requested as to most of the lots because they

5. The record also contains several instances where building permits in Block 25 were granted to the Hands or their tenants after 1990, see docket no. 27, Plaintiffs' Brief, Exhibit G, Exhibit J. In fact, as plaintiffs acknowledge, despite the denials in the early 1990s and the litigation upholding the denials, the Township has in fact approved permits for every lot in Block 25 except Lots 8 and 9.

were too small to site a mobile home on and would violate the required set-backs. The Board denied the variance because, inter alia, the hardships caused by the lot size and set-back ordinances were self inflicted by the Hands' desire to subdivide two parcels into seven lots. As to Lots 8 and 9, however, the Board further found that they were too close to Montgomery Creek and that siting a mobile home on them would violate the Township's Floodplain ordinance. The Hands appealed pro se to the Court of Common Pleas, which sustained the Zoning Hearing Board in the opinion by Judge Reilly cited above. The Hands raised both the claim that the permits were denied in retaliation for the Viehdeffer litigation, and the claim that the Floodplain Ordinance did not apply or was irrational because "all of lower Hyde will be under water before water is on my lot." docket no. 22, Exhibit E at Exhibit K-3. Judge Reilly rejected the floodplain ordinance with the other arguments for a variance because, he found, there was substantial evidence to support the Board's finding that the hardship to the Hands' in complying with the Township's ordinances was self-inflicted by their attempted subdivision of their parcels into seven lots. Judge Reilly recognized that the Hands had raised the retaliation claim at the oral argument on the appeal, and dismissed it, albeit summarily, on its merits. See May 17, 1993 slip opinion at 5. Plaintiffs appealed again, pro se, raising four arguments, but not the retaliation claim. The floodplain ordinance argument was raised in a single sentence under the heading "Relief from 50 foot restriction" :

As this wouldn't harm anything or anyone, just make it better for home to be in middle of lot, why not give it to me?

See docket no. 22, Defendants' Brief, Exhibit E at 8 ("Argument for Appellant"). The Pennsylvania Commonwealth Court affirmed the Common Pleas Court in the decision cited above, in December 1993. No further review was sought.

Both as a matter of timeliness and as a matter of issue preclusion, the only "live" claim that could be asserted by plaintiffs is the claim arising out of the permit denial to Caldwell for Lot 9 in August 1995. If it were necessary to reach the issue, I would recommend that the court enter summary judgment in favor of the defendants as to all other claims on the basis of issue preclusion: plaintiff Harry Hand's pro se attempts to litigate his efforts to secure a variance effected a waiver of any constitutional claims in this court. See Guarino v. Larsen. But even before reaching that issue, there can be no dispute that any harm to the plaintiffs from the denials other than to Caldwell fully accrued no later than the time in early 1994 of the expiration of the appeal period from the decision of the Pennsylvania Commonwealth Court. Plaintiffs' complaint was not filed until more than two years later, and is therefore untimely.

As for the denial of the permit to Caldwell as to Lot 9 in December 1995, it is clearly within two years of the filing of the complaint, and not barred by the statute of limitations. Turning to the merits of the plaintiffs' claims, it is necessary first to observe that, while pleading inconsistent claims is perfectly proper, at the evidentiary stage the plaintiffs are

forced by logical necessity to choose between their claim that the Township's rejection is unconstitutional because it is irrational and that it is unconstitutional because it is retaliatory: the Township's decision cannot be both. Plaintiffs try to have their cake and eat it too: see docket no. 27, Plaintiffs' Brief at 9. While I reject the defendant's argument that the claims based on the Caldwell permit are not yet ripe because I agree with the plaintiffs that further state court challenge to the denial is futile, I find that plaintiffs have raised a genuine issue of fact as to neither of their claims. First, the reason for the Lot 9 denial is stated on the face of the application by Code Enforcement Officer Haney: "Commonwealth Court of Penna ruling Dec. 13, 1993 - Case No. 1406 C.D. 1993." This obviously refers back to and incorporates the prior litigation, in which Lots 8 and 9 were determined to be in the area restricted by the floodplain ordinance. Plaintiffs strenuously object that this is without any rational basis, and even attach the deposition testimony of a former Supervisor discussing the fact that Lots 8 and 9 are unlikely to be flooded because of their elevation. docket no. 27, Plaintiffs' Brief Exhibit B, Haversack depo. at 11-14. Factual error by a governmental body, even gross factual error, however, does not equal a substantive due process violation. The forum for plaintiff to argue that the application of the floodplain ordinance was not supported by evidence was in the zoning hearing process and in the subsequent appeals. Plaintiff Harry Hand tried to do so in that forum with a one sentence argument that "[Since] it wouldn't

harm anything or anyone, ... why not give it to [him]?" Plaintiffs may not now marshal their evidence and make a second attempt here to prove the factual inapplicability or lack of wisdom of the floodplain ordinance by means of a constitutional claim.

As for retaliation, it is clear that if the plaintiffs had filed their complaint in 1990 and attached Attorney Belin's letter, they would have raised a genuine dispute of fact as to the Township's actual motivations, regardless of the formal correctness of the zoning decisions, and summary judgment would have to be denied. However, Attorney Belin avers, docket no. 22, Defendant's Brief, Exhibit A, without contradiction, that "the effect of that letter was withdrawn by Lawrence Township in early August of 1990." Since that time, as plaintiffs themselves admit, despite their loss at every turn on the merits of their application for a variance, plaintiffs have had permits granted for every lot in Block 25 except for the two lots in the floodplain. Even suspending my own judgment as required in ruling on a summary judgment motion, I cannot in light of those facts find that any reasonable juror could believe that Lawrence Township was engaged in a covert policy of retaliation, which extended to those lots in Block 25 determined to be in the floodplain, but to no others of plaintiffs' lots, whether in Block 25 or not. Such a finding would itself be irrational. Summary judgment should be entered on the claim arising out of the Caldwell permit as well.

Pursuant to 28 U.S.C. § 636(b)(1), the parties are given notice that they have ten days to serve and file written objections to this Report and Recommendation.

DATE:

10 May 98

Keith A. Pesto

Keith A. Pesto
United States Magistrate Judge

cc:

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

HARRY W. HAND and DOLLY : No. 92-2284-CD
E. HAND, his wife :
V. :
LAWRENCE TOWNSHIP ZONING :
HEARING BOARD :/

OPINION AND ORDER

This matter comes before the Court on a Pro Se appeal by Harry W. Hand and Dolly E. Hand, his wife, from the action of the Lawrence Township Zoning Hearing Board denying their application for variance. The written findings and decision of said Board are quite comprehensive and prove a complete analysis of their decision with authority. The appellants' response to this Court's Order under Section 1925(b) of the Rules of Appellate procedure, is unclear, at best, and this Court will respond to certain issues raised by appellants at oral argument.

The appeal is governed by the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 et seq. No motion was filed by the Hands for presentation of additional evidence. Therefore, if the record from the Board includes findings of fact made by the Board, this Court's scope of review is limited to determining whether the Board abused its

Exhibit "B-1"

discretion or committed an error of law or whether its factual findings were supported by substantial evidence. See Rushford vs. Zoning Board of Adjustment of Pittsburgh, 81 Pa.Cmwlth 274 473 A.2d 719 (1984); 53 P.S. 11005-A.

It is important to note that the notice of appeal filed by the Hands to this Court makes no challenge to any of the findings of fact of the Board and claims no errors of law beyond its contentions that the Board abused its discretion was one, neither it nor Lawrence Township sufficiently proved that granting the variance would cause any harm to the public and two, Lawrence Township has discriminated against the Hands because of action taken by it in other cases.

With regards to the first contention, no one is entitled to a variance as a matter of right, and there is no burden on the Township or the Board to prove a lack of harm. To the contrary, the burden is upon the applicant, and any issue as to the effect on the health, safety and welfare on the general public arises only after the other criteria for a variance have been met. Variance shall be granted only sparingly and only under exceptional circumstances, see Schaefer vs. Zoning Board of Adjustment, City of Pittsburgh, 62 Pa.Cmwlth 104, 435 A.2d 289 (1981). The substantive requirements for granting a variance has been codified in Section 10910.2 of the Pennsylvania Municipalities Planning Code which read in pertinent part:

The Board may grant a variance, provided that all of the following findings are made where relevant in a given case:

1. That there are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot, size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the Zoning Ordinance in the neighborhood or district in which the property is located;
2. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
3. That such unnecessary hardship has not been created by the applicant;
4. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare;
5. That the variance, if authorized, will represent the minimum variance that will afford relief and represented the least modification possible of the regulation and issue.

In order to grant a variance, the Board must find all of the requirements. The reason for granting a variance must be serious, substantial and compelling. See N. Pugliese, Inc., vs. Palmer Township Zoning Hearing Board, 140 Pa.Cmwlth 160, 592 A.2d 118 (1981).

In the instant case, the Hands cannot demonstrate there is no possibility that the property can be developed in direct conformity with the provisions of the Zoning Ordinance. A variance should not be granted simply because doing so would

permit the owner to obtain greater profit from the use of the property. See A.R.E Lehigh Valley Partners vs. Zoning Hearing Board of Upper Macungie Township, 193 Pa.Cmwlth 361, 590 A.2d 842 (1991). As the authority cited by the Board demonstrates, the requisite element of unnecessary hardship is lacking here as a matter of law, because the Hands did comply with the Zoning and Flood Plan Ordinances by merging lots or re-subdividing the larger tract. See BCL, Inc., vs. West Bradford Township, 387 A.2d 970, Pa.Cmwlth (1978).

The Hands have argued that no required action was not taken within 90 days, and therefore, the application for various must be granted. No sufficient issue was raised in their notice of appeal, and this Court, therefore, need not consider it. However, it is clear that the issue lacks merit. While this Court is not certain what statutory authority the Hands are relying upon for this contention, it notes that a Zoning Hearing Board shall render a written decision within Forty-five (45) Days after the last hearing before the Board. Where the Board fails to render the decision within this required period, or fails to hold a hearing within 60 days from the date of the applicant's request for hearing, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record an in extension of time (53 P.S. 10908). The last hearing in this case was held by the Board on October 19th, 1992, and its decision made on November 13rd, 1992, clearly within the time requirements.

At the first hearing before the Board, Mr. Hand cited Act No. 170 of 1976, 53 P.S. § 4104. This provision has been complied with in this matter. The application for building permits was submitted by Mr. Hand on May 6th, 1992, and rejected by the Lawrence Township Zoning and Code Enforcement Officer prior to May 22nd, 1992.

Any issue with regard to the timeliness of action by the Lawrence Township Zoning Hearing Board has been waived, because it was not raised in the Hands' appeal to this Court. In any event, this Court finds that the Zoning Hearing Board rendered its decision with the applicable time requirements.

With regard to the Hands' second contention, that the Township has discriminated against them, this Court is of the opinion that the argument is irrelevant. See Drop vs. North Huntingdon Township Board of Adjustment, 6 Pa.Cmwlth 642, 293 A.2d 144 (1982).

Wherefore, the Court entered its Order of May 17th, 1993, Dismissing the appeal.

BY THE COURT:

John K. Reilly, Jr.
President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

LAWRENCE TOWNSHIP ZONING HEARING
BOARD and LAWRENCE TOWNSHIP

v.

HARRY W. HAND and DOLLY E. HAND,
his wife,

Appellants

No. 1406 C.D. 1993

Submitted: November 24, 1993

BEFORE: HONORABLE MADALINE PALLADINO, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE EMIL E. NARICK, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PALLADINO

FILED: December 23, 1993

Harry and Dolly Hand (Landowners) appeal pro se from an order of the Court of Common Pleas of Clearfield County (trial court) dismissing Landowners' appeal from the Lawrence Township Zoning Hearing Board's (Board) denial of their application for variances. We affirm.

Landowners own two tracts of land, one comprised of three lots of dimensions 40' x 120' and the other comprised of four lots of the same dimensions. Landowners wish to improve each lot by placing a mobile home, modular home or permanent structure on the lot. Landowners submitted an application for building permits with the Lawrence Township Zoning and Code Enforcement Officer. The application was denied because it did not meet side or rear yard setback requirements and two of the lots violated the 1989 Lawrence Township Flood Plain Ordinance.

Landowners then appealed to the Board requesting a variance for each lot. The Board held two hearings and found that all seven lots were too small under the Lawrence Township Zoning Ordinance (Ordinance) for the construction of single family dwellings and that the probable use of the lots would be for mobile homes. Further, the Board found that no matter how mobile homes were situated on the lots, they violated either the front and rear yard setbacks or side yard setbacks. Additionally, if mobile homes were placed on two of the lots, they would violate the 1989 Flood Plain Ordinance. The Board concluded that any resulting hardships were self-inflicted and could be removed by merging or subdividing the lots in a different manner. The Board then denied the variances, and Landowners appealed to the trial court.

The trial court, without taking any additional evidence, dismissed Landowners' appeal. The trial court concluded that the Board's findings were supported by substantial evidence and that no abuse of discretion occurred.

The issues on appeal to this court are:¹ 1) whether the Board abused its discretion in holding that Landowners did not prove unnecessary hardship; and 2) whether Landowners have established a right to a variance by estoppel.

With respect to the first issue, one who seeks a variance

¹ ~~Where the trial court takes no additional evidence, the scope of our review is limited to determining whether the board committed a manifest abuse of discretion or an error of law in not granting the variance. We may conclude that the board abused its discretion only if its findings are not supported by substantial evidence.~~ D'Amato v. Zoning Board of Adjustments of City of Philadelphia, 137 Pa. Commonwealth Ct. 157, 585 A.2d 580 (1991).

has the burden of establishing that the existence of unique physical circumstances or conditions on the property create an unnecessary hardship so that a variance from the terms of the ordinance is necessary to enable a reasonable use of the property. Zoning Board of Adjustment v. Pasha, 118 Pa. Commonwealth Ct. 190, 544 A.2d 1101 (1988). The burden for a variance is heavy and variances, as a rule, should be granted sparingly and only under exceptional circumstances. Gateside-Queensgate v. Delaware Petroleum Company, 134 Pa. Commonwealth Ct. 603, 580 A.2d 443 (1990). However, where a lot is too small to conform with minimum lot area requirements, and cannot be made to conform by merging lots or resubdividing a larger tract, enforcement of the ordinance will sterilize the land, creating the necessary hardship which will justify the granting of a variance. West Goshen Township v. Crater, 114 Pa. Commonwealth Ct. 245, 538 A.2d 952 (1988).

Landowners argue that the individual lots are too small to conform to the minimum area requirements and that this is an unnecessary hardship. Landowners contend that the Board's denial of the variances was an abuse of discretion because the lot size was created by a subdivision plan created before the zoning ordinance went into effect, and thus, Landowners are bound by the subdivision plan. However, Landowners have proffered no legal authority to support their claim that they are bound by the subdivision plan.

To the contrary, in Middletown Township v. Middletown Township Zoning Hearing Board, 120 Pa. Commonwealth Ct. 238, 244-

245, 548 A.2d 1297, 1299 (1988), we explained that it was the burden of the landowner to prove that he intended to keep the lots separate and distinct from each other. Specifically, we stated:

[w]here a landowner or one of his predecessors-in-title has brought into common ownership two adjoining parcels of land prior to the enactment of a zoning ordinance which makes the parcel(s) nonconforming, the landowner bears the burden of proving that he or his predecessors intended to keep the parcels 'separate and distinct' and not make them part of one integrated tract. (Citation omitted.)

Id. at 244-245, 548 A.2d at 1299.

Additionally, in Application of BCL, Inc. v. West Bradford Township, 36 Pa. Commonwealth Ct. 96, 387 A.2d 970 (1978), we held that when a developer owns an adjacent undeveloped lot which could be combined with the non-conforming lot to meet the dimensional requirements of the zoning ordinance, the developer has not carried its burden of proving a legal hardship.

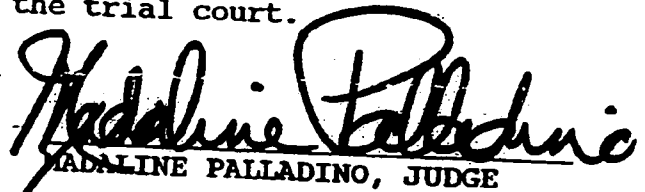
A review of the record in the instant case reveals that Landowners purchased all the lots in question by a single deed in 1986. Their predecessor acquired all the lots in question by a single deed in 1976, the year before the zoning ordinance went into effect. However, nowhere in the record is there evidence of an intention to keep the lots separate and distinct. Thus, we must conclude that Landowners do not own seven separate undersized lots, but rather, ~~two tracts of land of sufficient size to be used in a~~ conforming way under the Ordinance. Therefore, we conclude that the Board did not abuse its discretion in holding that Landowners failed to prove an unnecessary hardship.

With respect to the second issue, Landowners argue that the Ordinance is not being enforced in a nearby area (Hyde Park), and consequently, the Board is estopped from denying the variances.

To receive the benefits of an estoppel there must be (1) municipal failure to enforce the law over a long period of time or some form of "active" acquiescence of the illegal use; (2) good faith throughout the proceedings by the property owner; and (3) innocent reliance evidenced by substantial expenditures. Hudachek v. Zoning Hearing Board of Newton Borough, 147 Pa. Commonwealth Ct. 566, 608 A.2d 652 (1992). Further, a board's failure to uniformly enforce a zoning regulation does not preclude subsequent enforcement of the same. Knipple v. Geistown Borough Zoning Hearing Board, ___ Pa. Commonwealth Ct. ___, 624 A.2d 766 (1993).

Landowners' allegations of non-enforcement are only allegations. Landowners have provided no evidence of record to support these allegations. Since Landowners failed to establish any of the three requisite criteria there is no basis to grant a variance by estoppel.²

Accordingly, we affirm the trial court.


MADALINE PALLADINO, JUDGE

Judge Friedman concurs in the result only.

² Landowners raise two other issues on appeal. However, since these were not raised before the trial court Landowners are foreclosed from pursuing them before this court. Hersh v. Zoning Hearing Board of Marlborough Township, 90 Pa. Commonwealth Ct. 15, 493 A.2d 807 (1985).

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

LAWRENCE TOWNSHIP,	:	
Plaintiff	:	
vs.	:	NO. 90-15-EQU
HARRY W. HAND and DOLLY E. HAND,	:	
Husband and Wife,	:	
Defendants	:	
and	:	
KENNETH D. VEIHDEFFER and GLORIA	:	
W. VEIHDEFFER,	:	
Defendants	:	

MEMORANDUM

This equity action was tried to the Court June 29, 1994. Plaintiff, a second class Township, seeks abatement of what it perceives to be a public nuisance. Defendants, Harry W. Hand and Dolly E. Hand deny the factual basis for the conclusion on the part of the Township that they are responsible for creating the problem, and charge alternatively that either the Township or Mrs. Gloria W. Veihdeffer¹ or both are responsible for the creation of the situation the Township contends is offensive. The Hands further contend that the Township abused its power in 1990 by refusing to issue mobil home permits for other properties owned by them in the Township until the problem that

Carl Belin, Jr., Esq.
Mr. & Mrs. Harry Hand
Ronald Collins, Esq. _____
by cnk

¹Originally, in their counterclaim, the Hands joined Kenneth D. Veihdeffer and Gloria W. Veihdeffer, his wife. Mr. Veihdeffer has since died survived by his wife.

is the gist of this action was resolved. For this, they ask for monetary damages. Mrs. Veihdeffer denies responsibility for the nuisance and asks for damages against the Hands for the damage done to her property. Against this backdrop, and after a careful consideration of the evidence introduced at trial, we make the following:

Findings of Fact

1. Harry W. Hand and Dolly E. Hand are the owners of contiguous lots of ground located in Lawrence Township, Clearfield County, Pennsylvania.

2. They acquired two of the lots by a deed recorded February 9, 1982, and the remaining lot by deed recorded May 8, 1984.

3. The lots have been numbered Parcel 44 by the county assessment office and they are depicted on an enlargement of the Clearfield County tax assessment map which is attached to this Opinion and marked as Exhibit 1.

4. Mrs. Veihdeffer is the owner of five contiguous lots that are adjacent to the Hands's lots. These lots are identified as Parcel 47 on Exhibit 1. The lots were acquired by Mrs. Veihdeffer and her late husband between 1960 and 1965.

5. Mrs. Veihdeffer owns another lot which is identified as Parcel 34 on Exhibit 1 on which she has her home and business. She and Mr. Veihdeffer acquired this property in 1960.

6. The lots identified as Parcel 47 are vacant and were acquired by the Veihdeffers for privacy, and because in their judgment, the wooded nature of the lots enhanced the value of the property upon which they built their home.

7. Photographs of the lots in Parcel 47 taken around 1980 depict a sylvan setting that was not only picturesque but also beneficial to the neighborhood. In this regard, a neighbor (Parcel 35) testified to the advantageous nature of this parcel and the uses to which it was subjected by area children.

8. Beginning in 1988, the Hands began to alter the character of their lots by raising the elevation.

9. They accomplished this by adding and compacting fill on their property.

10. Mr. Hand told this Court that he raised the elevation of his lots anywhere from 22 inches to 36 inches.

11. When he completed his filling of the property in 1989, he constructed a six inch dike along the property line between his lots and the vacant Veihdeffers' lots.

12. Prior to this work, surface water flowed across the Veihdeffers' lots, across the Hands' lots and from there to a ditch along Lawrence Avenue.

13. The flow patterns that existed prior to the fill being placed on the Hands's property are depicted on a map that was prepared by hydrologists employed by the Veihdeffers. The map is attached to this Opinion and marked Exhibit 2. The arrows illustrate the path of surface water prior to the Hands's alterations to their lots.

14. Mrs. Veihdeffer testified that prior to the fill and dike being constructed, surface water would accumulate on Parcel 47 in early spring, but that warm weather annually rectified the problem.

14. This testimony was corroborated by a neighbor, a Township supervisor, and most impressively by Mr. George Finkbiner who lived in the area for fifty years and who sold the Hands two of the three lots in question. He told this Court that save in the early spring, standing water had never been a problem on the Veihdeffers' property.

15. After completion of the fill and the dike, the character of Parcel 47 changed quickly from an asset to a liability. The land became covered with stagnant water, the trees and vegetation died, and the lots resembled, and still do, an area that could be an adjunct to the Dismal Swamp.

16. There is no doubt but that the compaction of fill and construction of the dike on the Hand property caused the impoundment of surface water on the Veihdeffer property since the natural course of surface water flow was obstructed.

17. The after photographs taken in 1990, as well as this writer's view, confirmed the devastation that has occurred as a result of the inability of surface water to escape the Veihdeffer property.

18. The impoundment is malodorous, and chemical testing of the water on June 22, 1994, confirmed that a high level of bacteria is present in the water thereby creating a health hazard particularly to children who might be attracted to the property.

19. The cost of restoring the property to its prefill condition has been estimated at \$23,300.00.

20. There was no evidence that Mr. and Mrs. Hand sought approval of the Township or any other governmental agency prior to the construction of the fill and dike on their property.

Discussion

The Commonwealth Court of Pennsylvania has adopted as the law of Pennsylvania the Restatement (Second) of Torts definition of a public nuisance. See Muehlieb v. City of Philadelphia, 133 Pa. Commonwealth Ct. 133, 574 A.2d 1208 (1990). That definition includes conduct that is injurious to public health and public safety. See Restatement (Second) of Torts 821 (B). There can be no argument that the foul, stagnant pond that covers approximately fifty percent of Parcel 47, and which is bacteria laden, is a danger to the public health and safety of residents of Lawrence Township. It therefore constitutes a public nuisance which the Township is authorized to remove. The Second Class Township Code empowers the supervisors "to prohibit . . . and to remove any nuisance". 53 P.S. 65712. In this regard, the supervisors sued Mr. Hand and not the Veihdeffers upon whose property the nuisance exists. That we believe was appropriate since it was and is the conduct of the Hands that has created the problem. The late Chief Justice William I Schaffer observed in 1941 in an opinion he authored in the case Kramer v. Pittsburgh Coal Company, 341 Pa. 379, 381, 19 A.2d 362, 363, that ". . . the term 'nuisance' is applied to that class of wrongs that arise from the unreasonable, unwarrantable or unlawful use by a person of his own property, real or personal . . ." (Emphasis added.) In this case it was the act of raising the elevation of their

lots by the Hands that caused the impoundment of the water on the Veihdeffer property. The construction of the compacted fill and the dike was unlawful in that the activity violated a common law duty owed by the Hands to the Veihdeffers. The law of this Commonwealth is that "the owner of a servient tenement may not negligently alter the natural flow of surface water on his property by artificially redirecting or diverting it onto a dominant tenement's property without being liable for the damage caused". Bower v. Hoefner, 118 Pa.Comwlth. 293, 545 A.2d 423, 425 (1988). As the flow patterns illustrated on Exhibit 2 show, the Hands are the owners of the servient tenement, and Mrs. Veihdeffer is the owner of the dominant tenement. Although not pleaded, we nevertheless believe that the construction of the fill and dike also violated Section 680.13 of the Storm Water Management Act, 32 P.S. 680.13, which imposes a statutory duty upon anyone "engaged in the alteration or development of land which may affect storm water runoff characteristics" to "implement such measures consistent with the provisions of the applicable watershed storm water plan as are reasonably necessary to prevent injury to health, safety or other property".

Thus, the construction of the fill and dike is the reason for the impoundment and hence the public nuisance. Accordingly, Mr. and Mrs. Hand are liable not only for the cost of abatement of the nuisance but also for the damage done to the Veihdeffer property due to the negligent violation by them of the duty owed to the Veihdeffers.

Before addressing the issue of remedy, we believe it appropriate to explain to the Hands our ruling at trial that they were foreclosed from pursuing their claim for damages against the Township. The answer to the complaint in this action contained a counterclaim in which the Hands sought damages from the Township for lost rental income brought about by the refusal of the Township to issue permits to them so as to permit the placement of mobil homes on property other than that at issue in this case. The essence of their claim is that the Township was attempting to coerce them into taking action to correct the situation giving rise to this action by denying to them permits for property unrelated to this case.

We declined to hear this evidence since it was the subject matter of another equity action filed by Mr. and Mrs. Hand on March 7, 1991, against Lawrence Township and the individual supervisors. That action was filed to No. 91-580-CD, and sought relief from the activity of the Township. Both the solicitor for the Township and Mr. Hand indicated to us that a hearing on that complaint was held at which the parties settled their differences. Although there is no order of discontinuance in the file, it was not disputed at the trial of this case that a resolution of some sort was arrived at by the parties in Civil No. 91-580-CD.

Although the Hands believe that they should still be allowed to seek damages in this case, our view is that they are foreclosed from

litigating a second time issues that they raised in another action, and about which they were given the opportunity to be heard. We were told without dissent from Mr. Hand that the permits sought were released.

In any event, since the issue was the subject matter of another case, and since that case was resolved, we declined to hear evidence relative to Mr. and Mrs. Hands' claim for damages against the Township.

Conclusion

There remains for our determination the questions of remedy. In that regard, we want to clearly state our intention. It is first to abate the nuisance, and second, to compensate Mrs. Veihdeffer for the damage to her property. The cost of both shall be borne by Mr. and Mrs. Hand. In order to carry out this purpose, we are going to direct that certain action be taken. We are going to ask the supervisors to submit a plan for the abatement of the nuisance that accomplishes that result in the most cost effective manner. The plan we trust will be consistent with the ordinances of the Township and the mandates of the Commonwealth of Pennsylvania, and it must accomplish our purpose which is to restore the Veihdeffer property in terms of drainage to the condition it was prior to the construction of the fill and dike. We are also going to direct that Mrs. Veihdeffer and Mr. and Mrs. Hand submit to us an appraisal of Parcel 47. We are interested in ascertaining the fair market value of Parcel 47 today but the appraisal must be premised on the condition of the property prior to the impoundment. In other words, we desire to know fair market value today

of this property as it existed in 1987. Our reason for this request is the direction decisional authority gives with respect to damages which is that restoration damages should not exceed the value of the property. "The true measure of damages is the cost of remedying the injury, unless that equals or exceeds the value of the thing injured when such value becomes the measure." Ridgeway Caourt, Inc. v. Landon Courts, Inc., 295 PaS. 493, 442 A.2d 246, 248 (1981), quoting from Robb v. Carneigie Bros. & Co., 145 Pa. 324, 22 A. 649 (1891).

We will enter an Order incorporating these directions and schedule a further hearing, if that becomes necessary, after receipt of the information requested.

BY THE COURT,

Stewart Kutz
J.

DATED: July 21, 1994

96	97	124	98	99	100	101	102
-	-	-	-	+	-	+	-

(CLARENDON) SCHNARRS AVE.

131	61	60	59	58
-	-	-	+	+

95	94	93	125	92	91	90
+	-	-	-	-	-	+

STREET

49	48	47	46	45	44	43	42	41	40	39	38	37	36	35	34	33
+	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

80	81	82	126	83	84	85	87	88	89
+	-	-	-	-	-	-	-	-	+

LAWRENCE AVENUE

47	44
-	-

79	78	77	76	74	72
-	+	+	-	-	+

33	34	35	36	37	38	39	40	41
+	-	-	+	+	+	+	+	+

64	65	66	68	70	71
+	-	-	-	+	-

WASHINGTON AVENUE

32	30	30.1	28	25
-	-	-	-	-

17	16	14	13	12	11	10
-	+	+	+	+	+	-

18	19	20	21	22	23	24
+	-	-	-	-	+	+

1	2	3	4	5	6	7	8	9	10	11	12
+	+	+	+	-	+	+	+	+	+	+	+

SUSQUEHANNA AVENUE

R. R. (FORMERLY B. R. & P. R. R.)

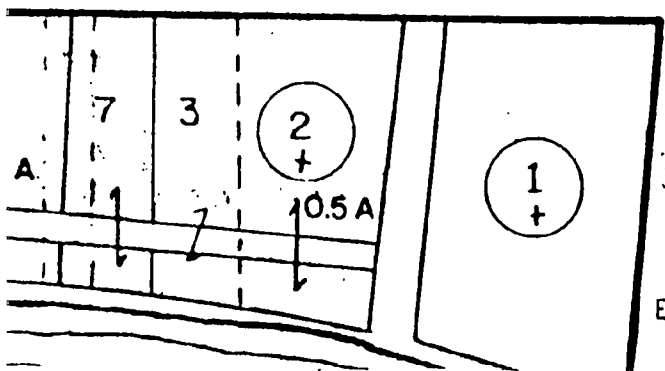
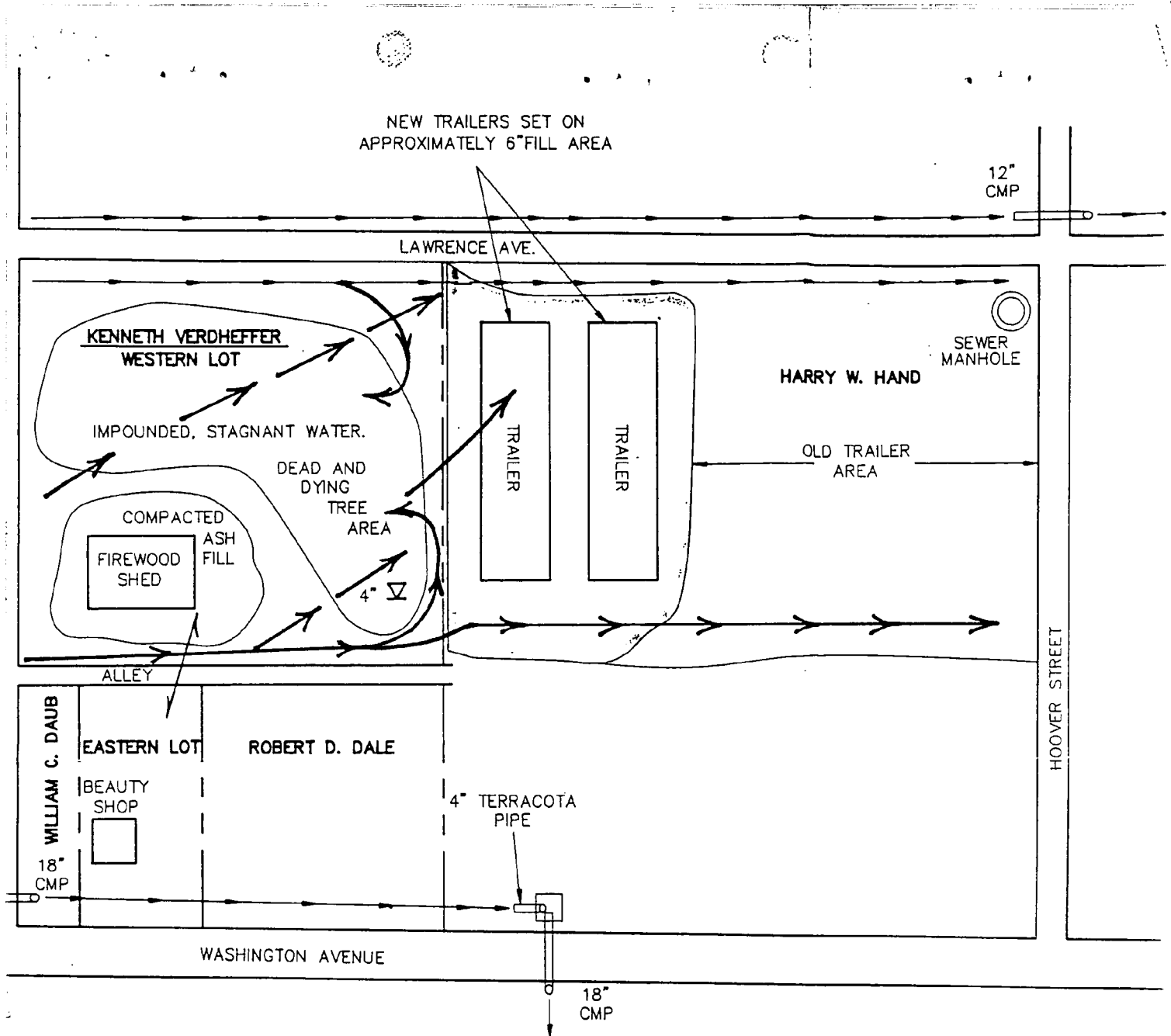


EXHIBIT "A"



LEGEND





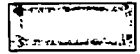
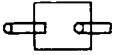


-  EXISTING RUNOFF AND FLOW DIRECTION
-  PREVIOUS RUNOFF DIRECTION
-  4" MAX STAGNANT WATER DEPTH
-  PROPERTY LINE
-  FILL AREA
-  STORMWATER STRUCTURE WITH CULVERTS
-  18" DIAMETER CORRUGATED METAL PIPE (CULVERT)
-  ROAD DITCH

EXHIBIT "B"

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

HARRY W. HAND and	:	
DOLLY E. HAND	:	
	:	
VS.	:	NO. 91-580-CD
	:	
LAWRENCE TOWNSHIP BOARD OF	:	
SUPERVISORS and DANIEL DUCKETT,	:	
GEORGE CLARK and DONALD KELLY,	:	
Individual Supervisors	:	

O R D E R

NOW this 5th day of August, 1997, this being the day and date set for hearing on Defendants' Praecipe for Judgment of Non Pros; following argument thereon, it is the ORDER that said Praecipe be and is hereby granted.

BY THE COURT,

/s/JOHN K. REILLY, JR.

President Judge

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

Attest:

Prothonotary

Exhibit "D"

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

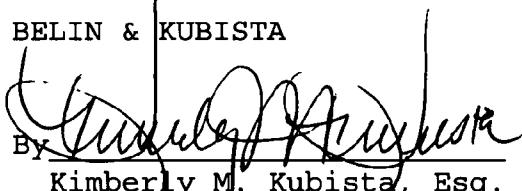
HARRY W. HAND and	:	
DOLLY E. HAND,	:	
	:	
Plaintiffs	:	
	:	NO. 03-261-CD
vs.	:	
	:	
CARL A. BELIN, JR., DANIEL D.	:	
DUCKETT, DONALD KELLY,	:	
Defendants	:	

CERTIFICATE OF SERVICE

This is to certify that the undersigned has sent a certified copy of Defendants' Preliminary Objections to Amended Complaint in the above-captioned matter to the following parties by postage prepaid First Class United States mail on June 25, 2003:

Harry W. Hand
Dolly E. Hand
530 Spruce Street
Clearfield, PA 16830

BELIN & KUBISTA

By 
Kimberly M. Kubista, Esq.
Attorney for Defendants

BELIN & KUBISTA
ATTORNEYS AT LAW
15 NORTH FRONT STREET
P.O. BOX 10
CLEARFIELD, PENNSYLVANIA 16830

FILED
4cc
6/10/48
JUN 25 2008
William A. Shaw
Prothonotary
Ally Kubista

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

HARRY W. HAND and

:

DOLLY E. HAND

:

-vs-

:

No. 03 - 261 - CD

CARL A. BELIN, JR., DANIEL D.

:

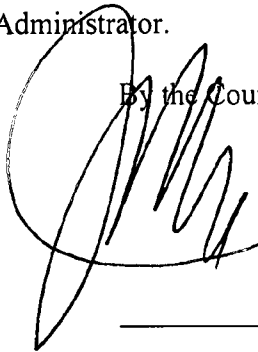
DUCKETT AND DONALD KELLY

:

ORDER

NOW, this 22nd day of September, 2003, upon consideration of Preliminary Objections to Plaintiff's Amended Complaint and argument and briefs thereon, it is the ORDER of this Court that said Objections be and are hereby sustained and the Complaint dismissed. Should Defendants wish to pursue their claim for counsel fees, they may request a hearing thereon through the Court Administrator.

By the Court,



President Judge

FILED

SEP 23 2003

William A. Shaw
Prothonotary/Clerk of Courts

FILED
SEP 23 2003

100 Amy Kubista

100 Harry & Dolly Hand

530 Spruce St.

Cleasfield, PA 16830

William A. Shaw
Prothonotary/Clerk of Courts



Date: 09/23/2003

Clearfield County Court of Common Pleas

User: DGR

Time: 09:25 AM

ROA Report

Page 1 of 1

Case: 2003-00261-CD

Current Judge: John K. Reilly Jr.

Harry W. Hand, Dolly E. Hand vs. Daniel D. Duckett, Donald Kelly, Carl A. Belin Jr.

Civil Other

Date		Judge
02/25/2003	✓ Filing: Civil Complaint Paid by: Hand, Harry W. (plaintiff) Receipt number: 1855932 Dated: 02/25/2003 Amount: \$85.00 (Cash)	No Judge
03/13/2003	✓ Preliminary Objections. filed by s/Kimberly M. Kubista, Esq. Certificate of Service 4 cc Atty Kubista	No Judge
06/23/2003	✓ Civil Complaint. filed by s/Harry W. Hand s/Dolly E. Hand 3 cc Pliffs	John K. Reilly Jr.
06/25/2003	✓ Preliminary Objections To Amended Complaint. filed by s/Kimberly M. Kubista, Esq. Certificate of Service 4 cc Atty Kubista	John K. Reilly Jr.
09/23/2003	✓ ORDER, NOW, this 22nd day of September, 2003, upon consideration of Preliminary Objections to Plaintiff's Amended Complaint and argument and Briefs thereon, it is the ORDER of this Court that said Objections be and are hereby SUSTAINED and the Complaint DISMISSED. Should wish to pursue their claim for counsel fees, they may request a Hearing thereon through the Court Administrator. by the Court, s/JKR, JR. P.J. 1 cc Atty Kubista, Harry & Dolly Hand	John K. Reilly Jr.

Date: 09/23/2003

Clearfield County Court of Common Pleas

User: DGREGG

Time: 09:25 AM

ROA Report

Page 1 of 1

Case: 2003-00261-CD

Current Judge: John K. Reilly Jr.

Harry W. Hand, Dolly E. Hand vs. Daniel D. Duckett, Donald Kelly, Carl A. Belin Jr.

Civil Other

Date		Judge
02/25/2003	✓ Filing: Civil Complaint Paid by: Hand, Harry W. (plaintiff) Receipt number: 1855932 Dated: 02/25/2003 Amount: \$85.00 (Cash)	No Judge
03/13/2003	✓ Preliminary Objections. filed by s/Kimberly M. Kubista, Esq. Certificate of Service 4 cc Atty Kubista	No Judge
06/23/2003	✓ Civil Complaint. filed by s/Harry W. Hand s/Dolly E. Hand 3 cc Plffs	John K. Reilly Jr.
06/25/2003	✓ Preliminary Objections To Amended Complaint. filed by s/Kimberly M. Kubista, Esq. Certificate of Service 4 cc Atty Kubista	John K. Reilly Jr.
09/23/2003	✓ ORDER, NOW, this 22nd day of September, 2003, upon consideration of Preliminary Objections to Plaintiff's Amended Complaint and argument and Briefs thereon, it is the ORDER of this Court that said Objections be and are hereby SUSTAINED and the Complaint DISMISSED. Should wish to pursue their claim for counsel fees, they may request a Hearing thereon through the Court Administrator. by the Court, s/JKR, JR. P.J. 1 cc Atty Kubista, Harry & Dolly Hand	John K. Reilly Jr.