

Carl Keith vs Marshall Shirley et al  
2004-1349-CD

2004-1349-CD  
CARL KEITH

VS

MARSHALL J. SHIRLEY, JR., ETAL.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CARL KEITH,

Plaintiff

Vs.

MARSHALL J. SHIRLEY, JR. and  
CELESTINA L.M. SHIRLEY, his  
wife,

Defendants

CIVIL DIVISION

No. 04 - 1349 - EQU

CD

COMPLAINT FOR SPECIFIC  
PERFORMANCE

Filed on Behalf of:

Plaintiff, CARL KEITH

Counsel of Record for This  
Party:

JOSEPH COLAVECCHI, ESQUIRE  
Pa. I.D. #06810

COLAVECCHI & COLAVECCHI  
221 East Market Street  
P.O. Box 131  
Clearfield, PA 16830

814/765-1566

FILED

AUG 30 2004

010:15 (u)

William A. Shaw  
Prothonotary  
3 CENT TO ATTY

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

CARL KEITH, :  
Plaintiff :  
: vs. : No. 04 - - EQU  
: :  
MARSHALL J. SHIRLEY, JR. :  
and CELESTINA L.M. SHIRLEY, :  
his wife, :  
Defendants :  
:

**N O T I C E**

You 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 Plaintiff. 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 AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAW OFFICES OF  
COLAVECCHI  
RYAN & COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P.O. BOX 131  
CLEARFIELD, PA

COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURTHOUSE  
Second and Market Streets  
Clearfield, PA 16830  
Phone 814/765-2641 Ex. 5982

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

CARL KEITH, :  
Plaintiff :  
vs. : No. 04 - - EQU  
MARSHALL J. SHIRLEY, JR. :  
and CELESTINA L.M. SHIRLEY, :  
his wife, :  
Defendants :

**COMPLAINT FOR SPECIFIC PERFORMANCE**

1. Plaintiff is Carl Keith, an individual residing at 504 Ida Street, Houtzdale, Pennsylvania, 16651.
2. Defendants are Marshall J. Shirley, Jr. and Celestina L.M. Shirley, his wife, both residing at R.R. Box 731S, Houtzdale, Pennsylvania, 16651.
3. At all times mentioned herein, Defendants were and still are the owners of the premises situated in Woodward Township, Clearfield County, Pennsylvania, described in Clearfield County Deeds and Records Book 1743, Page 248, and being known by Clearfield County Assessment Tax Map Number 130-M14-401-15.
4. On or about June 2001, Plaintiff and Defendants entered into an oral contract for the Defendants to convey to Plaintiff an easement and right-of-way upon and across the property of Defendants. The easement and right-of-way to be conveyed was to be approximately thirteen feet in width described as follows:

Running on the eastern side of Tax Map Number 130-M14-401-15 from the southern side of Pennsylvania Route 53 and running approximately one hundred sixty (160) feet along the eastern edge of Tax Map Number 130-M14-401-15 and to the property of Plaintiff known by Tax Map Number 130-M14-401-13.

5. The purpose of the easement was for ingress, regress, and egress from State Route 53 to the property of Plaintiff in Woodward Township, Clearfield County, Pennsylvania and known by Tax Map Number 130-M14-401-13, having been conveyed to Carl Keith and Jeanette Keith, his wife, by document recorded in Deeds and Record Book 927, Page 480. The said Jeanette Keith having died, the property vested in her surviving husband, Carl Keith. The easement and right-of-way was to be used only as a roadway or driveway to the property of Plaintiff.

6. The maintenance of the easement and right-of-way was to be the obligation of Plaintiff, his heirs, successors and assigns, and any improvements or changes were to be made only with the consent of Defendants, their heirs, successors and assigns.

7. The easement and right-of-way was for the benefit of Plaintiff and Defendants and was to run appurtenant to and with Plaintiff's land known by Tax Map Number 130-M14-401-13, and was to be for the benefit of his heirs, successors and assigns and to be perpetual. All work to construct the easement and right-of-way was to be at the expense of Plaintiff. Defendants needed this

right-of-way or landing constructed in order to give access to their property which they were renting to tenants.

8. The terms of the parties' oral contract were not reduced to writing but were certain, distinct and free from ambiguity and were clearly stated by both Defendants and Plaintiff.

9. The consideration for this easement and right-of-way was the Plaintiff supplying the backhoe, labor and materials to construct said easement and right-of-way which would be used jointly by Plaintiff and Defendants for their properties, both of which were rented. They formerly had access to these properties through the Abernathy land, but Abernathy had stopped Plaintiff and Defendants from using the Abernathy right-of-way. Defendants agreed to pay for one-half of the cost of the materials utilized in this right-of-way.

10. Pursuant to the terms of the parties' oral contract, Defendants applied for a permit for a minimum use driveway which was received by PennDot on July 2, 2001. A copy of said Application for Minimum Use Driveway is attached hereto marked Exhibit "A".

11. Plaintiff did backfill work on this easement and right-of-way at a cost of One Thousand Five Hundred Seventy-five (\$1,575)

right-of-way or landing constructed in order to give access to their property which they were renting to tenants.

8. The terms of the parties oral contract were not reduced to writing but were certain, distinct and free from ambiguity and were clearly stated by both Defendants and Plaintiff.

9. The consideration for this easement and right-of-way was the Plaintiff supplying the backhoe, labor and materials to construct said easement and right-of-way which would be used jointly by Plaintiff and Defendants for their properties, both of which were rented. They formerly had access to these properties through the Abernathy land, but Abernathy had stopped Plaintiff and Defendants from using the Abernathy right-of-way. Defendants agreed to pay for one-half of the cost of the materials utilized in this right-of-way.

10. Pursuant to the terms of the parties' oral contract, Defendants applied for a permit for a minimum use driveway which was received by PennDot on July 2, 2001. A copy of said Application for Minimum Use Driveway is attached hereto marked Exhibit "A".

11. Plaintiff did backfill work on this easement and right-of-way at a cost of One Thousand Five Hundred Seventy-five (\$1,575)

LAW OFFICES OF  
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& COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA

Dollars for the use of the backhoe as shown in more detail on Exhibit "B" attached hereto.

12. Plaintiff had loads of gravel and shale brought to the property and placed on the easement and right-of-way, said gravel and shale delivered by Baxter Trucking, Inc. at a cost to Plaintiff of Nine Hundred Seventy-five Dollars and Twenty Cents (\$975.20), a copy of said statement being attached hereto marked Exhibit "C".

13. Additional shale and fill was brought in by Baxter Trucking, Inc. at a cost of Eight Hundred Thirty-one Dollars and Seventy-two Cents (\$831.72). A copy of said statement being attached hereto marked Exhibit "D".

14. All of this work and expense, including the use of the backhoe and bringing in the shale and gravel, being constructed on the land of Defendants was based upon the oral contract between Plaintiff and Defendants. The work and payment was made by Plaintiff as set out above, and was pursuant to Plaintiff's oral contract with Defendants. These improvements have been completed.

15. After the work was completed, both Plaintiff and Defendants utilized the easement or right-of-way for the benefit of their respective properties. Plaintiff asked the Defendants to reduce their agreement to writing and retained Girard Kasubick, Esquire to draft a Right-of-Way Agreement.

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16. Girard Kasubick, Esquire drafted a Right-of-Way Easement Agreement which was submitted to Defendants who refused to sign it.

17. Defendants have wholly failed to keep or perform their part of the contract.

18. Defendants have recently notified Plaintiff not to utilize the easement and right-of-way.

19. Defendants stated that they have changed their mind and will not perform their contract to convey the easement and right-of-way, and they are also refusing to pay for one-half of the cost of the materials as per the agreement.

20. The proposed agreement prepared by Plaintiff's Attorney, Girard Kasubick, Esquire, is attached hereto marked Exhibit "E".

21. In addition to the damages set out above, Plaintiff has been harmed by the loss of rent for his property because of the problems being created by Defendants in their refusal to let Plaintiff utilize the easement and right-of-way for the benefit of his tenants.

22. By reason of the foregoing, the parties' oral contract has been so far executed by Plaintiff. The Defendants refusal to complete the same is inequitable and a fraud upon the Plaintiff.

WHEREFORE, Plaintiff prays:

(a) That Defendants be enjoined preliminarily until final hearing and permanently thereafter from conveying the property

underlying the right-of-way or from mortgaging or encumbering the property in any way;

(b) That Defendants be ordered to specifically convey the easement and right-of-way to him, which would be the completion of the oral contract, by good and sufficient deed;

(c) That Defendants be Ordered to pay one-half of the cost of the materials which is part of the oral contract.

(d) Such other general relief as may be just and proper.



JOSEPH COLAVECCHI, ESQUIRE  
Attorney for Plaintiff

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COLAVECCHI  
& COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA

VERIFICATION

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

---

CARL KEITH

*Carl Keith*

LAW OFFICES OF  
COLAVECCHI  
& COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA



**HIGHWAY OCCUPANCY PERMIT**

PERMIT NO.	100-10000000000000000000000000000000		
ORGANIZATION	PA. DEPT. OF TRANSPORTATION		
DATE ISSUED	04/05/2001		
PERMIT FEES	\$100.00		
ACCOUNT NO.	100-10000000000000000000000000000000		
COUNTY	PAULSBOURG		
TOWNSHIP/BORO	PAULSBOURG		
PERMITTEE	PAULSBOURG TOWNSHIP		
ADDRESS	PAULSBOURG TOWNSHIP		
POST OFFICE	PAULSBOURG		
ZIP CODE	17247		
COUNTY	PAULSBOURG		
TOWNSHIP/BORO	PAULSBOURG		
BOND/AGREEMENT NUMBER	100-10000000000000000000000000000000		
DESCRIPTION	PAULSBOURG TOWNSHIP		
STATE ROUTE NO.	PAULSBOURG TOWNSHIP		
SEGMENTS	PAULSBOURG TOWNSHIP		
OFFSET TO OFFSET	PAULSBOURG TOWNSHIP		
ALL WORK UNDER THIS PERMIT MAY BE STARTED ON	04/05/2001		
AND SHALL BE COMPLETED ON OR BEFORE	04/05/2001		
<p>Immediately upon completion of the work, Permittee shall notify the permit office where application was made. Subject to all the conditions, restrictions, and regulations prescribed by the Pennsylvania Department of Transportation, (see in particular 67 Pa. Code, Chapter 203, 441 and 459) and subject to the plans, special conditions, or restrictions herein set forth or attached hereto. This permit shall be located at the work site and shall be available for inspection by any police officer or department representative.</p>			
DESCRIPTION	<b>DESCRIPTION OF WORK</b>		
STATE ROUTE NO.	PAULSBOURG TOWNSHIP		
SEGMENT(S)	PAULSBOURG TOWNSHIP		
OFFSET TO OFFSET	PAULSBOURG TOWNSHIP		
DESCRIPTION	PAULSBOURG TOWNSHIP		
STATE ROUTE NO.	PAULSBOURG TOWNSHIP		
SEGMENT(S)	PAULSBOURG TOWNSHIP		
OFFSET TO OFFSET	PAULSBOURG TOWNSHIP		
TOWNSHIP/BORO	PAULSBOURG		
DESCRIPTION	PAULSBOURG TOWNSHIP		
STATE ROUTE NO.	PAULSBOURG TOWNSHIP		
SEGMENT(S)	PAULSBOURG TOWNSHIP		
OFFSET TO OFFSET	PAULSBOURG TOWNSHIP		

THIS PERMIT IS NOT VALID UNTIL SIGNED BY THE DISTRICT ENGINEER OR HIS AUTHORIZED REPRESENTATIVE

### **Acknowledgement of Completion**

Permitted work has been completed.

Date 6/12/02

has been completed.

**FOR** \_\_\_\_\_ *Secretary of Transportation*  
**BY** \_\_\_\_\_ *District Engineer*

406 4



## APPLICATION FOR MINIMUM USE DRIVEWAY

A Minimum Use Driveway is a Residential or Other Driveway Which is  
Expected to Be Used By Not More Than 25 Vehicles Per Day (i.e. 50 A.D.T.)

## READ INSTRUCTIONS ON REVERSE

Applicant: Property Owner

Marshall J. Shulley, Jr. Celeste A. L. M. Shulley  
Address  
RR1 Box 731-S Kirk St.  
Post Office  
Houtzdale PA Zip Code 16651  
Phone (814) - 378-8892 Fee 25.00 Check No. 3153

APPL. NO. 98-396

## LOCATION OF PROPOSED DRIVEWAY

County Clearfield (17)

Township/Boro Moraviantown (230)

Route No. 153

Name of Nearest Intersection STAMP WORKS ROAD

Distance to Nearest Intersection In Feet 600'

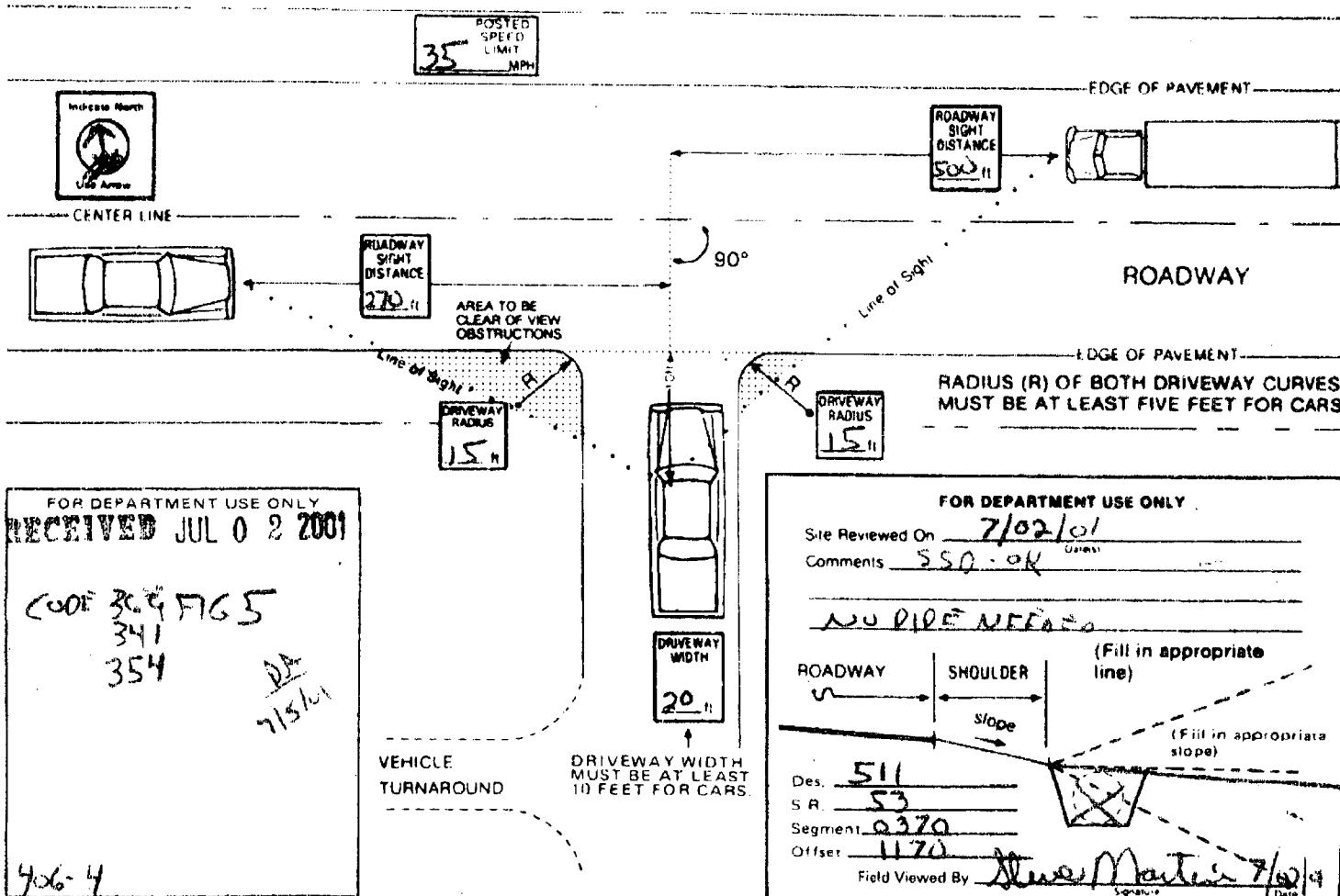
## APPLICATION IS MADE TO

CONSTRUCT A  ALTER AN  
NEW DRIVEWAY EXISTING DRIVEWAY

DATE WORK SCHEDULED TO BEGIN ASAP

DATE WORK SCHEDULED TO BE COMPLETED A.S.A.P.

For the purpose of measuring sight distance, the drivers' eye height shall be 3.50 feet above the proposed access surface and highway pavement surface and the vehicles' height shall be 4.25 feet above the proposed access surface and highway pavement surface.



Under and subject to all the conditions, restrictions and regulations prescribed by the Pennsylvania Department of Transportation and on the issued Permit, Form M-945P.

The applicant certifies that all statements contained herein are true and correct.

By Marshall J. Shulley, Jr. (Signature) 6-29-01 6-29-01 DATE

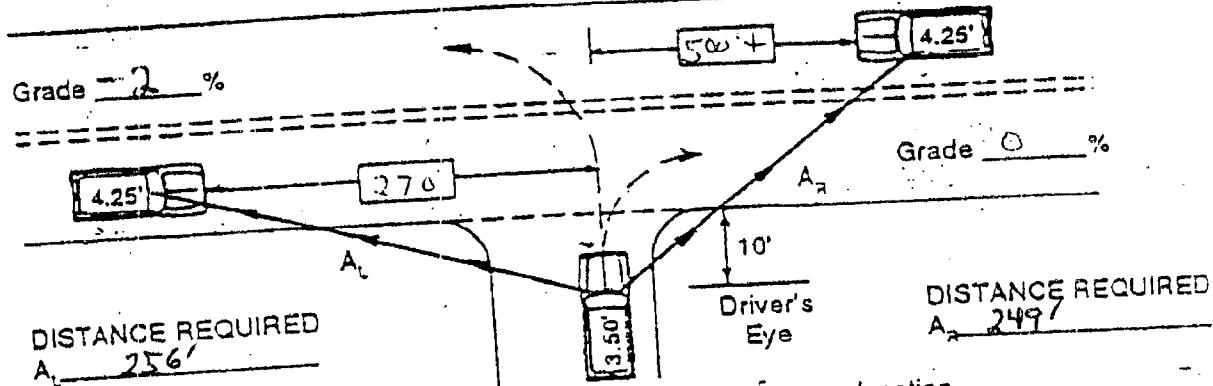
HAVE YOU READ INSTRUCTIONS ON REVERSE?  
HAVE YOU COMPLETED ALL BLANKS?

M-350S (6-95)

## FORMULA SIGHT DISTANCE MEASUREMENTS

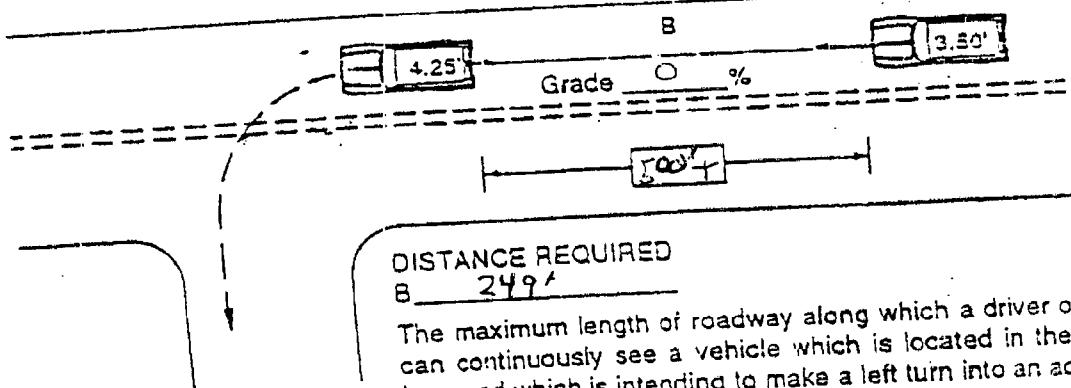
Applicant MARSHALL J + CELESTINA STIRLEYApplication No. 980396S.R. 53 Seg. 0370Offset 1170Posted Speed Limit 35Measured By STEVE MARTINDate 7/2/01Safe Operating Speed  
(Unposted Highway)

- A -



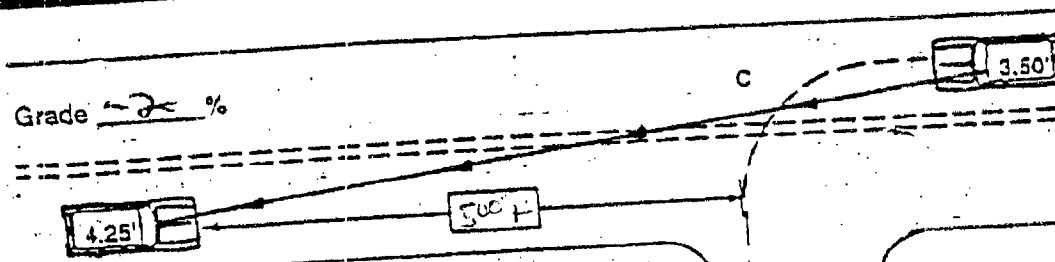
The maximum length of roadway along which a driver at an access location can continuously see another vehicle approaching on the roadway.

- B -



The maximum length of roadway along which a driver on the roadway can continuously see a vehicle which is located in the driver's travel lane and which is intending to make a left turn into an access.

- C -



The maximum length of roadway along which a driver of a vehicle intending to make a left turn into an access can continuously see a vehicle approaching from the opposite direction.

*Keith's Auto Body  
510 Ida Street  
Houtzdale, PA 16651*

*Backhoe Work @ \$45.00 per hour*

<i>Date:</i>	<i>Hours:</i>	<i>Amount:</i>
7/7/2001	7.0	\$315.00
7/14/2001	9.0	\$405.00
7/28/2001	6.0	\$270.00
9/14/2001	4.0	\$180.00
9/18/2001	5.0	\$225.00
9/21/2001	4.0	\$180.00
<i>Totals:</i>	<i>35.0</i>	<i>\$1575.00</i>



**Baxter Trucking, Inc.**

R.R. 1 BOX 561 ~ HOUTZDALE, PA. 16651  
Phone 814-378-7953 ~ Fax 814-378-5756

Carl Keith  
R.R. 1 Box 24  
Houtzdale, PA 16651  
**FAX 378-5919**

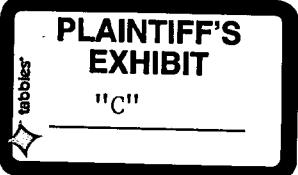
*Shal*

**BILLING DATE: 7/31/01**  
ACCOUNT ID:  
PREVIOUS BALANCE:

<b>ACCOUNT ACTIVITY</b>				
DATE	INVOICE NO.	DETAILS	CHARGES	PAYMENTS
7/7/01		Dave / 3 hours , 5 loads @ \$ 40.00 Hrly.	\$120.00	
7/7/01		Mike / 3 hours , 5 loads @ 40.00 Hrly.	\$120.00	
7/14/01		ED / 5 hours , 10 loads @ \$ 40.00 Hrly	\$200.00	
7/14/01		Dave / 1 hour , 2 loads @ \$ 40.00 Hrly.	\$40.00	
7/14/01		Mike / 5.5 hours , 9 loads @ \$ 40.00 Hrly	\$220.00	
7/28/01		Dave / 4 hours, 8 loads @ \$ 40.00 Hrly	\$160.00	
7/28/01		Ed / 1.5 hours , 3 loads @ 40.00 Hrly	\$60.00	
		Tax	\$55.20	
		<b>Totals:</b>	<b>\$975.20</b>	<b>\$0.00</b>
		<b>Please pay this amount:</b>		<b>\$975.20</b>

*paid 8-6-01  
0718*

**Terms: 30 days**  
**Thank you.**



## **Baxter Trucking, Inc.**

R.R. 1 BOX 561 ~ HOUTZDALE, PA. 16651  
Phone 814-378-7953 ~ Fax 814-378-5756

Carl Keith  
R.R. 1 Box 24  
Houtzdale, PA 16651

BILLING DATE: Sept. 22, 2001  
ACCOUNT ID:  
VIOUS BALANCE:

**ACCOUNT ACTIVITY**

Terms: 30 days  
**Thank you.**

0<sup>6</sup>  
P<sub>A1</sub>  
10<sup>-3-01</sup>  
0735

**PLAINTIFF'S  
EXHIBIT**

"D"



NEW ENTERPRISE STONE & LIME CO., INC.  
NEW ENTERPRISE, PA. 16664

PLANT NAME  
& NUMBER

TYRONE FORGE  
PLANT NUMBER 35

PHONE (814) 684-4995

ORDER NO <b>010416082</b>	TICKET NUMBER <b>A SCALE 1 3572388</b>		DATE <b>09/14/2001</b>	TIME <b>3:40 PM</b>	
CUSTOMER ID <b>1787600</b>	SHIP TO <b>BAXTER TRUCKING INC RR 1 BOX 561 HOUTZDALE, PA 16651</b>				
JOB SITE ID <b>1786241</b>	SHIP TO <b>PA</b>	STATE <b>PA</b>	CITY <b>PA</b>	ZONE <b>PA</b>	
PRODUCT ID# <b>CA0932</b>	PRODUCT DESCRIPTION <b>SELECT GRANULAR MAT. 2RC</b>				
CUSTOMER REQUIRED NUMBERS <b>F.O.B.</b>			CUSTOMER PHONE NO. <b>NEW 97F14</b>		
TAG NO. <b>AB00142</b>	NO. AXLES <b>3</b>	TRUCK NO. <b>BX17</b>	CARRIER NAME <b>BAXTER TRUCKING INC</b>	CARRIER CODE <b>134</b>	
Pick-up <b>XX</b>	Freight PPD <b>XX</b>	Freight Collect <b>XX</b>	ACCUMULATIVE QUANTITIES <b>150.00</b>	CHARGE <b>XX</b>	C.O.D. <b>XX</b>
US Weight <b>75,260</b>	METRIC Weight <b>XX</b>	Gross <b>XX</b>	Ordered <b>150.00</b>	MATERIAL <b>XX</b>	UNIT PRICE <b>XX</b>
<b>26,640</b>		Tare <b>XX</b>	Today <b>24.31</b>	LOADS <b>XX</b>	HAUL <b>XX</b>
<b>48,620</b>		Net <b>XX</b>	To Date <b>162.48</b>	LOADS <b>XX</b>	ADD'L CHARGES <b>XX</b>
<b>24.31</b>	<b>TON</b>		Accumulated Cash Sale <b>XX</b>	TAX <b>XX</b>	REFUND <b>XX</b>
WEIGHED BY <b>KAREN M. MCCREADY</b>			TOTAL THIS LOAD <b>XX</b>		
INSPECTORS SIGNATURE <b>XX</b>			JOB ARRIVAL TIME <b>XX</b>		
RECEIVED ABOVE MATERIAL IN GOOD CONDITION <b>X Mike Heels</b>			JOB DEPT TIME <b>XX</b>		
DELIVERY INFORMATION  <i>Carl Kreth</i>			XX		
GOD BLESS AMERICA			XX		

05 ASHCOM (888) 489-2121	08 ROARING SPRING (888) 489-2121	13 EBENSBURG DISTRIBUTION (888) 489-2121	26 OGLETON (814) 754-4921	35 TYRONE FORGE (814) 684-4905	41 CENTRAL CITY (814) 754-4921
06 CANOE CREEK (888) 489-2121	10 ORBISONIA (814) 447-3295	24 EBENSBURG FULVERIZING (814) 472-4717	29 BOSWELL (814) 629-5664	37 UNION FURNACE (814) 684-3180	
07 McCONNELLSTOWN (888) 489-2121	11 DRY RUN (717) 349-2412	25 NEW PARIS (888) 489-2121	30 BAKERSVILLE (814) 443-9950	38 SPROUL (888) 489-2121	

**CUSTOMER**

**3572388**



NEW ENTERPRISE STONE & LIME CO., INC.  
NEW ENTERPRISE, PA. 16664

PLANT NAME      TYRONE FORGE  
& NUMBER      PLANT NUMBER 35      PHONE (814) 684-4905

PLANT DIRECTORY						
05 ASHCOM (888) 489-2121	08 ROARING SPRING (888) 489-2121	13 EBENSBURG DISTRIBUTION (888) 489-2121	26 OGLETOWN (814) 754-4921	35 TYRONE FORCE (814) 684-4905	41 CENTRAL CITY (814) 754-4921	
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07 McCONNELLSTOWN (888) 489-2121	11 DRY RUN (717) 349-2412	25 NEW PARIS (888) 489-2121	30 BAKERSVILLE (814) 443-8950	38 SPROUL (888) 489-2121		
						CUSTOM

**CUSTOMER**



NEW ENTERPRISE STONE & LIME CO., INC.  
NEW ENTERPRISE, PA. 16664

PLANT NAME  
& NUMBER      TYRONE FORGE  
PLANT NUMBER 35

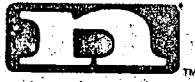
PHONE (814) 684-4985

ORDER NO. <b>010416082</b>	TICKET NUMBER <b>A SCALE 1 3573004</b>		DATE <b>09/18/2001</b>	TIME <b>3:14 PM</b>
CUSTOMER ID <b>1207600</b>	S <b>BAXTER TRUCKING INC</b>		STATE <b>PA</b>	
JOB SITE ID <b>Y1800118010</b>	P <b>RR 11 BOX 561 HOUTZDALE, PA 16651</b>		CITY <b>HOUTZDALE, PA</b>	
I <b>Carl Kieh</b>		ZONE <b>100</b>		
PRODUCT ID <b>CA0832</b>	PRODUCT DESCRIPTION <b>SELECT GRANULAR MAT. 2RC</b>			
CUSTOMER REQUIRED NUMBERS <b>F.O.B.</b>			CUSTOMER PHONE NO. <b>NEW07F14</b>	
TAG NO. <b>AB00142</b>	NO. AXLES <b>3</b>	TRUCK NO. <b>BX17</b>	CARRIER NAME <b>BAXTER TRUCKING INC</b>	
Pick-up <b>XX</b>	Freight PPD <b>XX</b>	Freight Collect <b>XX</b>	ACCUMULATIVE QUANTITIES <b>250.00</b>	CHARGE <b>XX</b>
US Weight <b>72,440</b>	METRIC Weight <b>Gross</b>	Ordered <b>22.90</b>	Loads <b>1</b>	UNIT PRICE <b>HAUL</b>
26,640	Tare	Today <b>22.90</b>	Loads <b>1</b>	ADD'L CHARGES <b>0</b>
45,800	Net	To Date <b>185.00</b>	Loads <b>1</b>	TAXES <b>0</b>
22.90	TON	Accumulated Cash Sale <b>0</b>		REFUNDS <b>0</b>
WEIGHED BY <b>KAREN M. MCCREADY</b>			TOTAL THIS LOAD	
INSPECTORS SIGNATURE <b>Mark Kieh</b>			JOB ARRIVAL TIME <b>0900</b>	JOB DEPT TIME <b>0900</b>
RECEIVED ABOVE MATERIAL IN GOOD CONDITION <b>X Mark Kieh</b>			A SERVICE CHARGE NOT TO EXCEED THE MAXIMUM ALLOWABLE BY LAW, WILL BE APPLIED TO ALL AMOUNTS OVER 30 DAYS PAST DUE.	
DELIVERY INFORMATION				
BOD BLESS AMERICA				

PLANT DIRECTORY					
05 ASHCOM (888) 489-2121	08 ROARING SPRING (888) 489-2121	13 EBENSBURG DISTRIBUTION (888) 489-2121	26 OGLETON (814) 754-4921	35 TYRONE FORGE (814) 684-4905	41 CENTRAL CITY (814) 754-4921
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07 McCONNELLSTOWN (888) 489-2121	11 DRY RUN (717) 349-2412	25 NEW PARIS (888) 489-2121	30 BAKERSVILLE (814) 443-9950	38 SPROUL (888) 489-2121	

CUSTOMER

3573004



NEW ENTERPRISE STONE & LIME CO., INC.  
NEW ENTERPRISE, PA. 16664

PLANT NAME TYRONE FORGE  
& NUMBER PLANT NUMBER 35

PHONE (814) 684-4905

ORDER NO. <b>019416002</b>	TICKET NUMBER <b>A SCALE 1 3573004</b>			DATE <b>09/18/2001</b>	TIME <b>3:14 PM</b>
CUSTOMER ID <b>1707600</b>	SHIP TO <b>BAXTER TRUCKING INC RR 11 BOX 561 HOUTZDALE, PA 16451</b>				
JOB SITE ID <b>YTH0011800</b>	SHIP TO <b>Carl Kiehl</b>				
PRODUCT ID <b>CA0832</b>	PRODUCT DESCRIPTION <b>SELECT GRANULAR MAT. 2RC</b>				
CUSTOMER REQUIRED NUMBERS <b>F.O.B.</b>				CUSTOMER PHONE NO.	
TAG NO. <b>A800142</b>	NO. AXLES <b>3</b>	TRUCK NO. <b>8X17</b>	CARRIER NAME <b>BAXTER TRUCKING INC</b>		CARRIER CODE <b>134</b>
Pick-up <b>XX</b>	Freight PPD <b>XX</b>	Freight Collect <b>XX</b>	ACCUMULATIVE QUANTITIES	CHARGE <b>XX</b>	C.O.D. <b>XX</b>
US Weight <b>72,440</b>	METRIC Weight <b>XX</b>	Gross <b>XX</b>	Ordered <b>250.00</b>	UNIT PRICE <b>XX</b>	TOTAL <b>XX</b>
26,640		Tare <b>XX</b>	Today <b>22.90</b>	LOADS <b>1</b>	HAUL <b>XX</b>
45,895	Net <b>XX</b>	Net <b>XX</b>	To Date <b>185.98</b>	LOADS <b>8</b>	ADD'L CHARGES <b>XX</b>
22.90	TON <b>XX</b>	TON <b>XX</b>	Accumulated Cash Sale <b>XX</b>	TAXES <b>XX</b>	SHIPPING <b>XX</b>
WEIGHED BY <b>KAREN M. MCCREADY</b>				TOTAL <b>XX</b>	
INSPECTORS SIGNATURE <b>XX</b>				JOB ARRIVAL TIME <b>0900 0200 0300 0400 0500 0600 0700 0800 0900 1000 1100 1200 1300 1400 1500 1600 1700 1800 1900 2000 2100 2200 2300 2400 2500 2600 2700 2800 2900 3000 3100 3200 3300 3400 3500 3600 3700 3800 3900 4000 4100 4200 4300 4400 4500 4600 4700 4800 4900 5000 5100 5200 5300 5400 5500 5600 5700 5800 5900 6000 6100 6200 6300 6400 6500 6600 6700 6800 6900 7000 7100 7200 7300 7400 7500 7600 7700 7800 7900 8000 8100 8200 8300 8400 8500 8600 8700 8800 8900 9000 9100 9200 9300 9400 9500 9600 9700 9800 9900 10000 10100 10200 10300 10400 10500 10600 10700 10800 10900 11000 11100 11200 11300 11400 11500 11600 11700 11800 11900 12000 12100 12200 12300 12400 12500 12600 12700 12800 12900 13000 13100 13200 13300 13400 13500 13600 13700 13800 13900 14000 14100 14200 14300 14400 14500 14600 14700 14800 14900 15000 15100 15200 15300 15400 15500 15600 15700 15800 15900 16000 16100 16200 16300 16400 16500 16600 16700 16800 16900 17000 17100 17200 17300 17400 17500 17600 17700 17800 17900 18000 18100 18200 18300 18400 18500 18600 18700 18800 18900 19000 19100 19200 19300 19400 19500 19600 19700 19800 19900 20000 20100 20200 20300 20400 20500 20600 20700 20800 20900 21000 21100 21200 21300 21400 21500 21600 21700 21800 21900 22000 22100 22200 22300 22400 22500 22600 22700 22800 22900 23000 23100 23200 23300 23400 23500 23600 23700 23800 23900 24000 24100 24200 24300 24400 24500 24600 24700 24800 24900 25000 25100 25200 25300 25400 25500 25600 25700 25800 25900 26000 26100 26200 26300 26400 26500 26600 26700 26800 26900 27000 27100 27200 27300 27400 27500 27600 27700 27800 27900 28000 28100 28200 28300 28400 28500 28600 28700 28800 28900 29000 29100 29200 29300 29400 29500 29600 29700 29800 29900 30000 30100 30200 30300 30400 30500 30600 30700 30800 30900 31000 31100 31200 31300 31400 31500 31600 31700 31800 31900 32000 32100 32200 32300 32400 32500 32600 32700 32800 32900 33000 33100 33200 33300 33400 33500 33600 33700 33800 33900 34000 34100 34200 34300 34400 34500 34600 34700 34800 34900 35000 35100 35200 35300 35400 35500 35600 35700 35800 35900 36000 36100 36200 36300 36400 36500 36600 36700 36800 36900 37000 37100 37200 37300 37400 37500 37600 37700 37800 37900 38000 38100 38200 38300 38400 38500 38600 38700 38800 38900 39000 39100 39200 39300 39400 39500 39600 39700 39800 39900 40000 40100 40200 40300 40400 40500 40600 40700 40800 40900 41000 41100 41200 41300 41400 41500 41600 41700 41800 41900 42000 42100 42200 42300 42400 42500 42600 42700 42800 42900 43000 43100 43200 43300 43400 43500 43600 43700 43800 43900 44000 44100 44200 44300 44400 44500 44600 44700 44800 44900 45000 45100 45200 45300 45400 45500 45600 45700 45800 45900 46000 46100 46200 46300 46400 46500 46600 46700 46800 46900 47000 47100 47200 47300 47400 47500 47600 47700 47800 47900 48000 48100 48200 48300 48400 48500 48600 48700 48800 48900 49000 49100 49200 49300 49400 49500 49600 49700 49800 49900 50000 50100 50200 50300 50400 50500 50600 50700 50800 50900 51000 51100 51200 51300 51400 51500 51600 51700 51800 51900 52000 52100 52200 52300 52400 52500 52600 52700 52800 52900 53000 53100 53200 53300 53400 53500 53600 53700 53800 53900 54000 54100 54200 54300 54400 54500 54600 54700 54800 54900 55000 55100 55200 55300 55400 55500 55600 55700 55800 55900 55000 55100 55200 55300 55400 55500 55600 55700 55800 55900 56000 56100 56200 56300 56400 56500 56600 56700 56800 56900 56000 56100 56200 56300 56400 56500 56600 56700 56800 56900 57000 57100 57200 57300 57400 57500 57600 57700 57800 57900 58000 58100 58200 58300 58400 58500 58600 58700 58800 58900 58000 58100 58200 58300 58400 58500 58600 58700 58800 58900 59000 59100 59200 59300 59400 59500 59600 59700 59800 59900 59000 59100 59200 59300 59400 59500 59600 59700 59800 59900 60000 60100 60200 60300 60400 60500 60600 60700 60800 60900 60000 60100 60200 60300 60400 60500 60600 60700 60800 60900 61000 61100 61200 61300 61400 61500 61600 61700 61800 61900 61000 61100 61200 61300 61400 61500 61600 61700 61800 61900 62000 62100 62200 62300 62400 62500 62600 62700 62800 62900 62000 62100 62200 62300 62400 62500 62600 62700 62800 62900 63000 63100 63200 63300 63400 63500 63600 63700 63800 63900 63000 63100 63200 63300 63400 63500 63600 63700 63800 63900 64000 64100 64200 64300 64400 64500 64600 64700 64800 64900 64000 64100 64200 64300 64400 64500 64600 64700 64800 64900 65000 65100 65200 65300 65400 65500 65600 65700 65800 65900 65000 65100 65200 65300 65400 65500 65600 65700 65800 65900 66000 66100 66200 66300 66400 66500 66600 66700 66800 66900 66000 66100 66200 66300 66400 66500 66600 66700 66800 66900 67000 67100 67200 67300 67400 67500 67600 67700 67800 67900 67000 67100 67200 67300 67400 67500 67600 67700 67800 67900 68000 68100 68200 68300 68400 68500 68600 68700 68800 68900 68000 68100 68200 68300 68400 68500 68600 68700 68800 68900 69000 69100 69200 69300 69400 69500 69600 69700 69800 69900 69000 69100 69200 69300 69400 69500 69600 69700 69800 69900 70000 70100 70200 70300 70400 70500 70600 70700 70800 70900 70000 70100 70200 70300 70400 70500 70600 70700 70800 70900 71000 71100 71200 71300 71400 71500 71600 71700 71800 71900 71000 71100 71200 71300 71400 71500 71600 71700 71800 71900 72000 72100 72200 72300 72400 72500 72600 72700 72800 72900 72000 72100 72200 72300 72400 72500 72600 72700 72800 72900 73000 73100 73200 73300 73400 73500 73600 73700 73800 73900 73000 73100 73200 73300 73400 73500 73600 73700 73800 73900 74000 74100 74200 74300 74400 74500 74600 74700 74800 74900 74000 74100 74200 74300 74400 74500 74600 74700 74800 74900 75000 75100 75200 75300 75400 75500 75600 75700 75800 75900 75000 75100 75200 75300 75400 75500 75600 75700 75800 75900 76000 76100 76200 76300 76400 76500 76600 76700 76800 76900 76000 76100 76200 76300 76400 76500 76600 76700 76800 76900 77000 77100 77200 77300 77400 77500 77600 77700 77800 77900 77000 77100 77200 77300 77400 77500 77600 77700 77800 77900 78000 78100 78200 78300 78400 78500 78600 78700 78800 78900 78000 78100 78200 78300 78400 78500 78600 78700 78800 78900 79000 79100 79200 79300 79400 79500 79600 79700 79800 79900 79000 79100 79200 79300 79400 79500 79600 79700 79800 79900 80000 80100 80200 80300 80400 80500 80600 80700 80800 80900 80000 80100 80200 80300 80400 80500 80600 80700 80800 80900 81000 81100 81200 81300 81400 81500 81600 81700 81800 81900 81000 81100 81200 81300 81400 81500 81600 81700 81800 81900 82000 82100 82200 82300 82400 82500 82600 82700 82800 82900 82000 82100 82200 82300 82400 82500 82600 82700 82800 82900 83000 83100 83200 83300 83400 83500 83600 83700 83800 83900 83000 83100 83200 83300 83400 83500 83600 83700 83800 83900 84000 84100 84200 84300 84400 84500 84600 84700 84800 84900 84000 84100 84200 84300 84400 84500 84600 84700 84800 84900 85000 85100 85200 85300 85400 85500 85600 85700 85800 85900 85000 85100 85200 85300 85400 85500 85600 85700 85800 85900 86000 86100 86200 86300 86400 86500 86600 86700 86800 86900 86000 86100 86200 86300 86400 86500 86600 86700 86800 86900 87000 87100 87200 87300 87400 87500 87600 87700 87800 87900 87000 87100 87200 87300 87400 87500 87600 87700 87800 87900 88000 88100 88200 88300 88400 88500 88600 88700 88800 88900 88000 88100 88200 88300 88400 88500 88600 88700 88800 88900 89000 89100 89200 89300 89400 89500 89600 89700 89800 89900 89000 89100 89200 89300 89400 89500 89600 89700 89800 89900 90000 90100 90200 90300 90400 90500 90600 90700 90800 90900 90000 90100 90200 90300 90400 90500 90600 90700 90800 90900 91000 91100 91200 91300 91400 91500 91600 91700 91800 91900 91000 91100 91200 91300 91400 91500 91600 91700 91800 91900 92000 92100 92200 92300 92400 92500 92600 92700 92800 92900 92000 92100 92200 92300 92400 92500 92600 92700 92800 92900 93000 93100 93200 93300 93400 93500 93600 93700 93800 93900 93000 93100 93200 93300 93400 93500 93600 93700 93800 93900 94000 94100 94200 94300 94400 94500 94600 94700 94800 94900 94000 94100 94200 94300 94400 94500 94600 94700 94800 94900 95000 95100 95200 95300 95400 95500 95600 95700 95800 95900 95000 95100 95200 95300 95400 95500 95600 95700 95800 95900 96000 96100 96200 96300 96400 96500 96600 96700 96800 96900 96000 96100 96200 96300 96400 96500 96600 96700 96800 96900 97000 97100 97200 97300 97400 97500 97600 97700 97800 97900 97000 97100 97200 97300 97400 97500 97600 97700 97800 97900 98000 98100 98200 98300 98400 98500 98600 98700 98800 98900 98000 98100 98200 98300 98400 98500 98600 98700 98800 98900 99000 99100 99200 99300 99400 99500 99600 99700 99800 99900 99000 99100 99200 99300 99400 99500 99600 99700 99800 99900 100000 100100 100200 100300 100400 100500 100600 100700 100800 100900 100000 100100 100200 100300 100400 100500 100600 100700 100800 100900 101000 101100 101200 101300 101400 101500 101600 101700 101800 101900 101000 101100 101200 101300 101400 101500 101600 101700 101800 101900 102000 102100 102200 102300 102400 102500 102600 102700 102800 102900 102000 102100 102200 102300 102400 102500 102600 102700 102800 102900 103000 103100 103200 103300 103400 103500 103600 103700 103800 103900 103000 103100 103200 103300 103400 103500 103600 103700 103800 103900 104000 104100 104200 104300 104400 104500 104600 104700 104800 104900 104000 104100 104200 104300 104400 104500 104600 104700 104800 104900 105000 105100 105200 105300 105400 105500 105600 105700 105800 105900 105000 105100 105200 105300 105400 105500 105600 105700 105800 105900 106000 106100 106200 106300 106400 106500 106600 106700 106800 106900 106000 106100 106200 106300 106400 106500 106600 106700 106800 106900 107000 107100 107200 107300 107400 107500 107600 107700 107800 107900 107000 107100 107200 107300 107400 107500 107600 107700 107800 107900 108000 108100 108200 108300 108400 108500 108600 108700 108800 108900 108000 108100 108200 108300 108400 108500 108600 108700 108800 108900 109000 109100 109200 109300 109400 109500 109600 109700 109800 109900 109000 109100 109200 109300 109400 109500 109600 109700 109800 109900 110000 110100 110200 110300 110400 110500 110600 110700 110800 110900 110000 110100 110200 110300 110400 110500 110600 110700 110800 110900 111000 111100 111200 111300 111400 111500 111600 111700 111800 111900 111000 111</b>	



NEW ENTERPRISE STONE & LIME CO., INC.  
NEW ENTERPRISE, PA. 16664

PLANT NAME: TYRONE FORGE  
& NUMBER: PLANT NUMBER 35 PHONE (814) 684-4905

ORDER NO. <b>610414082</b>	TICKET NUMBER <b>A SCALE P 3523844</b>		DATE <b>09/21/2001</b>	TIME <b>1:38 PM</b>
CUSTOMER ID <b>1707600</b>	S O D T O O H <b>BAXTER TRUCKING INC RR 1 BOX 561 HOUTZDALE, PA 16651</b>			
JOB SITE ID <b>1707600</b>	S H I P P O T <b>CARL Kick</b>		STATE <b>PA</b>	CITY <b>PA</b>
PRODUCT ID <b>CA0832</b>	PRODUCT DESCRIPTION <b>SELECT GRANULAR MAT. 2RC NEW#7F14</b>			
CUSTOMER REQUIRED NUMBERS <b>FJORN</b>			CUSTOMER PHONE NO.	
TAG NO. <b>AB50142</b>	NO. AXLES <b>3</b>	TRUCK NO. <b>8X17</b>	CARRIER NAME <b>BAXTER TRUCKING INC</b>	
Pick-up <b>XX</b>	Freight PPD <b>XX</b>	Freight Collect <b>XX</b>	CHARGE <b>XX</b>	C.O.D. <b>XX</b>
US Weight <b>74,560</b>	METRIC Weight <b>26,640</b>	ACCUMULATIVE QUANTITIES <b>Gross</b> <b>250.00</b>	UNIT PRICE <b>MATERIAL</b>	TOTAL <b>XX</b>
		Ordered <b>23.96</b>	XX	
		Today <b>23.96</b>	XX	
		Loads <b>1</b>	XX	
		To Date <b>230.48</b>	XX	
		Loads <b>10</b>	XX	
		ADD'L CHARGES <b>XX</b>	XX	
		POSITIONING <b>XX</b>	XX	
		ACCUMULATIVE <b>23.96</b>	XX	
		NET <b>TONS</b>	XX	
WEIGHED BY <b>KAREN M. MCCREADY</b>			TOTAL <b>XX</b> THIS LOAD	
INSPECTORS SIGNATURE <b>✓</b>			JOB ARRIVAL TIME <b>ARRIVED 0900</b>	JOB DEPT TIME <b>0900-1100</b>
RECEIVED ABOVE MATERIAL IN GOOD CONDITION <b>X</b>			A SERVICE CHARGE NOT TO EXCEED THE MAXIMUM ALLOWABLE BY LAW WILL BE APPLIED TO ALL AMOUNTS OVER 30 DAYS PAST DUE	
DELIVERY INFORMATION			DELIVERY DATES AND TIMES	
* GOD BLESS AMERICA *				
3523844				

PLANT DIRECTORY						
05 ASHCOM (888) 489-2121	08 ROARING SPRING (888) 489-2121	13 EBENSBURG DISTRIBUTION (888) 489-2121	26 OGLETOWN (814) 754-4921	35 TYRONE FORGE (814) 684-4905	41 CENTRAL CITY (814) 754-4921	
06 CANOE CREEK (888) 489-2121	10 ORBISONIA (814) 447-3295	24 EBENSBURG PULVERIZING (814) 472-4717	29 BOSWELL (814) 629-5664	37 UNION FURNACE (814) 684-3180		
07 McCONNELLSTOWN (888) 489-2121	11 DRY RUN (717) 349-2412	25 NEW PARIS (888) 489-2121	30 BAKERSVILLE (814) 443-9950	38 SPROUL (888) 489-2121		

CUSTOMER

RIGHT-OF-WAY EASEMENT

It is hereby agreed that **MARSHALL J. SHIRLEY, JR.** and **CELESTINA L. M. SHIRLEY**, his wife, of R.R. Box 731S, Houtzdale, PA 16651, herein after called "Grantors", for and in consideration of the sum of One (\$1.00) Dollar, receipt of which is hereby acknowledge, and for other good and valuable consideration, and with the intent to be legally bound hereby, do hereby grant, bargain, sell and convey unto **CARL KEITH**, of 504 Ida Street, Houtzdale, PA 16651, hereinafter called "Grantee", an easement and right-of-way upon and across the property of the Grantors located in Woodward Township, Clearfield County, Pennsylvania which is described in Clearfield County Deeds and Records Book 1743, Page 248 and being known by Clearfield Tax Map No. 130-M14-401-15.

The easement and right-of-way conveyed is approximately thirteen (13) feet in width as is described as follows:

Running on the eastern edge of Tax Map No. 130-M14-401-15 from the southern side of PA Route 53 and running approximately One hundred sixty (160) feet along the eastern edge of Tax Map No. 130-M14-401-15 and to the property of the Grantee known by Tax Map No. 130-M14-401-13. The above right-of-way shaded in red on the Clearfield County Assessment Map attached hereto and marked EXHIBIT "A".

The easement granted and conveyed herein is for the purpose of ingress, regress and egress from State Route 53 to the property of Grantee in Woodward Township,

Clearfield County, Pennsylvania, and known by Tax Map No. 130-M14-401-13, and the said map number conveyed to Carl Keith and Jeanette Keith, his wife, in Clearfield County Deeds and Records Book 927, Page 480. The said Jeanette Keith having died. This easement shall be used only as a roadway or driveway to the property of Grantee. The maintenance of the easements shall be the obligation of Grantee, his heirs, successors or assigns of the dominant property who shall keep it in a safe and passable condition when in use, but any improvements or changes shall be made only with the consent of Grantors, their heirs, successors, and assigns to the servient property.

The easement granted hereunder is not exclusive.

The easement or right-of-way is for the benefit of the Grantee, his heirs, successors, and assigns and shall be appurtenant to and run with the Grantee's land, the dominant tenement, known by Tax Map No. 130-M14-401-13, and inure to the benefit of his heirs, successors, assigns and subsequent owners of the dominant tenement.

The easement or right-of-way and privileges and rights herein shall be perpetual and Grantors hereby bind themselves, their heirs, legal representatives, successors and assigns of Grantors' servient tenement to warrant and defend the above described easement and rights unto Grantee, his heirs, legal representatives, successors, and assigns, of the dominant tenement.

This instrument shall be binding on and benefits shall inure to the parties and their heirs, legal representatives, successors and assigns.

Grantors retain, reserve and shall continue to enjoy the use of the surface of such property of the servient tenement for any and all purposes which do not interfere with and prevent the use by Grantee of the within easement as a roadway or driveway to the dominant tenement.

IN WITNESS WHEREOF, this instrument is executed this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

WITNESS:

GRANTORS:

\_\_\_\_\_  
(SEAL)

Marshall J. Shirley, Jr.

\_\_\_\_\_  
(SEAL)

Celestina L. M. Shirley

WITNESS:

GRANTEE:

\_\_\_\_\_  
(SEAL)

Carl Keith

COMMONWEALTH OF PENNSYLVANIA :  
COUNTY OF CLEARFIELD : S:

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 2002,  
before me, the undersigned officer, personally appeared  
**MARSHALL J. SHIRLEY, JR. and CELESTINE L. M. SHIRLEY**,  
husband and wife, Grantors herein, known to me (or  
satisfactorily proven) to be the persons whose names are  
subscribed to the foregoing instrument and acknowledged  
that they executed the same for the purposes therein  
contained.

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

---

Notary Public

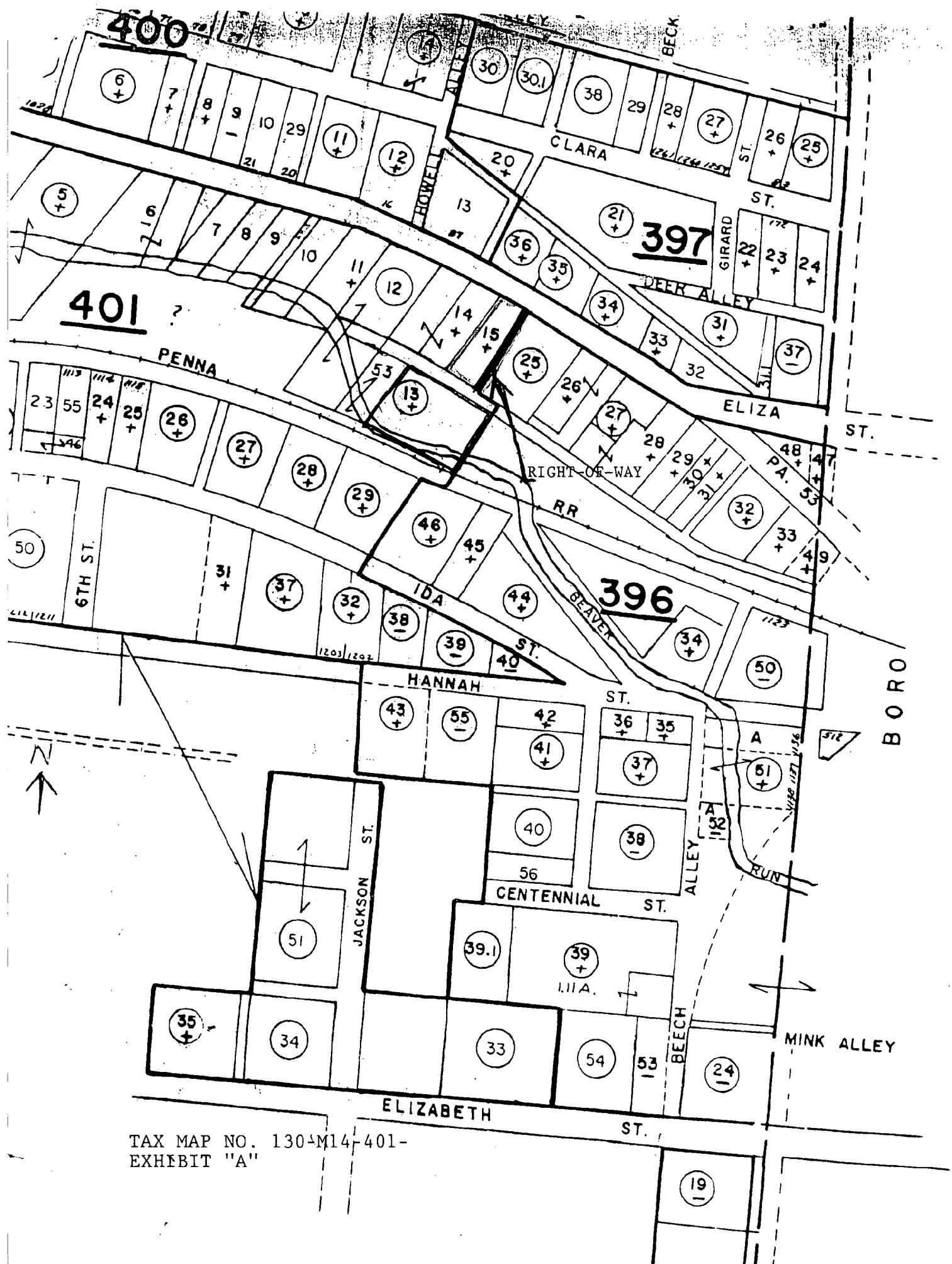
COMMONWEALTH OF PENNSYLVANIA :  
COUNTY OF CLEARFIELD : S:

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 2002, before  
me, the undersigned officer, personally appeared **CARL  
KEITH**, widower, Grantee herein, known to me (or  
satisfactorily proven) to be the person whose name is  
subscribed to the foregoing instrument and acknowledged  
that he executed the same for the purposes therein  
contained.

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

---

Notary Public



TAX MAP NO. 130-14-401-  
EXHIBIT "A"

Lap over margin

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION  
No. 04-  
-CD

CARL KEITH,

Plaintiff

vs.

MARSHALL J. SHIRLEY, JR. and  
CELESTINA L.M. SHIRLEY, his  
wife,  
Defendants

COMPLAINT FOR SPECIFIC  
PERFORMANCE

NOTICE TO DEFENDANT:

YOU are hereby notified that  
you are required to file an  
Answer to the within Complaint  
within twenty (20) days after  
service upon you or judgment may  
be entered against you.

*Joseph Colavecchi*  
JOSEPH COLAVECCHI, ESQUIRE  
Attorney for Plaintiff

**COLAVECCHI & COLAVECCHI**

ATTORNEYS AT LAW

221 EAST MARKET STREET  
(ACROSS FROM COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA 16830

**FILED**

AUG 30 2004

William A. Shaw  
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

KEITH, CARL

VS.

SHIRLEY, MARSHALL J. JR. & CELESTINA L.M.

COMPLAINT FOR SPECIFIC PERFORMANCE

Sheriff Docket # 16213

04-1349-CD

**SHERIFF RETURNS**

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NOW SEPTEMBER 2, 2004 AT 9:44 AM SERVED THE WITHIN COMPLAINT FOR SPECIFIC PERFORMANCE ON CELESTINA L.M. SHIRLEY, DEFENDANT AT RESIDENCE, RR BOX 731S, HOUTZDALE, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO CELESTINA SHIRLEY A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT FOR SPECIFIC PERFORMANCE AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: DAVIS/MORGILLO

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NOW SEPTEMBER 2, 2004 AT 9:44 AM SERVED THE WITHIN COMPLAINT FOR SPECIFIC PERFORMANCE ON MARSHALL J. SHIRLEY JR., DEFENDANT AT RESIDENCE, RR BOX 731S, HOUTZDALE, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO CELESTINA SHIRLEY, WIFE A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT FOR SPECIFIC PERFORMANCE AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: DAVIS/MORGILLO

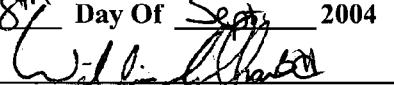
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Return Costs

Cost	Description
37.87	SHERIFF HAWKINS PAID BY: ATT CK# 7899
20.00	SURCHARGE PAID BY: ATTY CK# 7900

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Sworn to Before Me This

8/8 Day Of Sept 2004  


WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2006  
Clearfield Co., Clearfield, PA

So Answers,

  
Chester A. Hawkins  
Sheriff

FILED *Elo*  
0125980  
SEP 08 2004

William A. Shaw  
Prothonotary/Clerk of Courts

04-1349 CD

~~Plff~~  
vs

Joseph Colavecchi

Marshall J. Shaley Jr  
Celestina L. M.

Shawn P. Sullivan



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY ACTION

CARL KEITH, :  
Plaintiff :  
vs. : NO. 04 - 1349-CD  
: :  
MARSHALL J. SHIRLEY, JR. and : ANSWER, NEW MATTER &  
CELESTINA L. M. SHIRLEY, his : COUNTERCLAIM  
wife, :  
: :  
Defendants :  
:

FILED NO CC  
m 11 2004 ECR  
NOV 04 2004

William A. Shaw  
Prothonotary/Clerk of Courts

TO THE PROTHONOTARY:

Please note the appearance of the Undersigned as  
Counsel of record for **MARSHALL J. SHIRLEY, JR. and CELESTINA  
L. M. SHIRLEY**, the Defendants named in the above matter,  
noting that all papers and process for service upon said party  
may be served upon the undersigned at his office: 1701 Fifth  
Avenue, Altoona, PA 16602.

SULLIVAN, FORR, STOKAN & HUFF

BY: C. Sullivan

Shawn P. Sullivan  
State I.D. No. 42167  
Sullivan, Forr, Stokan & Huff  
1701 Fifth Avenue  
Altoona, PA 16602  
814-946-4316  
814-946-9426 (fax)

DATED: Oct. 22, 2004

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of **PRAECIPE**  
**FOR ENTRY OF APPEARANCE** was served on the 20th day of October,  
2004, by U.S. mail, postage prepaid to the following:

Joseph Colavecchi, Esquire  
**COLAVECCHI & COLAVECCHI**  
221 E. Market Street  
P.O. Box 131  
Clearfield, PA 16830

SULLIVAN, FORR, STOKAN & HUFF

BY: Shawn P. Sullivan

Shawn P. Sullivan, Esquire  
1701 Fifth Avenue  
Altoona, PA 16602  
(814) 946-4316  
STATE I.D. #42167

CARL KEITH, : IN THE COURT OF COMMON PLEAS OF  
Plaintiff, CLEARFIELD COUNTY, PENNSYLVANIA

vs. : NO. 2004 - 1349

MARSHALL J. SHIRLEY, JR. : Filed on behalf of:  
and CELESTINA L. M. SHIRLEY, Defendants, MARSHALL J.  
his wife SHIRLEY, JR. AND CELESTINA L.  
Defendants, : M. SHIRLEY

: Counsel of Record For This  
Party:

: SHAWN P. SULLIVAN, ESQUIRE  
ATTORNEY I.D. NO. 42167  
SULLIVAN, FORR, STOKAN & HUFF  
1701 FIFTH AVENUE  
ALTOONA, PA 16602  
(814) 946-4316

FILED *11/11/2004* NO *cc*  
NOV 04 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY ACTION

CARL KEITH, :  
Plaintiff :  
: :  
vs. : NO. 04 - 1349  
: :  
MARSHALL J. SHIRLEY, JR. and : ANSWER, NEW MATTER &  
CELESTINA L. M. SHIRLEY, his : COUNTERCLAIM  
wife, :  
: :  
Defendants :  
:

**NOTICE TO PLEAD**

**TO: CARL KEITH**

IN ACCORDANCE WITH RULES 1026 AND 1361 OF THE  
PENNSYLVANIA RULES OF CIVIL PROCEDURE, YOU ARE HEREBY NOTIFIED  
TO FILE A WRITTEN RESPONSE TO THE ENCLOSED **ANSWER, NEW MATTER,**  
**AND COUNTERCLAIM** WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF  
OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

SULLIVAN, FORR, STOKAN & HUFF

BY: Shawn P. Sullivan  
Shawn P. Sullivan,  
Attorney For Defendants  
1701 Fifth Avenue  
Altoona, PA 16602  
(814) 946-4316  
STATE I.D. #42167

DATE: \_\_\_\_\_

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

## EQUITY ACTION

CARL KEITH,	:	
	Plaintiff	:
		:
		:
vs.	:	NO. 04 - 1349
	:	
MARSHALL J. SHIRLEY, JR. and	:	ANSWER, NEW MATTER &
CELESTINA L. M. SHIRLEY, his	:	COUNTERCLAIM
wife,	:	
	:	
Defendants	:	
	:	

## **ANSWER**

AND NOW, this 29th day of October, 2004, comes the Defendants, by and through their attorneys, Sullivan, Forr, Stokan & Huff, whereby the following statements are made:

1. Admitted.
2. Admitted, although the new numbering for Defendant's residence is 455 Kirk Street, Houtzdale, PA 16651.
3. Admitted.
4. Admitted and denied. Defendant's agree to an easement of only 10 feet in width.
5. Admitted.
6. Admitted and denied. Although this was never formerly discussed between the parties, Defendants admit that Plaintiff would be solely responsible for the maintenance of the easement. It is denied that Defendants ever

discussed the easement being perpetual for the benefit of Plaintiffs, his heirs and assigns.

7. Admitted and denied. As to the perpetuity of the easement, Defendants incorporate Paragraph 6 of this Answer. Further, Defendants did not need this easement and would not benefit from it except for a parking space which Plaintiff agreed to provide when constructing the easement.
8. Defendants incorporate Paragraph 6 and Paragraph 7 of this Answer.
9. Admitted and denied. The only beneficiary of the easement was Plaintiff. The only benefit to be gained by Defendants was a parking space as set forth in Paragraph 7 of this Answer.
10. Admitted and denied. It is denied that the terms expressed by Plaintiff's Complaint constitute the terms to which Defendants had accepted.
11. Defendants are without sufficient information to form a belief as to the truth of the averment. Therefore, strict proof thereof is demanded at the time of trial.
12. Defendants are without sufficient information to form a belief as to the truth of the averment. Therefore, strict proof thereof is demanded at the time of trial.
13. Defendants are without sufficient information to form a belief as to the truth of the averment. Therefore,

strict proof thereof is demanded at the time of trial.

14. Defendants are without sufficient information to form a belief as to the truth of the averment. Therefore, strict proof thereof is demanded at the time of trial. By way of further Answer, the Defendant, Celestina L. M. Shirley, confronted the Plaintiff at the time of the construction of the easement advising Plaintiff that the width of the easement was being made too large. Plaintiff stated that he would scale back the width of the easement.
15. Admitted and denied. This is denied that the Defendants utilized the easement.
16. Admitted.
17. Denied. It is the Plaintiff that exceeded the terms of the oral agreement between the parties.
18. Denied. Defendants have posted "No Trespassing" signs but have orally told Plaintiff's tenants that they could continue to use the easement until this lawsuit is settled.
19. Denied. Defendants incorporate Paragraph 4 and Paragraph 6 of this Answer. By way of further Answer, Defendants agree to contribute only that which was actually paid by Plaintiff. During one of several conversations between Plaintiff and Mrs. Shirley, the Plaintiff advised that his nephew is doing the work for free. Further, the

backup work was performed by a business owned by the Plaintiff and his sons. Representation was made to Mrs. Shirley that there was no charge for the operation of the backhoe.

20. Admitted.
21. Defendants are without sufficient information to form a belief as to the truth of the averment. Therefore, strict proof thereof is demanded at the time of trial.
22. Denied. Defendants incorporate Paragraph 4 and Paragraph 6 of this Answer.

WHEREFORE, Defendants respectfully pray that your Honorable Court dismiss the Complaint of Plaintiff.

**NEW MATTER**

23. Defendants incorporate Paragraphs 1-22 of this Answer.
24. Plaintiff, if landlocked, has the right to acquire an easement by necessity from his grantor. The Defendants are not the grantor of Plaintiff's parcel and have therefore have no legal obligation to provide an easement to Plaintiff.
25. This is an oral agreement for the granting of an easement. As such, it is subject to the statute of fraud which legally prohibits specific performance of an oral agreement for an interest in real estate.

WHEREFORE, Defendants respectfully pray that your Honorable Court dismiss the Complaint of Plaintiff.

**COUNTERCLAIM**

26. The Defendants incorporate Paragraphs 1-25 of this Answer.
27. During the construction of the easement by Plaintiff, Plaintiff's agent or employees caused damage to the fence as well as to the porch on Defendants' property.
28. As a result of these actions, Defendants have suffered damages in the amount of \$9,417.98. A copy of the estimate from Croyle's Quality Contracting is attached hereto and marked as Exhibit "A."

WHEREFORE, Defendants pray that the Court grant judgment in their favor and against the Plaintiff in the amount of \$9,417.98 and that the Complaint of the Plaintiffs against the Defendants be dismissed.

Respectfully submitted,

SULLIVAN, FORR, STOKAN & HUFF

BY: 

Shawn P. Sullivan, Attorney  
for Defendants

Croyle's Quality  
Contracting

814 342 2404

To Repair front porch:

Block retaining wall:

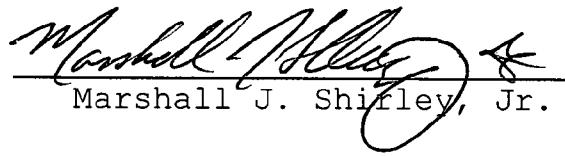
5,163.60

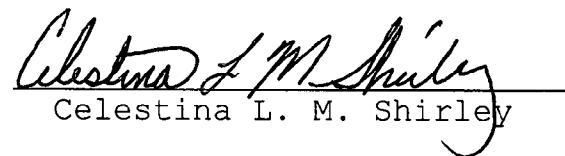
6x6 posts construction:

4,254.38

**VERIFICATION**

I verify that the statements in this **ANSWER, NEW MATTER, AND COUNTERCLAIM** are true and correct to the best of my knowledge and belief. I understand that false statements made herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Marshall J. Shirley, Jr.

  
\_\_\_\_\_  
Celestina L. M. Shirley

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of **ANSWER, NEW MATTER, AND COUNTERCLAIM** was served on the 3rd day of ~~November~~  
~~October~~, 2004, by U.S. mail, postage prepaid to the following:

Joseph Colavecchi, Esquire  
**COLAVECCHI & COLAVECCHI**  
221 E. Market Street  
P.O. Box 131  
Clearfield, PA 16830

SULLIVAN, FORR, STOKAN & HUFF

BY: *Shawn*  
Shawn P. Sullivan, Esquire  
1701 Fifth Avenue  
Altoona, PA 16602  
(814) 946-4316  
STATE I.D. #42167

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CARL KEITH,

Plaintiff

vs.

MARSHALL J. SHIRLEY, JR., and  
CELESTINA L.M. SHIRLEY, his  
wife,

Defendants

CIVIL DIVISION

No. 04 - 1348 - CD

REPLY TO NEW MATTER AND  
ANSWER TO COUNTERCLAIM

Filed on Behalf of:

Plaintiff, CARL KEITH

Counsel of Record for This  
Party:

JOSEPH COLAVECCHI, ESQUIRE  
Pa. I.D. #06810

COLAVECCHI & COLAVECCHI  
221 East Market Street  
P.O. Box 131  
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF  
COLAVECCHI  
& COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA

④  
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Atty Colavecchi

William A. Shaw  
Prothonotary/Clerk of Courts

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

CARL KEITH, :  
Plaintiff : No. 04 - 1349 - CD  
:  
Vs. :  
:  
MARSHALL J. SHIRLEY, JR., and :  
CELESTINA L.M. SHIRLEY, his wife, :  
Defendants:

**REPLY TO NEW MATTER  
AND ANSWER TO COUNTERCLAIM**

**REPLY TO NEW MATTER**

Carl Keith, Plaintiff in this matter, through his attorney, Joseph Colavecchi, Esquire, files his Reply to Defendants' New Matter and Answer to Counterclaim and respectfully avers as follows:

23. This does not require a Reply.
24. Denied. This has no relevance to the overall situation. Both Plaintiff and Defendants were utilizing the Abernathy road. When Abernathy cut off the road from both Plaintiff and Defendants, it put both Plaintiff and Defendants in the position where they did not have driving access or parking areas for their buildings.
25. Denied. On the contrary, this would have been taken out of the Statute of Frauds by the fact that Plaintiff, as set forth in the Complaint, has expended considerable work and expenses in putting in the landing and the parking area. This work and

expenses were done with the knowledge and acceptance of said work and expenses by Defendants.

WHEREFORE, Plaintiff asks that the Court dismiss the Answer and New Matter of the Defendants and enter judgment in favor of Plaintiff.

***ANSWER TO COUNTERCLAIM***

26. This does not require an answer.

27. Denied. The averments set forth herein, are within the knowledge of Defendants and strict proof of these averments is demanded at the trial of this case.

28. Denied. On the contrary, Plaintiff did not cause any damage to the porch of Defendants.

WHEREFORE, Plaintiff asks that the Court dismiss the Counterclaim and enter judgment in favor of Plaintiff together with interest and costs.



JOSEPH COLAVECCHI, ESQUIRE  
Attorney for Plaintiff

LAW OFFICES OF  
COLAVECCHI  
& COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA

VERIFICATION

I verify that the statements made in this Reply to New Matter and Answer to Counterclaim are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Carl Keith  
CARL KEITH

LAW OFFICES OF  
COLAVECCHI  
& COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA

—Lap over margin—

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNA.  
CIVIL DIVISION  
No. 04 - 1349 - CD

CARL KEITH,

Plaintiff

vs.

MARSHALL J. SHIRLEY, JR., and  
CELESTINA L.M. SHIRLEY, his  
wife,  
Defendants

REPLY TO NEW MATTER  
AND ANSWER TO COUNTERCLAIM

**FILED**

NOV 09 2004

William A. Shaw  
Prothonotary/Clerk of Courts

**COLAVECCHI**  
**RYAN & COLAVECCHI**

ATTORNEYS AT LAW  
221 EAST MARKET STREET  
(ACROSS FROM COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CARL KEITH,

Plaintiff

VS.

MARSHALL J. SHIRLEY, JR., and  
CELESTINA L.M. SHIRLEY, his  
wife,

Defendants

CIVIL DIVISION

No. 04 - 1349 - CD

**PRAECIPE TO DISCONTINUE**

Filed on Behalf of:

Plaintiff, CARL KEITH

Counsel of Record for This  
Party:

PAUL COLAVECCHI, ESQUIRE  
Pa. I.D. #83274

COLAVECCHI & COLAVECCHI  
221 East Market Street  
P.O. Box 131  
Clearfield, PA 16830

814/765-1566

✓ FILED ICC Atty  
of 10.25m Colavecchi  
APR 30 2013  
William A. Shaw  
Prothonotary/Clerk of Courts

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

CARL KEITH,

Plaintiff : No. 04 - 1349 - CD

vs.

MARSHALL J. SHIRLEY, JR., and  
CELESTINA L.M. SHIRLEY, his wife,  
Defendants:

**PRAECIPE TO DISCONTINUE**

TO: PROTHONOTARY OF CLEARFIELD COUNTY

Please mark the record in the above-captioned action settled,  
discontinued, and ended.

COLAVECCHI & COLAVECCHI

  
\_\_\_\_\_  
BY: PAUL COLAVECCHI, ESQUIRE  
Attorney for Plaintiff

April 30, 2013