

05-183-CD
D. Luzier et al vs. H&K Properties Inc.

15, TNC.

Duane Luzier et al v. H&K Properties Inc.
005-183-CD

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

DUANE B. LUZIER and KELLY S. LUZIER,
husband and wife,

PLAINTIFFS,

v.

H & K PROPERTIES, INC.,

DEFENDANT.

No. 05- 183 -CD

Type of Pleading:

CIVIL COMPLAINT

Filed By:

Plaintiff

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED

FEB 09 2005

019:201
William A. Shaw

Prothonotary/Clerk of Courts

4 CENTS TO ATT

David Meholick, Court Administrator
c/o Clearfield County Courthouse
2nd and Market Streets
Clearfield, PA 16830
(814)-765-2641

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

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H & K PROPERTIES, INC.,

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No. 05- -CD

CIVIL COMPLAINT

NOW COMES the Plaintiffs, Duane B. Luzier and Kelly S. Luzier, husband and wife, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of their CIVIL COMPLAINT:

The Parties

1. That first Plaintiff is Duane B. Luzier, an adult individual who does reside at 217 Charles Road, Clearfield, Clearfield County, Pennsylvania 16830 and who at all relevant and material times did reside in Clearfield County, Pennsylvania.
2. That second Plaintiff is Kelly S. Luzier, an adult individual who does reside at 217 Charles Road, Clearfield, Clearfield County, Pennsylvania 16830 and who at all relevant and material times did reside in Clearfield County, Pennsylvania.
3. That at all relevant and material times, Plaintiffs were husband and wife residing as such at the aforementioned addresses, and are hereinafter collectively referred to as “the Luziers”.
4. That first defendant is H & K Properties, Inc., upon information and belief a duly incorporated Pennsylvania entity with principal place of business located at 506 Krebs Avenue, Clearfield, Clearfield County, Pennsylvania 16830, hereinafter “H & K Properties”.

5. That second defendant is Richard T. Hughes, an adult individual, who does, and who upon information and belief, at all relevant and material times did, reside at 107 North Front Street, Clearfield, Clearfield County, Pennsylvania 16830, sometimes hereinafter referred to as "Hughes".

Background

6. By deed dated January 5, 2001, Defendant H & K Properties obtained certain land in Lawrence Township, Clearfield County, Pennsylvania.

7. That Defendant H & K Properties proceeded to have said land subdivided for the purposes of developing a residential development as recorded in Clearfield County as Instrument Number 200215354, Map Number 2629.

8. That Defendant H & K Properties solicited business for the sale of residential lots in this development, indicating that lots were approved for building.

9. That as part of this solicitation, defendant H & K, with the assistance of Defendant Hughes, who was, and upon information and belief was and is the President of Defendant H & K Properties, caused said advertisements to be published. Attached hereto as Exhibit "A" is a true and correct copy of such an advertisement placed in the Clearfield Progress newspaper during the late summer, early fall of 2002.

10. At this time, the Luziers desired to build a home in the Clearfield Area and were interested in purchasing a lot in the H & K Properties subdivision, responded to said advertisement and spoke with Defendant Hughes.

11. That by deed of November 5, 2002, the Luziers did acquire Lot Number 2, being slightly in excess of five (5) acres, in said subdivision from H & K Properties for the sum of \$26,850. A true and correct copy of said deed is attached hereto as Exhibit "B".

12. That in contemplation of said transaction and in preparation to obtain mortgage financing for the construction of their home, the Luziers did have an appraisal performed at the cost of \$250.

13. As part of the transaction, the Luziers did accept certain restrictions placed upon the lot by H & K Properties which were for the purpose of protecting the development as a residential development as well as protecting the homeowners financial interests in the premises. A true and correct copy of said restrictions are attached hereto as Exhibit "C".

14. That prior to purchasing lot number 2, the Luzier were assured by Defendant Hughes that sewerage would be available by the end of November, 2002, and that he was securing public water in the development. A true and correct copy of the letter from Defendant Hughes stating as such is attached hereto as Exhibit "D".

15. The Luziers were lead to believe, by Defendant Hughes, that they could start construction of their home during 2003, once the weather cleared.

16. In fact, the Luziers were not able to start construction on their home during 2003 in that neither Defendant Hughes nor Defendant H & K Properties obtained the necessary sewerage or water for the development.

17. During the year 2003, the Luziers were continually assured by Defendants Hughes and H & K Properties that the sewerage and water were being obtained and they could commence construction in short period of time.

18. This scenario ensued throughout 2003 and into 2004 when in fact the Luzier attempted to obtain a building permit for their home to be constructed on lot number 2 in the H & K Properties subdivision.

19. The Luziers were denied their building permit by the duly elected and/or appointed representatives of Lawrence Township in that the development had not obtained the necessary sewerage or water.

20. Given this fact, Defendants Hughes and H & K Properties again assured the Luziers that this situation would be corrected and finally filed for a sewerage permit, upon information and belief in the spring of 2004, for the development and sent a representative to the appropriate board for Lawrence Township.

21. That at said meeting, the representative of H & K Properties, believed to be an employee of Defendant Hughes in another of his ventures, was asked questions for which he was unable to give appropriate responses and the permit was denied.

22. That when Mr. Luzier discussed this situation Defendant Hughes, Defendant Hughes assured Mr. Luzier that he (Defendant Hughes) would personally attend the next meeting and that the sewerage permit would be obtained.

23. At the next meeting, H & K Properties again was represented not by Defendant Hughes but by the same individual who was as before, unable to respond to the inquiries presented by Lawrence Township, which again denied the permit.

24. At this point, in need of housing in the Clearfield Area and still unable to build upon lot number 2 with time running out to be able to construct in 2004, the Luziers purchased other housing in the Clearfield Area in late June, early July 2004.

25. At this point, Defendant Hughes assured the Luziers that he would return to them their purchase price paid for lot number 2 in exchange for their deed.

26. That Defendant Hughes then refused to do so.

Count I: Breach of Contract
v. H & K Properties

27. That the averments of paragraphs 1 - 26, inclusive, are hereby incorporated as if again fully set forth at length.

28. That Defendant H & K Properties breached their agreement with the Luziers in that (i) sewerage was not available by the end of November, 2002; (ii) neither sewerage nor public water was secured within a reasonable length of time, and upon information and belief, still has not been secured as of this date (January, 2005); (iii) sold a residential development lot which was not capable of being developed; and (iv) failed to take the necessary and appropriate actions to secure sewerage or public water in the development.

29. That as a direct and proximate result of the Defendant H & K Properties' breach of contract the Luzier did suffer losses for (i) the purchase price for the lot (\$26,850) and (ii) the cost of the appraisal (\$250), totaling \$27,100.

WHEREFORE, Plaintiffs request that JUDGMENT be entered in their favor and against Defendant H & K Properties, Inc., in an amount in excess of \$20,000, together with interest and costs of suit.

Count II: Breach of Contract
v. Defendant H & K Properties

30. That the averments of paragraphs 1 - 29, inclusive, are hereby incorporated as if again fully set forth at length.

31. That Defendant H & K Properties breached the assurance given by its president that it would reacquire lot number 2 from the Luziers after repeated failures to procure the water and sewerage.

WHEREFORE, Plaintiffs request that JUDGMENT be entered in their favor and against Defendant H & K Properties, Inc., in an amount in excess of \$20,000, together with interest and costs of suit.

Count III: Unfair Trade Practices

v. Defendants Hughes and H & K Properties

32. That the averments of paragraphs 1 - 31, inclusive, are hereby incorporated as if again fully set forth at length.

33. That Defendant Hughes and Defendant H & K Properties, by and through its president, represented to the Luziers, prior to their purchasing lot number 2 in the H & K Properties subdivision, that (i) sewerage would be available by November 2002; (ii) in any event sewerage and public water would be available within a reasonable length of time; (iii) the development would be suitable for building residential homes upon; and (iv) Defendant Hughes and H & K Properties would take all necessary and reasonable steps to procure sewerage and public water for the development.

34. That in violation of 73 Pa.C.S.A. 201-2(4)(iii), (v), (vii) and (xvii) Defendant Hughes and H & K Properties gave the above representations when in fact (i) sewerage was not available by November, 2002; (ii) public water and sewerage were not available within a reasonable length of time, let alone at any point in time; (iii) the development was not suitable for building a residential home within a reasonable length of time, let alone at any point in time; and (iv) failed to take necessary and reasonable steps to procure sewerage and public water for the development.

35. That as a direct and proximate result of the misrepresentations of Defendants Hughes and H & K Properties, Inc., the Luziers suffered the previously mentioned losses.

36. That pursuant to 73 Pa.C.S.A. 201-9.2(a), and given the Defendants clear and numerous misrepresentations, the Luziers request that they be awarded up to treble damages for their losses as compensation for the Defendants unfair trade practices and their reasonable attorney's fees.

WHEREFORE, Plaintiffs request that JUDGMENT be entered in their favor and against Defendants Richard T. Hughes and H & K Properties, Inc., jointly and severally, in an amount in excess of \$20,000, together with interest, reasonable attorney's fees and costs of suit.

Miscellaneous Averments

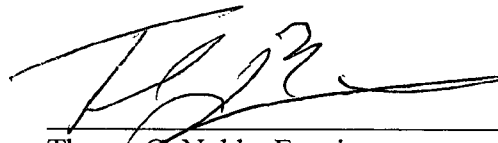
37. That Defendants pursuant to Count III have joint and several liability.

38. That venue is proper.

39. That jurisdiction is proper.

WHEREFORE, Plaintiffs request that JUDGMENT be entered in their favor and against Defendants Richard T. Hughes and H & K Properties, Inc., jointly and severally, in an amount in excess of \$20,000, together with interest, reasonable attorney's fees and costs of suit.

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiffs
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

OWN ROAD, CLEARFIELD, PA 16830.

RESPONSIBLE, CAR-
NG sitter needed in our
loutzdale home, for
aughters ages 4 and 6.
all 378-5085 (anytime).

Reap the rewards in
Classifieds.

Auctions

e-mail to
dianed@nittanyoil.com
E.O.E. and Drug Free.

SITTER FOR ONT Kin-
dergarten. 11 A.M. -
day-F. Deca-
tur are home or
yours. 34 902.

Auctions

REAL ESTATE AT PUBLIC AUCTION SATURDAY, AUG. 24, 2002

CONTENTS: 9:30 A.M. — REAL ESTATE: NOON

RON J. & RON S. GILLIGAN WILL CONDUCT A PUBLIC
AUCTION FOR J. J. POWELL IN JANESVILLE, PA
FROM PHILIPSBURG, TAKE RT. 53 THROUGH HOUTZDALE
AND RAMEY TO JANESVILLE, AT Y IN JANESVILLE STAY
RIGHT AND HOUSE IN ON THE LEFT.

This is a nice two story wood frame house. Home
three bedrooms, 1 1/2 baths, modern kitchen, dining room,
living room, family room, full basement, oak hardwood
floors in living room and dining room, beautiful oak stair-
case, trim and pocket doors, stone fireplace in family
room, oil hot water baseboard heat, aluminum siding,
porches, cast iron railings, very nice two story detached
garage. The home is situated on a beautiful lot approxi-
mately 240 x 140. Plus a guest house that has a large
living room and eat-in kitchen. Guest house has endless
possibilities.

To see or for more information, call Ron at 814-237-0189.
Terms of Real Estate: 10% down balance in 45 days.

AUCTIONEERS: RON J. & RON S. GILLIGAN
#AU339-L & #AU3430-L

Owner of Auctioneer not responsible in case of accident.
All oral info day of auction takes precedence over all written ads.

fits and profit sharing.
Please send resume to
Triangle Tech, P.O. Box
551, DuBois, PA 15801 by
August 30, 2002. Atten-
tion: Director
EOE/AA.

Real Estate

LAWRENCE TOWN-
SHIP: Only 3 lots re-
maining! (6) 5 acre level
wooded residential lots.
Approved for building. 1
mile from courthouse,
just off Park Avenue
and SR 879 By-Pass.
\$5,000 an acre. 765-8691
days.

BUYING A HOME? Re-
financing? Reasonable

Exhibit "A"

search, an legal work in-
volving buying or selling
homes. FmHA and con-
ventional mortgages. R.
Denning Gearhart,
Attorney-at-Law, Clear-
field 765-1581.

PHILIPSBURG: Qual-
ity Home in Sunset
Acres; 1,860 square feet,
4 bedroom, 2 1/2 bath,
double lot, many extras.
Just \$133,333. 342-6543.
V i s i t :
http://bettrue.hyperma-
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& electric l
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hony Creek
\$54,900.

COUNTR
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attractive &
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room. Rea
Great area
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water heat.
\$25,000. Ca
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INVESTI
mobile home
mobile home
store bldg.
for serious i
ders Rt. 53
area. \$81,5
Godissart 34
4,000 SQ. F
On 1.6 acres
Plaza Area
Water & sep
floor. Many
John Petu
Clearfield
Phillipaburg
State College
Bellefonte

County Parcel No. _____

This Deed,

MADE the

5thday of NOVEMBER

in the year two thousand two (2002)

BETWEEN H & K PROPERTIES, INC., a Corporation, with its principal office at 506 Krebs Avenue, Clearfield, Pennsylvania, 16830, party of the first part, hereinafter referred to as Grantor,

A

N

D

DUANE B. LUZIER and KELLY S. LUZIER, husband and wife, of R.R. 1, Box 42, Clearfield, Pennsylvania, 16830, parties of the second part, hereinafter referred to as Grantees.

WITNESSETH, That in consideration of Twenty-six Thousand Eight Hundred Fifty (\$26,850) ----- Dollars, in hand paid, the receipt whereof is hereby acknowledged, the said grantor does hereby grant and convey to the said grantees, as tenants by the entireties,

ALL that certain parcel of land situated in Lawrence Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pipe along the southern right of way line of State Route 879 which is the northwestern corner of the property herein described; thence along right-of-way line of S.R. 879 North eighty (80) degrees twenty-four (24) minutes thirty-five (35) seconds East, three hundred forty and eighteen one-hundredths (340.18) feet along the property adjoining the SR 879 right-of-way, et al, to an iron pin; thence North fifty-five (55) degrees forty-nine (49) minutes thirty-five (35) seconds East, two hundred eighty-three and seventy-nine hundredths (283.79) feet along the adjoining property of SR 879 right-of-way, et al, to an iron pin; thence South zero (00) degrees zero (00) minutes East, five hundred twenty-six and six one-hundredths (526.06) feet along the property of H & K Properties, Inc. (Lot 3), et al, to an iron pin; thence North seventy-nine (79) degrees one (01) minute West forty-eight and eighty-eight hundredths (48.88) feet along the adjoining lands of H & K Properties (Lot 6), et al, to an iron pin; thence North eighty-six (86) degrees twenty-four (24) minutes West two hundred ninety-four and eighteen one-hundredths (294.18) feet along the property of H & K Properties, Inc., et al, to an iron pin; thence South forty-four (44) degrees twenty-four (24) minutes West, three hundred and twenty-six and twenty-six one-hundredths (326.26) feet to an iron pin; thence North zero (00) degrees zero (00) minutes East, five hundred fifteen and ninety-eight one-hundredths (515.98) feet to an iron pin along the adjoining lands of H & K Properties (Lot 1), more or less, to the place of beginning.

Exhibit "B"

Containing 5.37 acres, more or less.

EXCEPTING AND RESERVING therefrom a twenty-five (25) foot access easement along the southern adjacent properties.

FURTHER SUBJECT to the Restrictive Covenants previously recorded at Clearfield County Instrument Number

BEING part of the same premises conveyed to H & K Properties, Inc. by deed of Joseph F. Kane and Richard T. Hughes, Co-Partners, t/d/b/a H & K Properties, a Pennsylvania General Partnership, dated January 5, 2001 and recorded at Clearfield County Instrument Number 200100989.

Further being identified as Lot Number 2 in the Subdivision recorded at Clearfield County Instrument Number 200215354, Map Number 2629.

AND the said grantor will WARRANT AND FOREVER DEFEND the property hereby conveyed.

IN WITNESS WHEREOF, the said Grantor has caused this Deed to be signed by its President or a Vice President, and also by its Secretary, or by an Assistant Secretary, or by its Treasurer, or by an Assistant Treasurer, and its Corporate Seal to be hereunto affixed, the day and year first above written.

Attest:

H & K PROPERTIES, INC.

Secretary

By

RICHARD T. HUGHES

President

(CORPORATE SEAL)

CERTIFICATE OF RESIDENCE

I hereby certify, that the precise residence of the grantees herein is as follows:

R.R. 1 BOX 42
CLEARFIELD, PA.
16830

Attorney or Agent for Grantee

Commonwealth of Pennsylvania
County of CLEARFIELD

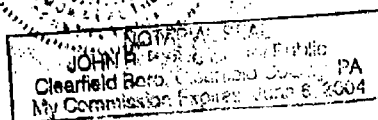
ss:

On this, the 5th day of NOVEMBER, 2002, before me, the undersigned officer, personally appeared RICHARD T. HUGHES, who acknowledged himself to be the President of H & K Properties, Inc., the foregoing corporation, and that as such, he, being authorized by such corporation to do so, executed the foregoing deed for the purpose therein contained by signing his name thereon as such.

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

My Commission Expires

20



Commonwealth of Pennsylvania

County of

} ss:

I HEREBY CERTIFY that on this

day of

A.D. 2002 , before me, the subscriber, a

Notary Public in and for said Commonwealth and County, personally appeared

, the attorney named in the foregoing Indenture,

and by virtue and in pursuance of the authority therein conferred upon him, acknowledged the said

INDENTURE to be the act and deed of the said

to the intent that the same may be duly recorded.

WITNESS my hand and Notary Seal the day and year aforesaid.

My Commission Expires

Notary Public

I HEREBY CERTIFY, that the precise address of the grantee herein is

.....
.....

Commonwealth of Pennsylvania

County of

} ss:

RECORDED in the Office for Recording of Deeds, etc., in and for said County, in

Deed Book No.

Vol.

, Page

WITNESS my Hand and Official Seal this

day of

, 2002

Recorder of Deeds

KAREN L. STARCK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania

INSTRUMENT NUMBER

200218136

RECORDED ON

NOV 07, 2002

2:35:28 PM

Total Pages: 4

RECORDING FEES - \$13.00

RECORDER

COUNTY IMPROVEMENT \$2.00

FUND

RECORDER IMPROVEMENT \$3.00

FUND

JCS/ACCESS TO \$10.00

JUSTICE

STATE TRANSFER TAX \$268.50

STATE WRIT TAX \$0.50

LAWRENCE TOWNSHIP \$134.25

CLEARFIELD AREA \$134.25

SCHOOLS

TOTAL \$565.50

CUSTOMER

COLAVECCHI & RYAN

RESTRICTIVE COVENANTS

WHEREAS, Declarant is the owner of certain property located in the Township of Lawrence, Clearfield County, Pennsylvania, known and numbered as Lots Nos. 2 and 6 of the Foxford Heights Subdivision, more particularly bounded and described as set forth in the Subdivision recorded at Clearfield County Instrument Number 200215354, Map Number 2629.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall insure to the benefit of each owner thereof.

1. Nothing but (1) single family private dwelling or a residence designed for occupancy by one family shall be erected on any of said lots, nor shall said premises be used for any purposes other than residential purposes, except that a three-car garage for the sole use of the owner or occupant of said lot, may be erected on said lot, provided, however, that nothing herein contained shall be construed to prevent the use of one building site of two or more lots, or the use as a building site or portions of two or more lots.

2. No single family dwelling erected on any lot shall contain more than three (3) floors and the total height of said dwelling shall not exceed fifty feet (50') to be measured from the top of the basement level of said dwelling, and said basement level is to be that level which is wholly or substantially below ground.

3. The exterior of all houses and other structures must be completed within one (1) year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or builder due to strikes, fires, national emergencies, or natural calamities.

4. No excavation of stone, gravel, or earth shall be made upon any lot except for basements, cellars, retaining walls, landscaping driveways, and pools. No brush or trees shall be cut, cleared or destroyed in any manner for a distance of thirty (30) feet from the property line along the rear property line and both side property lines.

5. Within one (1) month after completion of a dwelling on a lot, debris and waste material remaining on the ground shall be picked up and disposed of. Within one (1) year after the completion of a dwelling on a lot, said lot shall be landscaped, in a workmanlike manner.

Exhibit "C"

6. Each lot owner shall construct and maintain suitable and adequate parking space on his lot for parking of his vehicles and the parking of vehicles of his guests so that said vehicles when parked shall not obstruct or interfere with vehicular travel on any of the roadways.

7. No trailer, shed or other temporary or movable building or facility shall be erected or maintained on any lot except as may be reasonably necessary for a short period of time for use in aiding the erection of a dwelling on said lot, and in no event shall said trailer, shed or other temporary movable building or facility be maintained on a lot after completion of said dwelling.

8. No trailer, basement of a partially completed dwelling, tent, garage, barn, shed, structure or facility erected or maintained on any lot shall at any time be used as a residence.

9. No lot shall be used or maintained as a dumping ground for rubbish, nor shall pay rubbish or garbage, or other waste of any type be allowed to accumulate on said lot. Said rubbish, garbage, or other waste shall be kept in sanitary containers, and all such containers or incinerators or other equipment used for the storage or disposal of said material shall be kept in a clean and sanitary condition and located in as inconspicuous a place as possible.

10. No fowl, swine, cattle, sheep, goats, horses, or other domestic or wild animals shall be kept or maintained on any lot. This restriction shall not apply to dogs, cats, or other small domestic animals, generally considered as pets, so long as said dogs, cats, or other small domestic animals are of a quiet and inoffensive nature.

11. No obnoxious or offensive use shall be made of any lot, nor shall any offensive trade or activity be carried on upon any lot, nor shall any activity of any nature whatsoever be conducted on a lot which may constitute a nuisance.

12. No profession, trade, business, commercial or industrial activity, or any part thereof, may be carried on in any residence or structure or upon the lot and no suppliers or equipment for any such trade, business, commercial or industrial activity may be placed or stored either temporarily or permanently on said lot. An attorney at law, accountant or a doctor of medicine may, however, maintain an office in his own residence.

13. Lines or appliances of any type designated for the purpose of drying laundry shall be erected and maintained in as inconspicuous a place as possible.

14. No mobile homes shall be erected or maintained on any lot.

15. No signs or billboards of any character shall be erected, pasted or posted or displayed upon any, or about the lot, except a small sign advertising a property for sale,

and except that H & K Properties, its successors and assigns, as developers of the tract or adjacent tracts shall have the right to erect and maintain signs and control their size and height regarding the development of said lots or adjacent lands.

16. No lot shall be subdivided or its boundary lines changed except to create one building site of two or more lots or the use as a building site of portions of two or more lots, in which case, so long as the minimum building restrictions are provided for the new lot.

17. No structure of any kind shall be erected, placed or altered on any lot until construction plans and specifications and a plan showing the location of any structure shall have been approved in writing by a duly authorized representative of H & K Properties, or its Assignee. Said construction plans and specifications must be approved or disapproved within fifteen (15) days from the date of submission of same for consideration. In the event that a written disapproval is not received within said fifteen (15) day period, said construction plans and specifications shall be deemed to have been approved.

18. No residence or combination residence and garage shall be erected upon any such lot having less than 1800 square feet.

19. No separate garage shall be erected for the storage of more than two (2) passenger automobiles. Said separate garage shall be of architectural design similar to that of the residence on said lot and shall not be erected before the erection of said residence, but only concurrently or thereafter.

20. No antenna of any kind on a lot shall be displayed to public view.

21. No above-ground swimming pools shall be erected or maintained on any lot.

22. There is reserved certain perpetual, alienable and releasable easements over, upon, across and under each lot for the erection, maintenance, installation and use of electrical and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity telephone equipment, gas, sewer, water, or other public convenience or utilities.

23. The provisions herein contained shall run with and bind the land and shall insure the benefit of and be enforceable by the Declarant, its legal representatives, heirs, successors and assigns, for a period of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each. This Declaration may be amended or terminated during any such ten (10) year period of

extension by an instrument signed by not less than seventy-five (75) percent of the then owners of said lots. Any such amendment or termination must be recorded with the Recorder of Deeds of Clearfield County.

24. Violation of any restrictions or conditions or breach of any covenant herein contained shall give the Declarant, in addition to all other remedies, the right to enter upon the property or as to which such violation or breach consists and summarily to abate and remove at the expense of the owner thereof any erection, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof; the Declarant shall not thereby be deemed guilty of any manner of trespass for such entry, abatement or removal, nor be liable for any damages occasioned thereby.

25. Since it is impossible to measure in money the damages which will accrue by reason of a violation of any of the provisions of this Declaration, if the Declarant shall institute any action or proceedings to enforce any provision contained in this Declaration, any person against whom such action or proceedings is brought shall be deemed to waive the claim or defense therein that the Declarant has an adequate remedy at law, and such person shall not urge in any action or proceeding the claim or defense that such remedy at law exists. The remedy of specific performance shall be in addition to any and all remedies available to the Declarant at law or in this Declaration.

26. Failure by the Declarant, however long continued, to object to any violation, or to enforce any restriction, condition, covenant or agreement herein contained shall in no event be deemed to waive the right to do so thereafter as to the same breach or to one occurring prior or subsequent thereto.

27. If one or more of the restrictions, covenants and conditions contained herein shall be invalid or unlawful, it shall not affect the validity or enforce ability of the remaining restrictions, covenants or conditions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal on the day and year first above written.

ATTEST:

H & K PROPERTIES, INC.

BY


RICHARD T. HUGHES, PRESIDENT

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

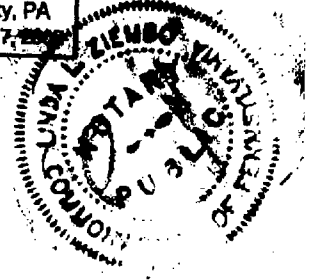
:
: SS.
:

On this the 5 day of November, 2002, before me, the undersigned officer, personally appeared RICHARD T. HUGHES, who acknowledged himself to be the President of H & K Properties, Inc., a corporation, and that he as such President, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the corporation by himself as President.

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

Linda L. Ziembo

NOTARIAL SEAL
LINDA L. ZIEMBO, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires December 17, 2005



KAREN L. STARCK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania

INSTRUMENT NUMBER
200218134

RECORDED ON
Nov 07, 2002
2:31:21 PM
Total Pages: 5

RECORDING FEES -	\$15.00
REORDER	
COUNTY IMPROVEMENT	\$2.00
FUND	
REORDER IMPROVEMENT	\$3.00
FUND	
STATE WRIT TAX	\$0.50
TOTAL	\$20.50
CUSTOMER	
OLAVECCHI & RYAN	

Richard T. Hughes, P.E.

Consulting Engineer

506 Krebs Avenue

Clearfield, PA 16830

V (814) 765-8691

F (814) 765-8692

September 11, 2002

Duane Luzier
RR #1 Box 42
Clearfield, PA 16830

RE: Residential Property Lawrence Township

Dear Duane:

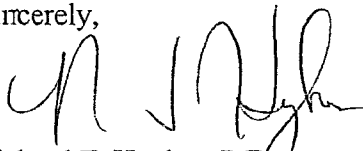
Please find attached herewith a copy of the Deed Description including the Restrictive Covenants with regards to your property. At this immediate time, no sanitary system is available, but I am having a line installed by the end of November and will have a single tap-on fee of \$10,000. I suggest these monies should be escrowed until the line is installed.

I am currently pursuing public water but do not have it secured as of this date. The cost of your lot (Lot #2) is \$5,000 per acre or \$26,850, plus \$10,000 sewer fee.

I want to close on these lots on Friday, September 27, 2002 and I will pay for all legal costs. John Ryan, my attorney, will contact you directly with regards to the closing.

Please call if you have any questions.

Sincerely,



Richard T. Hughes, P.E.

Attachment

Exhibit "D"

Cc: John Ryan, Attorney

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

DUANE B. LUZIER and KELLY S. LUZIER,
husband and wife,

PLAINTIFFS,

v.

H & K PROPERTIES, INC.,

DEFENDANT.

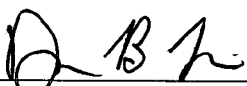
No. 05-_____-CD

VERIFICATION


We, Duane B. Luzier and Kelly S. Luzier, Plaintiffs, do hereby swear and affirm that we have read the foregoing CIVIL COMPLAINT and that the averments therein contained are true and correct to the best of our knowledge, information and belief. Furthermore, we are over the age of 18 years of age and we give this unsworn statement knowing it is to authorities and subject to the penalties of 18 Pa.C.S.A. 4901.

So made this 7th day of February, 2005.

By,



Duane B. Luzier, Plaintiff



Kelly S. Luzier, Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100213
NO: 05-183-CD
SERVICE # 1 OF 2
WRIT OF REVIVAL

PLAINTIFF: DUANE B. LUZIER and KELLY S. LUZIER
vs.
DEFENDANT: H & K PROPERTIES, INC.

SHERIFF RETURN

NOW, February 11, 2005 AT 1:29 PM SERVED THE WITHIN WRIT OF REVIVAL ON H&K PROPERTIES, INC. DEFENDANT AT 107 N. FRONT ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO RICHARD HUGHES, OWNER A TRUE AND ATTESTED COPY OF THE ORIGINAL WRIT OF REVIVAL AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: HUNTER /

FILED
05-183-CD
MAR 14 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100213
NO: 05-183-CD
SERVICE # 2 OF 2
WRIT OF REVIVAL

PLAINTIFF: DUANE B. LUZIER and KELLY S. LUZIER
vs.
DEFENDANT: H & K PROPERTIES, INC.

SHERIFF RETURN

NOW, February 11, 2005 AT 1:29 PM SERVED THE WITHIN WRIT OF REVIVAL ON RICHARD T. HUGHES
DEFENDANT AT 107 NORTH FRONT ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING
TO RICHARD T. HUGHES, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL WRIT OF REVIVAL
AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: HUNTER /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100213
NO: 05-183-CD
SERVICES 2
WRIT OF REVIVAL

PLAINTIFF: DUANE B. LUZIER and KELLY S. LUZIER
vs.
DEFENDANT: H & K PROPERTIES, INC.

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	NOBLE	1751	20.00
SHERIFF HAWKINS	NOBLE	1751	26.37

Sworn to Before Me This

_____ Day of _____ 2005

So Answers,




Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100213
NO: 05-183-CD
SERVICE # 1 OF 2
COMPLAINT

PLAINTIFF: DUANE B. LUZIER and KELLY S. LUZIER
vs.
DEFENDANT: H & K PROPERTIES, INC.

AMENDED
SHERIFF RETURN

NOW, February 11, 2005 AT 1:29 PM SERVED THE WITHIN COMPLAINT ON H&K PROPERTIES, INC. DEFENDANT AT 107 N. FRONT ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO RICHARD HUGHES, OWNER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: HUNTER /

FILED *no cc*
01/31/2005
MAR 16 2005 *6K*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100213
NO: 05-183-CD
SERVICE # 2 OF 2
COMPLAINT

PLAINTIFF: DUANE B. LUZIER and KELLY S. LUZIER
vs.
DEFENDANT: H & K PROPERTIES, INC.

AMENDED
SHERIFF RETURN

NOW, February 11, 2005 AT 1:29 PM SERVED THE WITHIN COMPLAINT ON RICHARD T. HUGHES
DEFENDANT AT 107 NORTH FRONT ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING
TO RICHARD T. HUGHES, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND
MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: HUNTER /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

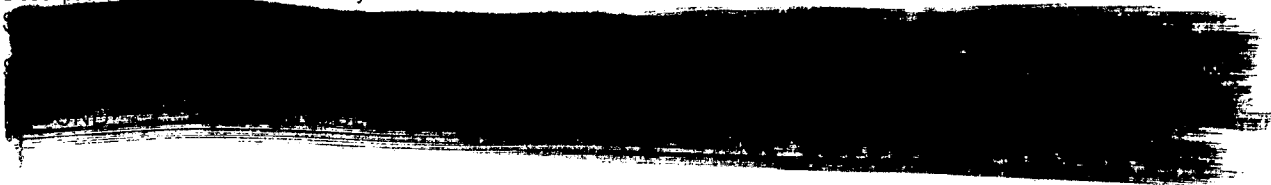
DOCKET # 100213
NO: 05-183-CD
SERVICES 2
COMPLAINT

PLAINTIFF: DUANE B. LUZIER and KELLY S. LUZIER
vs.
DEFENDANT: H & K PROPERTIES, INC.

**AMENDED
SHERIFF RETURN**

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
-------------	---------	---------	--------

			
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Sworn to Before Me This

_____ Day of _____ 2005

So Answers,

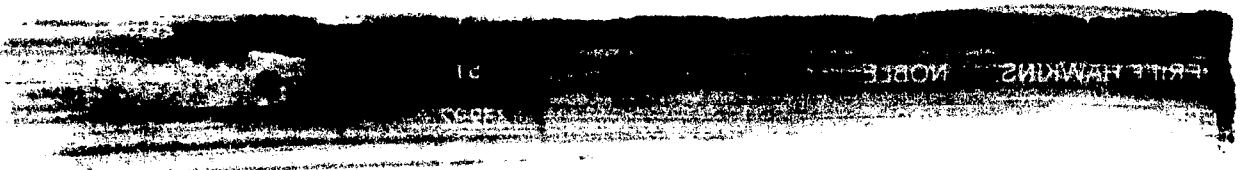


Chester A. Hawkins
Sheriff

FILED

MAR 16 2005

William A. Shaw
Prothonotary/Clerk of Courts



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

DUANE B. LUZIER and KELLY S. LUZIER,
husband and wife,

PLAINTIFFS,

v.

H & K PROPERTIES, INC.,

DEFENDANT.

No. 05- 183 -CD

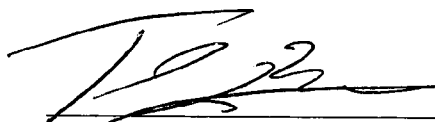
PRAECIPE TO DISCONTINUE

To: William A. Shaw, Prothonotary

Date: May 26, 2005

Please mark the above captioned matter, ENDED, SETTLED and FOREVER
DISCONTINUE.

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiffs
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

FILED

MAY 31 2005

william A. Shaw
William A. Shaw
Prothonotary

no cert
copy of cert to Atty & *CH*

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

CIVIL DIVISION

**Duane B. Luzier
Kelly S. Luzier**

**Vs.
H & K Properties, Inc.**

No. 2005-00183-CD

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on May 31, 2005, marked:

Ended, Settled and Forever Discontinue

Record costs in the sum of \$131.37 have been paid in full by Theron G. Noble, Esq..

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 31st day of May A.D. 2005.

William A. Shaw, Prothonotary