

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

CIVIL DIVISION

**Palisades Collection LLC
Bank One**

**Vs.
Harry J. Ripley**

No. 2006-01875-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 February 7, 2007, marked:

Discontinued without prejudice.

Record costs in the sum of \$85.00 have been paid in full by David R. Galloway Esq. .

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 7th day of February A.D. 2007.

William A. Shaw, Prothonotary

Date: 2/7/2007
Time: 02:38 PM
Page 2 of 2

Clearfield County Court of Common Pleas

User: LMILLER

ROA Report

Case: 2006-01114-CD

Current Judge: Paul E. Cherry

David L. Piccoli Sr., Discovery House CU, Inc. vs. Clearfield County, Pike Township, Guardian Inspection Services, Inc.,
Clearfield County Planning Commission

Civil Other

Date		Judge
9/11/2006	✓ Reply of Defendants Clearfield County and Clearfield County Planning Commission to Plaintiffs' New Matter to Counterclaim, filed by s/ Kim C. Kesner Esq. 5CC Atty Kesner.	Paul E. Cherry
	✓ Reply of Defendant Pike Township to Plaintiffs' New Matter to Counterclaim, filed by s/ Kim C. Kesner Esq. 5CC Atty Kesner.	Paul E. Cherry
12/29/2006	✓ Motion For Special Relief, filed by s/ Kim C. Kesner Esq. 4CC atty Kesner.	Paul E. Cherry
1/2/2007	Order AND NOW, this 2nd day of January 2007, upon consideration of Defendant Pike Township's Motion for Special Relief (Injunction), it is hereby ORDERED AND DECREED that hearing thereon in accordance with PA.R.Civ.P. Rule 1531 shall be held on the 6th day of February 2007 in Courtroom NO. 2 at 2:00 p.m. BY THE COURT: /s/ Paul E. Cherry, Judge. 4CC Atty Kesner.	Paul E. Cherry
1/5/2007	✓ Certificate of Service, filed by Atty. Kesner, 1 Cert. to Atty. Served copy of Motion for Special Relief and Order on Atty. Strouss, Guradian Inspection Services and Mr. Wruble.	Paul E. Cherry
1/31/2007	✓ Motion For Continuance of Hearing on Motion For Special Relief, filed by s/ Ruth E. Granfors, Esquire. 2CC Atty.	Paul E. Cherry
2/2/2007	✓ Order, NOW, the 31st day of Jan, 2007, upon consideration of Plaintiff's Motion for Continuance of Hearing on Motion for Special Relief scheduled for Feb. 6, 2007, at 2:00 p.m.; ordered that said Motion for Continuance is Denied. By the Court, /s/ Paul E. Cherry, Judge. 1CC Attys: Kesner, Granfors; 1CC Guardian Insp. 5510 Memorial Blvd., Tobyhanna, PA 18466	Paul E. Cherry
2/5/2007	✓ Plaintiff's Answer to Pike Township's Motion for Special Relief (Injunction), filed by Atty. Strouss	Paul E. Cherry

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

CIVIL DIVISION

**Erie Insurance Exchange
Robert Hannah**

**Vs.
Sugar Shack Bakery**

No. 2006-01035-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 February 7, 2007, marked:

Settled and discontinued.

Record costs in the sum of \$85.00 have been paid in full by John Sehring III.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 7th day of February A.D. 2007.

William A. Shaw, Prothonotary

Date: 2/7/2007
Time: 02:38 PM
Page 1 of 2

Clearfield County Court of Common Pleas

User: LMILLER

ROA Report

Case: 2006-01114-CD

Current Judge: Paul E. Cherry

David L. Piccoli Sr., Discovery House CU, Inc. vs. Clearfield County, Pike Township, Guardian Inspection Services, Inc.,
Clearfield County Planning Commission

Civil Other

Date		Judge
7/13/2006	New Case Filed.	No Judge
	✓ Filing: Complaint Seeking Declaratory Judgment and Injunctive Relief Paid by: Carleton Strouss, Esq. Receipt number: 1914671 Dated: 07/13/2006 Amount: \$85.00 (Check) 9CC Atty.	No Judge
	✓ Motion For Preliminary Injunction, filed by s/ Carleton O. Strouss Esq. 6CC Atty without orders and 3CC Atty w/orders.	No Judge
	✓ Praecipe for Expedited Disposition, filed by s/ Carleton O. Strouss Esq. 5CC Atty.	No Judge
	✓ Order, AND NOW, this 13th day of July, 2006, Order that hearing on Plaintiffs' Preliminary Injunction has been scheduled for the 17th day of July, 2006, at 11:00 a.m. in Courtroom No. 2. BY THE COURT: /s/Paul E. Cherry, Judge One CC Atty Strouss, Atty Kesner One CC mailed to Guardian Inspection Services One Faxed to Guardian 7/14/06	No Judge
7/18/2006	✓ Order, NOW, this 17th day of July, 2006, following hearing on Motion for Injunction, following taking of testimony and upon consideration of same, it is the Order of this Court that said Motion be and is hereby denied. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Strouss, Kesner, 1CC Guardian Isp. 5510 Memorial Blvd. Tobyhanna, PA 18466	Paul E. Cherry
7/31/2006	✓ Acceptance of Service, filed. I accept service of the Complaint for Declaratory Judgment and Injunctive Relief and Motion for Preliminary Injunction on behalf of Clearfield County Planning Commission and certify that I am authorized to do so, filed by s/ Kim C. Kesner Esq. No CC.	Paul E. Cherry
	✓ Acceptance of Service, filed. I accept service of the Complaint for Declaratory Judgment and Injunctive Relief and Motion for Preliminary Injunction on behalf of Pike Township and certify that I am authorized to do so, filed by s/ Kim C. Kesner Esq. 1CC atty.	Paul E. Cherry
	✓ Acceptance of Service, filed. I accept service of the Complaint for Declaratory Judgment and Injunctive Relief and Motion for Preliminary Injunction on behalf of Clearfield County and certify that I am authorized to do so, filed by s/ Kim C. Kesner Esq. 1CC atty.	Paul E. Cherry
8/4/2006	✓ Answer And Counterclaim of Pike Township to Complaint Seeking Declaratory Judgment, filed by s/ Kim C. Kesner, Esquire. 6 CC to Atty	Paul E. Cherry
	✓ Answer And Counterclaim of Clearfield County and Clearfield County Planning Commission, filed by s/ Kim C. Kesner, Esquire. 7 CC to Atty.	Paul E. Cherry
8/16/2006	✓ Notice, filed by s/ Thomas D. Snyder, Court Reporter. No CC	Paul E. Cherry
	Transcript of Proceedings, filed. Hearing on Plaintiffs' Preliminary Injunction, held before Paul E. Cherry, Judge, on Monday, July 17, 2006.	Paul E. Cherry
8/17/2006	✓ Sheriff Return, August 2, 2006, Sheriff of Monroe County was deputized. August 8, 2006 at 1:50 pm Served the within Complaint Seeking Declaratory Judgment al on Guardian Inspection Services Inc. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Kirkpatrick \$31.00 Monroe Co. costs pd by Kirkpatrick \$31.90	Paul E. Cherry
8/24/2006	✓ Plaintiffs' Answer with New Matter to Counterclaim of Pike Township, filed by s/ Carleton O. Strouss Esq. No CC.	Paul E. Cherry
	✓ Plaintiffs' Answer with New Matter with New Matter to Counterclaim of Clearfield County and Clearfield County Planning Commission, filed by s/ Carleton O. Strouss Esq. No CC.	Paul E. Cherry

CA

Carleton O. Strouss, Esquire
PA Attorney I.D. No. 25994
Ruth E. Granfors, Esquire
PA Attorney I.D. No. 39508
Kirkpatrick & Lockhart Nicholson Graham LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507
T: 717-231-4500
F: 717-231-4501

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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,
Plaintiffs,

v.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC., and CLEARFIELD
COUNTY PLANNING COMMISSION,
Defendants.

Docket No. 06-1114-CD

**COMPLAINT SEEKING DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF**

Counsel for Plaintiffs

Carleton O. Strouss, Esquire
Ruth E. Granfors, Esquire
Kirkpatrick & Lockhart
Nicholson Graham LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507

Guardian Inspection Services

5510 Memorial Blvd.
Tobyhanna, PA 18466

*Counsel for Clearfield County, Clearfield
County Planning Commission, and
Pike Township*

Kim C. Kesner, Esquire
23 N. Second Street
Clearfield, PA 16830-2438

FILED Aug pd. 85.00
019:4281 9 CC Atty
JUL 13 2006
(initials)

William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID L. PICCOLI, SR., and	:	
DISCOVERY HOUSE CU, INC.,	:	
Plaintiffs,	:	
v.	:	
	:	Docket No. _____
CLEARFIELD COUNTY, PIKE	:	
TOWNSHIP, GUARDIAN INSPECTION	:	
SERVICES, INC., and CLEARFIELD	:	
COUNTY PLANNING COMMISSION,	:	
Defendants.	:	

NOTICE

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, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

DAVID S. MEHOLICK, COURT ADMINISTRATOR
Clearfield County Courthouse
Clearfield, PA 16830
814-765-2641 Ext. 5982

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

DAVID L. PICCOLI, SR., and	:	
DISCOVERY HOUSE CU, INC.,	:	
Plaintiffs,	:	
v.	:	
	:	Docket No. _____
CLEARFIELD COUNTY, PIKE	:	
TOWNSHIP, GUARDIAN INSPECTION	:	
SERVICES, INC., and CLEARFIELD	:	
COUNTY PLANNING COMMISSION,	:	
Defendants.	:	

**COMPLAINT SEEKING DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF**

Introduction

Plaintiffs bring this action pursuant to the Pennsylvania Declaratory Judgments Act, 42 Pa. C.S. §§7531 to 7541, to obtain a declaration of the rights and duties of the parties in connection with the operation by Discovery House of a methadone treatment facility near Curwensville in Pike Township of Clearfield County. Discovery House currently provides such services to more than 200 patients at the facility. It has provided services there since March of 2003. The requested declaration and related relief will aid in the determination of an existing, genuine justiciable controversy and additional emergent controversies.

The essence of the relief sought by the plaintiffs is a declaration by the Court that the operation of the Facility is not prohibited by §621 of the Municipalities Planning Code, 53 P.S. §10621. Further, in order to avoid any disruption to patient care, plaintiffs seek an order enjoining defendants from seeking or directing any cessation of operations at the Facility pending the Court's determination regarding the §621 Restriction and pending final adjudication of any construction, occupancy, or land use approvals related to the modification or construction of buildings to continue the operation of the Facility on the Property. The injunctive relief will

maintain the *status quo* as it has existed for over three years insofar as it will maintain continuity of care to the patients of Discovery House.

Granting the relief requested will clarify the rights of the parties and provide an orderly mechanism for resolution of these controversies in a manner that avoids disruption to the care of the patients served by Discovery House, protects the property rights of Piccoli, protects the legitimate interest of Discovery House in continuing to operate pursuant to its license from the Department of Health, and allows the municipalities to exercise governmental powers.

Plaintiffs respectfully represent, as follows:

The Parties

1. David L. Piccoli, Sr., is an adult individual whose address is 66 Pavilion Avenue, Providence, RI 20905 (hereinafter "Piccoli").

2. Discovery House CU, Inc., is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business at R.R.#3, Box 281 R, Route 879, Curwensville, PA 18633 ("Discovery House").

3. Clearfield County is a County of the Sixth Class ("County"). The offices of the County are located at 230 E. Market Street, Clearfield, Pennsylvania 16830.

4. Pike Township (the "Township") is a township of the Second Class located in Clearfield County, PA. The offices of the Township are located at State Route 879, P.O. Box 219, Curwensville, PA 16833.

5. Guardian Inspection Services, Inc. ("Guardian") is a Pennsylvania corporation with registered office at 5510 Memorial Blvd., Tobyhanna, PA 18466. It provides construction code consulting, enforcement and administration services. Guardian acts as a Third-Party Agency under the Pennsylvania Construction Code Act, 35 P.S. §7210.101 *et seq.*), on behalf of

the Moshannon Valley Council of Governments (the "MVCOG"), of which the Township is a member. Guardian has a place of business at 1739 Kiwanis Trail, DuBois, PA 15801.

6. The Clearfield County Planning Commission (the "Planning Commission") is a planning agency created under the authority of Article II of the Pennsylvania Municipalities Planning Code ("MPC"), 53 P.S. § 10201, *et seq.*, and performing its statutory duties pursuant to the Clearfield County Subdivision and Land Development Ordinance ("SALDO"). The offices of the Planning Commission are located at 650 Leonard Street – Suite 110, Clearfield, PA, 16830-3243.

The Property

7. Piccoli owns a parcel of real estate located in Pike Township, Clearfield County, consisting of approximately 4.34 acres and identified as Tax Assessment parcel #H10-000-00063.2 and Instrument #200209399 (the "Property").

8. The Property is located in a rural area of the Township, approximately one and one-half (1 ½) miles west of Curwensville and is situated on the eastern side of Pennsylvania State Route 879.

9. There is no zoning in the Township or otherwise applicable to the Property.

10. Since 2002, Piccoli has leased the Property to Discovery House for use as a methadone maintenance clinic.

The Facility

11. In October 2002, Discovery House contacted the Township to obtain a building permit to renovate the building on the Property, informing Township officials, and others, that the building would be used as a methadone maintenance clinic.

12. The Township did not object to that use. Indeed, on October 28, 2002, the Township issued Building Permit Exemption No. 383 to Discovery House so that it could make repairs and modifications to the building to accommodate the contemplated use.

13. Since 2003, Discovery House has been operating a methadone treatment facility on the Property (the "Facility"). Currently, Discovery House treats over 200 patients at this Facility.

14. Discovery House is licensed by the Pennsylvania Department of Health as a narcotic treatment program and registered by the United States Department of Justice, Drug Enforcement Administration to administer a methadone maintenance program. In addition, it is accredited under standards for opioid treatment programs established by the United States Department of Health and Human Services, Centers for Substance Abuse Treatment.

15. Methadone maintenance services involve daily administration of a physician ordered methadone dose, periodic individual and group counseling, medical monitoring and case management services. The daily methadone dose is provided in person on site at the facility, unless a patient is approved for take-home medications in accordance with applicable regulations.

16. In 2004, Discovery House placed a small mobile manufactured building on the Property to provide additional storage space (the "Small Trailer"). Later that year, Discovery House decided to use the Small Trailer as an additional room for meeting with and counseling patients. Guardian, as the Third-Party Agency working on behalf of MVCOC, and thus the Township by virtue of the Township's membership in the MVCOC, notified Discovery House that it must construct an access ramp to the Small Trailer to conform to the Uniform

Construction Code ("UCC") established under the Pennsylvania Construction Code Act (35 P.S. §7210.101, *et seq.*).

17. On January 6, 2005, Guardian issued Construction Permit MCB 4-05 to Discovery House to construct the access ramp. Upon Guardian's inspection of the completed access ramp, Discovery House was authorized to use the Small Trailer as a meeting room pursuant to a Temporary Certificate of Occupancy/Compliance issued June 28, 2005.

18. On December 28, 2005, Guardian issued a six-month extension of the temporary certificate of occupancy. Discovery House notified Guardian that it planned to use the Small Trailer longer than six months and would need an extension beyond the six-month period.

Fire at the Property and Related Response

19. On January 17, 2006, fire destroyed the building located on the Property. The fire did not affect the Small Trailer, and Discovery House moved some operations to the Small Trailer.

20. Discovery House immediately began identifying options to ensure that services for its patients would not be disrupted as a result of the loss of the building. As a temporary solution, Discovery House rented a large temporary mobile building, which was placed on the Property on January 27, 2006 (the "Large Trailer").

21. At the time the Large Trailer was placed on the Property, Brian S. Wruble ("Wruble"), a building inspector for Guardian, informed Discovery House that it had a "verbal" temporary occupancy permit to use the Large Trailer.

22. From January 17, 2006 until the present, Discovery House has served its patients through the use of the Small Trailer and the Large Trailer (collectively the "Trailers") while it pursued plans to rebuild a permanent building on the Property.

23. Plaintiffs made continual and extensive efforts to comply with all land use or occupancy permitting requirements suggested by the Defendants (Plaintiffs do not concede that any or all of said requirements were mandated by law, but Plaintiffs proceeded in a cooperative manner to address any concerns expressed by the Defendants). These included seeking approval for a land development plan through the Planning Commission for a new building as well as applications for temporary or permanent (as the case may be) occupancy permits in connection with the Trailers as interim solutions to the disruption caused by the fire.

24. In the course of the approval and permitting process, the Planning Commission raised the question of whether §621 of the Municipalities Planning Code (“MPC”), 53 P.S. §10621 (“§621 Restriction”) precluded operation of the Facility.

25. The Defendants collaborated with one another in connection with the issues presented by the occupancy permit and land use applications. The Township and Guardian essentially suspended activity on the occupancy permit applications in light of the assertions raised regarding the §621 Restriction. As detailed more fully below, the Planning Commission ultimately (and erroneously) disapproved the plan for the new building solely on the basis of the §621 Restriction. Guardian has not issued extensions to the permits (or new permits) for the Trailers. However, Guardian contends that such permits are needed by Plaintiffs. However, any absence of permits ultimately stems from the delay and disruption to the permitting process caused by the controversy surrounding the §621 Restriction. Said delay was contrary to the intent of the Uniform Construction Code and was prejudicial to the Plaintiffs.

The Land Development Plan for Permanent Building

26. Plaintiffs had a land development plan prepared that depicted the construction of a new, larger structure to replace the building the fire destroyed (the “Land Development Plan”) in

accordance with the Clearfield County Subdivision and Land Development Ordinance ("SALDO").

27. On March 2, 2006, Discovery House, submitted the Land Development Plan to the Township. On April 5, 2006, the Township signed the Land Development Plan at the Township meeting to acknowledge that the Township Board of Supervisors had reviewed it and gave the signed copies to Discovery House for submission to the Planning Commission.

28. On April 11, 2006, Discovery House submitted the Land Development Plan to the Planning Commission.

29. At the Planning Commission meeting of June 19, 2006, the Planning Commission advised Discovery House that the Land Development Plan met all criteria of the SALDO. See page 2 of the statement of Ms. Jodi Brennan, a copy of which is attached at Tab 1. It states, in pertinent part, as follows:

As for the County's Subdivision and Land Development ordinance requirements, all related items have been met including the most recent outstanding item being the highway occupancy permit. Which leaves one last issue to contend with; that being the 500 ft. state prohibition.

30. On June 20, 2006, the Planning Commission notified Discovery House that the sole basis for the disapproval of the Land Development Plan was the Planning Commission's conclusion that the §621 Restriction prohibited the use of the Property as a methadone treatment facility. A copy of the letter is attached at Tab 2. Thus, the Planning Commission disapproved the Land Development Plan even though it met all of the requirements of the SALDO.

31. Piccoli intends to appeal the decision of the Planning Commission to this Court for the reason that consideration of the §621 Restriction was beyond the jurisdiction of the Planning Commission and was, in any event, incorrect as a matter of law.

32. Because the existence of a dispute regarding the §621 Restriction has permeated other governmental actions, including but not limited to the issuance of occupancy permits, the rights of the parties must be clarified beyond the narrow issue arising from the decision of the Planning Commission, otherwise multiple proceedings may emerge or may be capable of repetition while evading review.

Assertion of Action to Close Facility

33. Guardian has not acted on Piccoli's pending occupancy permit applications for the Small and Large Trailers.

34. Guardian and/or the Township have expressed the view that unspecified steps will be taken by or through them on or after July 16, 2006, to require Discovery House to cease operations at the Facility.

Immediate and Irreparable Harm

35. Any action by the Defendants to order the closure of the Facility would result in immediate and irreparable harm to Plaintiffs and the patients served by Discovery House, including but not limited to the following:

a) methadone treatment is a form of health care that requires the daily administration of medication which is ordinarily only administered at the Facility;

b) there are approximately 210 patients being served by the Facility at the present time;

c) the patients rely upon Discovery House to provide the daily administration of medication;

d) there is no other methadone treatment facility in Clearfield County or within approximately 68 miles of the Facility;

e) if the Facility is closed, the care of the patients will be disrupted, resulting in possible adverse physical consequences to the patients;

f) if the Facility is closed, the patients will need to seek care elsewhere;

g) if the patients are required to travel a substantial distance to receive care, they will suffer loss of employment time which could result in the loss of earnings, or worse, the loss of employment;

h) if the Facility is closed, Discovery House will be unable to serve the public interest by providing its services as licensed by the Department of Health;

i) if the Facility is closed, Discovery House will suffer the loss of revenue associated with operation of the Facility; and

j) if the Facility is closed, Piccoli will lose his legitimate expectations in the development of the Premises and the economic value of the rental arrangement with Discovery House.

36. Any damages experienced by the Plaintiffs or the patients cannot be recovered by them and would be irretrievably lost due to the availability of governmental immunity.

COUNT ONE

Plaintiffs v. All Defendants

Declaratory Judgment and Injunctive Relief

37. Paragraphs 1 to 36 are incorporated by reference.

Multiple Ripe Justiciable Controversies

38. A genuine controversy exists between the parties regarding whether the operation of the Facility is prohibited by the §621 Restriction.

39. The controversy is a live one with respect to Piccoli's request that the Planning Commission approve the construction of a new building on the Premises.

40. There is also a live controversy regarding whether the §621 Restriction is properly an element of the review process for construction/occupancy permits for the Trailers or a permanent building.

41. But for the disruption to the planning and permitting process engendered by the dispute associated with the §621 Restriction, Piccoli will be able to meet any requirements customarily applied to temporary or permanent (as the case may be) buildings under the MPC, SALDO, and UCC.

42. Resolution of the question surrounding the §621 Restriction will avoid the time and expense associated with multiple disputes.

43. The planning approval and permitting processes have been delayed and disrupted by the Defendants' insistence upon injecting the §621 Restriction into those proceedings. The delay and disruption has been prejudicial to the Plaintiffs.

The §621 Restriction Does Not Apply To The Facility

44. The Decision of the Planning Commission was incorrect for several reasons. The principal errors are errors of law arising from the Planning Commission's erroneous perception of its jurisdiction under the MPC and the SALDO and its erroneous interpretation of the §621 Restriction. Piccoli will file an appeal of the Planning Commission's decision with this Court and request consolidation with these proceedings as appropriate.

45. The Planning Commission's Decision and related interpretation of the §621 Restriction is inconsistent with the well-established rule that enactments that restrict the use of property are to be interpreted in favor of the property owner and against any implied extension of the restriction. See, for example, §603.1 of the MPC, 53 P.S. §10603.1.

46. The sole basis for the Planning Commission's disapproval was, as follows:

This is to inform you that at their June 19, 2006 monthly meeting, the Clearfield County Planning Commission voted to **DISAPPROVE THE APPLICATION FOR LAND DEVELOPMENT because approval would violate §621(a)(1) of the Pennsylvania Municipalities Planning Code due to the proximity of the proposed land development to a residential housing area as well as a public recreational trail owned by Clearfield County Rails to Trails.**

Please refer to the Pennsylvania Municipalities Planning Code for the following consideration:

621(a)(1) Notwithstanding any other provision of law to the contrary and except as provided in subsection (b), a methadone treatment facility shall not be established or operated within 500 feet of an existing school, public playground, *public park, residential housing area*, child-care facility, church, meetinghouse, or other actual place of regularly stated religious worship established prior to the proposed methadone treatment facility.

See Tab 2. Emphasis in original.

- **Facility is Not Within 500 Feet of a Residential Housing Area**

47. The "residential housing area" referred to in the Planning Commission's decision was a single rental residence located along a commercial section of State Route 879 in Pike Township which is not subject to zoning. See Tab 1.

48. The Facility is not within five hundred feet of a residential housing area.

49. The housing referred to by the Planning Commission clearly cannot be thought of as an "area." The word "area" must be considered in evaluating the §621 Restriction because the principles of statutory construction presume that "the General Assembly intends the entire statute to be effective and certain." 1 Pa. C.S. § 1922(2).

50. The word "area" is not defined in the MPC. Black's Law Dictionary (6th ed.) includes: "A surface, a territory, a region" among its definitions of area. In context, the word

area clearly means something more than a single property or even a small collection of properties. Rather, it denominates a primary use within a broader region.

51. Here, the primary use cannot reasonably be deemed a residential housing “area.” The USGS Quadrant map discloses very few structures in the vicinity, and any housing is clearly existing in isolation, not in an “area.” The housing is located close to commercial activity along a highway. There is no residential zoning – there is no zoning at all. Therefore, these circumstances cannot reasonably be embraced by the term “residential housing area.” Consequently, any housing does not provide a basis for the application of the §621 Restriction.

- **The Facility is Not Within 500 Feet of a Public Park**

52. The “public recreational trail” referred to by the Planning Commission is not a public park within the meaning of MPC. Therefore, the Facility is not within 500 feet of a public park.

53. The “public recreational trail” referred to by the Planning Commission is a rail trail privately owned by the Clearfield County Rails to Trails Association (“Rail Trail”). Moreover, as a matter of statutory construction, such trails do not trigger the §621 Restriction even if publicly held.

54. When the General Assembly added the §621 Restriction by Act 10 of 1999, it could have simply prohibited the construction of a methadone treatment facility within 500 feet of “public grounds” which was and is a defined term under the MPC. Section 107 of the MPC provides, as follows:

“Public grounds,” includes:

- (1) **parks, playgrounds, trails, paths and other recreational areas and other public areas;**
- (2) **sites for schools, sewage treatment, refuse disposal and other publicly owned or operated facilities;**
- and**

(3) publicly owned or operated scenic and historic sites.

53 P.S. §10107 (emphasis added).

55. Rather than applying the restriction to “public grounds,” the General Assembly itemized specific types of public facilities to which the §621 Restriction would apply. The list includes a public park. It does not include “trails, paths, or other recreational areas and other public areas.”

56. The Statutory Construction Act provides, in pertinent part, as follows:

In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among others, may be used:

...
(2) That the General Assembly intends the entire statute to be effective and certain.

1 Pa. C.S. §1922(2). This means that individual statutory provisions must be construed with reference to the entire statute of which they are a part, and the entire statute is presumed to be certain and effective, not superfluous and without impact. Reading §621 of the MPC in conjunction with the definition of “public grounds” in §107 of the MPC, it is clear that the General Assembly regards a trail as something different from a park. To conclude otherwise would render the term “trail” in §107 mere surplusage.

57. Given the General Assembly’s manifest intention to develop a specific list of protected spaces subject to the §621 Restriction, principles of statutory construction presume that the exclusion of “trails, paths and other recreational areas and other public areas” contained in the MPC’s existing definition of public grounds was intentional. Applying that principle the Rail Trail does not trigger the §621 Restriction.

- **Vested Rights / Estoppel**

58. Prior to establishing the Facility, Piccoli and Discovery House made a good faith examination of the Premises and the surrounding community and concluded that the §621 Restriction was not applicable to the Facility.

59. On October 28, 2002, the Piccoli received a building permit exemption from the Township in order to repair and remodel the Premises to accommodate the use as a methadone treatment facility. No appeal was taken from the grant of said exemption.

60. Piccoli and Discovery House made a substantial and unrecoverable investment in establishing the Facility on the Premises.

61. The Facility has been operated on the Premises since March, 2003, pursuant to a license issued by the Pennsylvania Department of Health, a circumstance of which all relevant governmental bodies and the public have been aware since that time.

62. No harm will result from the continued operation of the Facility on the Premises, and the public interest will be served by that continued use.

63. It would be inequitable to require the Facility to discontinue operations to the detriment of the Landowner, Discovery House and its patients.

The §621 Restriction Is Not Within The Scope Of Construction Or Occupancy Permit Review Under The Uniform Construction Code

64. The UCC provides that municipalities may administer and enforce the UCC by contracting with Third-Party Agencies as has occurred in this case with Guardian. *See* 35 P.S. §7210.501(b). The authority of Guardian derives exclusively from Guardian's status as a Third-Party Agency which is defined by the UCC as "A person, firm or corporation certified by the Department of Labor and Industry as a construction code official and contracted to perform plan review of construction documents, inspect construction or administer and enforce codes and

regulations under this act.” 35 P.S. §7210.103 (emphasis added). The authority of Guardian as a Third-Party Agency does not extend beyond the four corners of the UCC.

65. The UCC does not incorporate the §621 Restriction. The UCC does not incorporate Article V of the Pennsylvania Municipalities Planning Code (“MPC”), which governs land subdivision and development. The UCC does not incorporate licensure regulation by the DOH in any way that is relevant to the present applications before Guardian. Rather, the UCC relates to the attributes of the “bricks and mortar” that are under review. This limitation on the scope of authority is illustrated by the fact that Third-Party Agencies are approved for specific code requirements such as accessibility, building/structural, electrical, energy conservation, fire, mechanical, and plumbing. The attached certification by the Department of Labor and Industry setting forth Guardian’s authority identifies these code classifications. (Tab 3).

66. The §621 Restriction, the SALDO, and DOH licensure requirements are not within the scope of Guardian’s review of the applications for building or occupancy permits.

Relief Requested

67. Plaintiffs seek a declaration from the Court that the §621 Restriction does not apply to the Facility.

68. Plaintiffs seek a declaration that, as a matter of process, the §621 Restriction, the SALDO and DOH licensure requirements are not within the Defendants’ scope of review of building or occupancy permits or land use approvals for the Facility.

69. Plaintiffs request that the Court preliminarily and permanently enjoin the Defendants from taking action adverse to Plaintiffs by virtue of the application of the §621 Restriction to the Facility and the attendant delay and disruption to the land use planning and

construction/occupancy permitting process as more fully set forth in the following prayer for relief.

70. The relief requested will maintain the *status quo* as it has existed for more than three years, that is, Discovery House will continue to provide service to its patients.

71. No injury will result from granting the relief requested. The *status quo* has been lawful and in all respects satisfactory.

72. If the injunctive relief is denied, there is a real prospect of specific, immediate and irreparable harm to the patients through the disruption or loss of health care and disruption or loss of income or employment, and such loss is not recoverable. Similarly, Plaintiffs would be damaged financially. Plaintiffs' financial damage is not recoverable.

73. The application of the §621 Restriction presents a question of law and Plaintiffs' right to relief is clear.

74. Plaintiffs lack any other adequate and effective remedy to address the threatened closure of the Facility.

WHEREFORE, the Plaintiffs request the Court to order, as follows:

1. Declare that the §621 Restriction does not apply to the operation of the Facility on the Premises;

2. Declare that the §621 Restriction, the SALDO, and DOH licensure requirements are not within the Defendants' scope of review of building or occupancy permits or land use approvals for the Facility;

3. Enjoin and restrain the Defendants, their agents and servants, from taking any action adverse to the Plaintiffs on the basis of the §621 Restriction;

4. Enjoin and restrain the Defendants, their agents and servants, from denying any land use approvals or building or occupancy permits on the basis of the §621 Restriction;


5. Enjoin and restrain the Defendants, their agents and servants, from taking any action (including but not limited to enforcement proceedings or citations of any kind, the direct or indirect effect of which would disrupt the ability of the Plaintiffs to provide methadone treatment services at the Facility pending further order of this Court;

6. Retain jurisdiction over the parties and this matter pending final resolution of any other land use or permitting issues arising from the Plaintiffs' efforts to establish temporary and then permanent facilities on the Premises through which the operations of the Facility may be continued.

7. Grant such other relief as may be appropriate under the circumstances.

Respectfully submitted,


7/13/06



Carleton O. Strouss
PA 25994
Ruth E. Granfors
PA 39508
Kirkpatrick & Lockhart Nicholson Graham LLP
17 N. Second St., 18th Floor
Harrisburg, PA 17101
717.231.4500
717.231.4501 (fax)
*Counsel for Plaintiffs David L. Piccoli, Sr. and
Discovery House CU, Inc.*

VERIFICATION

I, Kenneth Tressler, declare that I am an authorized representative of Discovery House CU, Inc. and David L. Piccoli, Sr., and further declare that the facts set forth in the Complaint for Declaratory Judgment and Injunctive Relief are true and correct to the best of my knowledge, information and belief, and I make this declaration subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.


Kenneth Tressler

Public Education

Land Use

This land development plan, which has received much media attention, has provided the planning commission with an opportunity to educate the public on land use regulation and in particular the extensive drug problem that is impacting our communities. Education is a key role of what a planning commission is all about. Planning Commissions can provide a forum to discuss local issues and provide education and guidance that can be used to make sound land use decisions.

The first item that I wanted to stress upon is that if a community wants to regulating how land can be used, that is, if they want to control whether a certain piece of land is used for a convenience store or simply for agricultural purposes they must do so through a zoning ordinance. A subdivision and land development ordinance, which is what the County Planning Commission administers, is not designed to regulate land use. It simply dictates development standards, regardless of the land use, development standards such as assuring the site has sufficient water and sewer capacity, adequate public access, and that storm water run-off from the development is managed to prevent flooding. In the case of the Piccoli land development plan, we have a unique situation whereas our legislators created a law specifically for a certain land use, that being the prohibition of methadone treatment clinics within 500 ft of certain facilities.

If it were not for this specific legislative requirement for methadone treatment facilities we would not even be questioning the use of this land under the county's SALDO because regulating land use is to be done through zoning regulations not subdivision & land development regulations.

If a community wants to control how land is used then they must adopt a municipal zoning ordinance. It is common misconception that a municipality can zone some use out of their municipality and that is not the case. Every legal land use must be provided for in a municipal zoning ordinance. Zoning simply allows a municipality to determine where certain uses should occur in the municipality. For example, certain incompatible land uses can be kept separate from one another. If you have limited prime business development lands you would want to protect them by designating them solely for that purpose. At the same time you would want to protect the quality of life of your resident by not allowing loud or polluting types of businesses near such residences.

Only seven of the 51 municipalities in Clearfield County have zoning. Rural Pennsylvanians are strong private property rights advocates and fear controls that would impact how they can use their properties. Many residents do not want to be told what they can and can not do on their property, however they often do not hesitate to complain that someone should be regulating what their neighbor does on his or her property. This is evident from the numerous complaints our office receives on a daily basis from residents regarding their neighbors' unkempt properties, malfunctioning sewage systems, smoke from burning trash or outdoor furnaces; building of fences/sheds on property lines, noise & odor pollution, junk cars, etc. You name it and we have probably heard it. So on one hand no one wants to be regulated however when someone is impacting your property value or quality of life its another story. What residents need to understand is that if they want their neighbors regulated then they too have to abide by those same regulations.

Drug Addiction & Trafficking

Last fall our office hosted several topic specific roundtables as part of our comprehensive plan process. One of those roundtables was on social services. This roundtable unveiled the extent of our social problems in Clearfield County. It was disheartening to hear how many people were in treatment for depression and drug abuse. Drug addiction is a serious problem not only here in Clearfield County but in north central PA as a whole. A report by the US Drug Enforcement Administration indicates that Philadelphia and New York based criminal groups and street gangs who distribute drugs such as heroin and cocaine are relocating to central and northern PA to establish new drug markets. The extent of our local drug addiction & trafficking problem is evident by the recent drug busts and robberies in our area.

It is unfortunate that there is a need for methadone clinics but as long as there are drug addicts there will be a need for treatment. Drug trafficking & addiction is associated with crime and that is a legitimate concern of the residents living in proximity to the clinic. Currently the Discovery House in Grampian is treating

approximately 200 patients and has a waiting list of over 400. It should be noted that all these patients are seeking treatment voluntarily. While not every patient is going to become a model citizen overnight a good majority are genuinely wanting a better life for themselves and their families. We should keep in mind that even though a waiting list of 400 seems vast; it is estimated that only 20% of heroin addicts are receiving methadone treatment. That means the other 80% are probably still out on the street buying and using drugs and committing crimes in our communities.

If there is demand for methadone treatment then it is likely that we will see another methadone facility opening up somewhere else in our area. With over 86% of our municipalities without any zoning they will have little say as to where such a facility would be best placed in their community.

There have been many misconceptions running through the rumor mill as to what Methadone is and its cognitive effects on its patients. There is plenty of literature available from reputable sources to anyone wanting to learn the truth regarding this treatment. The federal office of national drug control policy has informative factsheets as well as links to various studies. Methadone treatment clinics are regulated not only by the State Department of Health but also by the Federal Department of Health and Human Services. Methadone, which has been used for over 30 years, is a legal and proven effective treatment for certain drug addictions.

That wraps up my public education portion of my presentation. Hopefully I provided everyone with a better understanding of land use regulation and the extent of the drug problem in our region. Now I would like to return to the land development in question which has sparked so much public interest, the Joseph Piccoli land development plan otherwise known as the Discovery House.

As for the County's Subdivision and Land Development ordinance requirements, all related items have been met including the most recent outstanding item being the highway occupancy permit. Which leaves one last issue to contend with; that being the 500ft state prohibition.

First do we have authority to enforce Section 621 of the MPC?

The Planning Commission has been presented with the actual dialogue between our state legislators prior to voting upon and passing Act 10, which provided for the prohibition of methadone clinics within 500 ft. of certain facilities. Upon reading the dialogue it is apparent that the legislators wanted to protect children from the increased crime activity associated with drug addicts and they wanted the 500-ft. prohibition regardless if there was any local zoning. When one legislator argued that such a prohibition could be dealt with under a local zoning ordinance, another legislator responded the only way to protect the children is to adopt a statutory solution at a state level otherwise they would be relying on others to protect the children. A letter from one of those legislators provided further evidence of this intent, James E. Casorio from the 56th Legislative District. He states in his letter that according to Patrick F. Kieley, legal counsel at the Local Government Commission this law is not conditioned to existing zoning regulations.

The 500 ft. prohibition provisions were placed in the Municipalities Planning Code. They unfortunately do not specify who should enforce; however it is assumed since they were placed in the MPC they were meant to be enforced during the planning process of a development. Since the County Planning Commission represents the local township in its planning capacity for this development the Planning Commission is being asked to enforce this 500-ft. state prohibition. A question being posed of the Planning Commission is if we don't enforce it who will?

The second question that needs to be answered is "is there a violation of this 500 ft. prohibition?"

It is alleged that the methadone clinic is within 500 ft. of both a residential housing area and a public park. Our GIS mapping shows that there is a residential rental property with 500ft (building line to building line) and the local rails to trails is also within 500 ft (building line to building line). Is this a residential housing area? Is the rails to trails a public park? These are the questions we will need to answer this evening.

The legislators unfortunately did not provide definitions of a residential housing area nor for a public park. Our solicitor has indicated that in lieu of definitions provided for in the regulations the courts tend to rely

both our solicitor and the developer's counsel different definitions and interpretations for these terms. Depending on what dictionary you use you can find different definitions. For example, one definition found defines park as "a tract of ground kept in its natural state, about or adjacent to a residence, as for the preservation of game, for walking, riding or the like", while yet another definition for "public" found is "open to common or general use". Would rails to trails meet the literal definition of these two words "public" & "park"? Well we know that any rails to trails funded by state DCNR monies, as was the case with this trail, require that they be open to the public. Many trails are commonly called linear parks. Those in the trail development community do consider them parks since they are open to the public for recreational purposes. Another relevant question would be do children frequent this trail? The answer is yes.

Another definition we are being asked to consider is residential housing area. "Is the rental house, which is less than 500 ft. away from the clinic, part of a larger residential housing area? Looking at the literal definition are there multiple residential houses nearby? The answer is yes and at least one is within 500 ft. of the clinic. Is this a residential housing area? One definition of area found is "a geographical region of indefinite boundary." If you drew a circle around the nearby houses and defined this as an area does it fall within 500-ft., yes. Is the entire "area" within 500 ft., no. As you can see, without legislative provided definitions we are forced to make a best judgment call. Are there children residing within any of these residential houses? There is currently at least one known child residing in at least one of those homes. The closest residential structure, a rental, does not currently house children but could in the future since this is a rental property and the current lease is ending.

If the Planning Commission's answer is yes to the first question regarding authority then the next question is do you believe that a violation has occurred depending on your interpretation of a residential housing area and a public park? If the answer is yes the next decision that the Planning Commission will need to make is will you deny this plan on this basis?



Clearfield County Planning Commission

650 Leonard Street - Suite 110 • Clearfield, PA 16830-3243
(814) 765-5149 • FAX (814) 765-6056

June 20, 2006

Wilson Fisher, Jr., PLS
Hess & Fisher Engineers, Inc.
36 North Second Street
Clearfield, PA 16830

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RE: David L. Piccoli, Sr. Land Development
Pike Township
CCPC File No.: 14306-4

Dear Wilson:

This is to inform you that at their June 19, 2006 monthly meeting, the Clearfield County Planning Commission voted to **DISAPPROVE THE APPLICATION FOR LAND DEVELOPMENT because approval would violate §621(a)(1) of the Pennsylvania Municipalities Planning Code due to the proximity of the proposed land development to a residential housing area as well as a public recreational trail owned by Clearfield County Rails to Trails.**

Please refer to the Pennsylvania Municipalities Planning Code for the following consideration:

621(a)(1) Notwithstanding any other provision of law to the contrary and except as provided in subsection (b), a methadone treatment facility shall not be established or operated within 500 feet of an existing school, public playground, *public park*, *residential housing area*, child-care facility, church, meetinghouse, or other actual place of regularly stated religious worship established prior to the proposed methadone treatment facility.

If this office can be of further assistance, please call at the above number.

Sincerely,

Jodi Brennan
(JTB)

Jodi Brennan
Director

JB/mbb

pc: Pike Township
David L. Piccoli, Sr.

Certified Third Party Agency Listing

Name of Agency: **Guardian Inspection Services, Inc.**
 Address: **2277 Route 33, Suite 408**
Hamilton Square, NJ 08690

Contact person: **Richard Alloway or Brian Hartmann**

Telephone: **(800) 882-8344**
 E-mail address: **guardianinsp@optonline.net**

Will perform: residential and commercial code services

Code requirements it will enforce:

<u>X</u>	accessibility
<u>X</u>	building/structural
<u>X</u>	electrical
<u>X</u>	energy conservation
<u>X</u>	fire
<u>X</u>	mechanical
<u>X</u>	plumbing

Is able to contract for additional code work for municipalities: **Yes**

Is able to perform residential code work in opt-out municipalities: **Yes**

Intends to perform code work in each county that is checked below:

<input checked="" type="checkbox"/>	Adams	<input checked="" type="checkbox"/>	Clinton	<input checked="" type="checkbox"/>	Lackawanna	<input checked="" type="checkbox"/>	Pike
<input checked="" type="checkbox"/>	Allegheny	<input checked="" type="checkbox"/>	Columbia	<input checked="" type="checkbox"/>	Lancaster	<input checked="" type="checkbox"/>	Potter
<input checked="" type="checkbox"/>	Armstrong	<input checked="" type="checkbox"/>	Crawford	<input checked="" type="checkbox"/>	Lawrence	<input checked="" type="checkbox"/>	Schuylkill
<input checked="" type="checkbox"/>	Beaver	<input checked="" type="checkbox"/>	Cumberland	<input checked="" type="checkbox"/>	Lebanon	<input checked="" type="checkbox"/>	Snyder
<input checked="" type="checkbox"/>	Bedford	<input checked="" type="checkbox"/>	Dauphin	<input checked="" type="checkbox"/>	Lehigh	<input checked="" type="checkbox"/>	Somerset
<input checked="" type="checkbox"/>	Berks	<input checked="" type="checkbox"/>	Delaware	<input checked="" type="checkbox"/>	Luzerne	<input checked="" type="checkbox"/>	Sullivan
<input checked="" type="checkbox"/>	Blair	<input checked="" type="checkbox"/>	Elk	<input checked="" type="checkbox"/>	Lycoming	<input checked="" type="checkbox"/>	Susquehanna
<input checked="" type="checkbox"/>	Bradford	<input checked="" type="checkbox"/>	Erie	<input checked="" type="checkbox"/>	McKean	<input checked="" type="checkbox"/>	Tioga
<input checked="" type="checkbox"/>	Bucks	<input checked="" type="checkbox"/>	Fayette	<input checked="" type="checkbox"/>	Mercer	<input checked="" type="checkbox"/>	Union
<input checked="" type="checkbox"/>	Butler	<input checked="" type="checkbox"/>	Forest	<input checked="" type="checkbox"/>	Mifflin	<input checked="" type="checkbox"/>	Venango
<input checked="" type="checkbox"/>	Cambria	<input checked="" type="checkbox"/>	Franklin	<input checked="" type="checkbox"/>	Monroe	<input checked="" type="checkbox"/>	Warren
<input checked="" type="checkbox"/>	Cameron	<input checked="" type="checkbox"/>	Fulton	<input checked="" type="checkbox"/>	Montgomery	<input checked="" type="checkbox"/>	Washington
<input checked="" type="checkbox"/>	Carbon	<input checked="" type="checkbox"/>	Greene	<input checked="" type="checkbox"/>	Montour	<input checked="" type="checkbox"/>	Wayne
<input checked="" type="checkbox"/>	Centre	<input checked="" type="checkbox"/>	Huntingdon	<input checked="" type="checkbox"/>	Northampton	<input checked="" type="checkbox"/>	Westmoreland
<input checked="" type="checkbox"/>	Chester	<input checked="" type="checkbox"/>	Indiana	<input checked="" type="checkbox"/>	Northumberland	<input checked="" type="checkbox"/>	Wyoming
<input checked="" type="checkbox"/>	Clarion	<input checked="" type="checkbox"/>	Jefferson	<input checked="" type="checkbox"/>	Perry	<input checked="" type="checkbox"/>	York
<input checked="" type="checkbox"/>	Clearfield	<input checked="" type="checkbox"/>	Juniata	<input checked="" type="checkbox"/>	Philadelphia		

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

DAVID L. PICCOLI, SR., and :
DISCOVERY HOUSE CU, INC., :
Plaintiffs, :

v. :

CLEARFIELD COUNTY, PIKE :
TOWNSHIP, GUARDIAN INSPECTION :
SERVICES, INC., and CLEARFIELD :
COUNTY PLANNING COMMISSION, :
Defendants. :

Docket No. 06-1114-CD

FILED loc
0/9:42/04 Att'y (S)
JUL 13 2006 w/out orders

William A. Shaw 3 CC Atty
Prothonotary/Clerk of Courts w/ orders

MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs respectfully move this Court for a Preliminary Injunction pursuant to Pa.R.Civ.P. 1531. A proposed form of order providing the relief requested is attachment 1. A proposed form of scheduling order is attachment 2. A Praecipe for Expedited Disposition is being filed herewith. In support of their motion, Plaintiffs represent, as follows:

Background

1. Plaintiffs' Complaint Seeking Declaratory Judgment and Injunctive Relief ("Plaintiffs' Complaint") is incorporated herein by reference in its entirety as though fully set forth at length.
2. As recited in Plaintiffs' Complaint, a controversy has arisen between the parties regarding whether Discovery House may continue to operate a methadone treatment facility in Curwensville, Pennsylvania ("Facility") as it has done for the past three years. The central element of the controversy is the question of whether §621 of the Municipalities Planning Code, 53 P.S. 10621, restricts the activities at the Facility (§621 Restriction).
3. Plaintiffs' Complaint seeks a declaration that the §621 Restriction does not apply to the Facility.

4. As detailed in Plaintiffs' Complaint, the existence of the controversy has disrupted and delayed the processing and approval of land use planning and construction and occupancy permit applications sought by the Plaintiffs. Those approvals were sought by the Plaintiffs in response to Plaintiffs' efforts to continue to serve the patients of Discovery House after a fire destroyed the principal building through which Discovery House has rendered the services.

5. Discovery House has rendered services to its patients virtually without interruption subsequent to the fire through the utilization of temporary mobile manufactured structures ("Trailers").

6. Representatives of the Defendants have asserted that on or after July 16, 2006, they may take actions to require Plaintiffs to discontinue rendering services at the Facility.

7. Any asserted basis to direct that Discovery House discontinue serving patients would be inextricably linked to the controversy regarding the §621 Restriction and its impact on related approvals.

Immediate and Irreparable Harm

8. Any action by the Defendants to order the closure of the Facility would result in immediate and irreparable harm to Plaintiffs and the patients served by Discovery House, including but not limited to the following:

a) methadone treatment is a form of health care that requires the daily administration of medication which is ordinarily only administered at the Facility;

b) there are approximately 210 patients being served by the Facility at the present time;

c) the patients rely upon Discovery House to provide the daily administration of medication;

d) there is no other methadone treatment facility in Clearfield County or within approximately 68 miles of the Facility;

e) if the Facility is closed, the care of the patients will be disrupted, resulting in possible adverse physical consequences to the patients;

f) if the Facility is closed, the patients will need to seek care elsewhere;

g) if the patients are required to travel a substantial distance to receive care, they will suffer loss of employment time which could result in the loss of earnings, or worse, the loss of employment;

h) if the Facility is closed, Discovery House will be unable to serve the public interest by providing its services as licensed by the Department of Health;

i) if the Facility is closed, Discovery House will suffer the loss of revenue associated with operation of the Facility; and

j) if the Facility is closed, Piccoli will lose his legitimate expectations in the development of the Premises and the economic value of the rental arrangement with Discovery House.

9. Any damages experienced by the Plaintiffs or the patients cannot be recovered by them and would be irretrievably lost due to the availability of governmental immunity.

Relief Requested

10. Plaintiffs request that the Court preliminarily enjoin the Defendants from taking action adverse to Plaintiffs by virtue of the application of the §621 Restriction to the Facility and

the attendant delay and disruption to the land use planning and construction/occupancy permitting process as more fully set forth in the following prayer for relief.

11. The relief requested will maintain the *status quo* as it has existed for more than three years, that is, Discovery House will continue to provide service to its patients.

12. No injury will result from granting the relief requested. The *status quo* has been lawful and in all respects satisfactory.

13. If the injunctive relief is denied, there is a real prospect of specific, immediate and irreparable harm to the patients through the disruption or loss of health care and disruption or loss of income or employment. Similarly, Discovery House and Piccoli would be damaged financially. Such damage would be unrecoverable.

14. The application of the §621 Restriction presents a question of law and Plaintiffs' right to relief is clear.

15. Plaintiffs lack any other adequate and effective remedy to address the threatened closure of the Facility.

Certificate of Non-Concurrence

16. As this motion is being filed with initial process, no counsel has yet entered an appearance. However, based on the evolution of the dispute, we understand that the Defendants do not concur in the relief requested.

WHEREFORE, the Plaintiffs request the Court to order, as follows:

1. Enjoin and restrain the Defendants, their agents and servants, from taking any action adverse to the Plaintiffs on the basis of the §621 Restriction pending further order of Court;

2. Enjoin and restrain the Defendants, their agents and servants, from denying any land use approvals or building or occupancy permits on the basis of the §621 Restriction pending further order of Court;

3. Enjoin and restrain the Defendants, their agents and servants, from taking any action (including but not limited to enforcement proceedings or citations of any kind), the direct or indirect effect of which would disrupt the ability of the Plaintiffs to provide methadone treatment services at the Facility pending further order of this Court;

4. Retain jurisdiction over the parties and this matter pending final resolution of any other land use or permitting issues arising from the Plaintiffs' efforts to establish temporary and/or permanent facilities on the Premises through which the operations of the Facility may be continued.

5. Grant such other relief as may be appropriate under the circumstances.

Respectfully submitted,

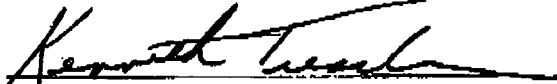
7/13/06



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Kirkpatrick & Lockhart Nicholson Graham LLP
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Harrisburg, PA 17101
717.231.4500
717.231.4501 (fax)
*Counsel for Plaintiffs David L. Piccoli, Sr. and
Discovery House CU, Inc.*

VERIFICATION

I, Kenneth Tressler, declare that I am an authorized representative of Discovery House CU, Inc. and David L. Piccoli, Sr., and further declare that the facts set forth in the Motion for Preliminary Injunction are true and correct to the best of my knowledge, information and belief, and I make this declaration subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.


Kenneth Tressler

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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,
Plaintiffs,

v.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC., and CLEARFIELD
COUNTY PLANNING COMMISSION,
Defendants.

Docket No. _____

ORDER

And now, this ____ day of _____, 2006, upon consideration of Plaintiffs' motion for preliminary injunction, it is hereby ordered that the motion is GRANTED and it is further ordered:

1. Defendants, their agents and servants, are enjoined and restrained from taking any action adverse to the Plaintiffs on the basis of §621 of the Pennsylvania Municipalities Planning Code, 53 P.S. §10621, until further order of this Court.

2. Defendants, their agents and servants, are enjoined and restrained from denying any approvals or permits to Plaintiffs on the basis of §621 of the Pennsylvania Municipalities Planning Code, 53 P.S. §10621, until further order of this Court.

3. Defendants, their agents and servants, are enjoined and restrained from taking any action (including but not limited to enforcement proceedings or citations of any kind), the direct or indirect effect of which would disrupt the ability of the Plaintiffs to provide methadone treatment services at the Facility pending further order of this Court.

So ordered.

By the Court

J.

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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,
Plaintiffs,

v.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC., and CLEARFIELD
COUNTY PLANNING COMMISSION,
Defendants.

Docket No. _____

ORDER

And now, this ____ day of _____, 2006, upon consideration of Plaintiffs' Motion for Preliminary Injunction, it is hereby ordered that:

- (1) a rule is issued upon the respondent to show cause why the moving party is not entitled to the relief requested;
- (2) the Defendants shall file answers to the motion within _____ days of this date;
- (3) a status conference will be conducted by the Court on _____, in Courtroom No. _____ of the Clearfield County Courthouse;
- (4) an evidentiary hearing shall be held on _____, in the Clearfield County Courthouse, Clearfield, Pennsylvania, in Courtroom No. _____;
- (5) argument shall be held on _____, in Courtroom No. _____ of the Clearfield County Courthouse; and
- (6) notice of the entry of this order shall be provided to all parties by the Plaintiffs.

By the Court

J.

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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,

Plaintiffs,

v.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC., and CLEARFIELD
COUNTY PLANNING COMMISSION,

Defendants.

Docket No. _____

CERTIFICATE OF SERVICE


I hereby certify that on July 13, 2006, I caused a copy of the foregoing Motion for Preliminary Injunction to be served upon the persons and in the manner set forth below:

1. By personal service on Kim C. Kesner, Esquire in his capacity as Solicitor for Clearfield County, Pike Township, and the Clearfield County Planning Commission.
2. By first class mail, postage prepaid addressed to:

Guardian Inspection Services, Inc.
5510 Memorial Blvd.
Tobyhanna, PA 18466

and

Mr. Brian Wruble
Guardian Inspection Services, Inc.
1739 Kiwanis Trail
DuBois, PA 15801



Carleton D. Strauss
PA 25994
Kirkpatrick & Lockhart Nicholson Graham LLP
17 N. Second St., 18th Floor
Harrisburg, PA 17101
717.231.4500
717.231.4501 (fax)
*Counsel for Plaintiffs David L. Piccoli, Sr. and
Discovery House CU, Inc.*

CA

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

FILED 5CC
9/9:42 AM
JUL 13 2006
5

William A. Shaw
Prothonotary/Clerk of Courts

DAVID L. PICCOLI, SR., and :
DISCOVERY HOUSE CU, INC., :
Plaintiffs, :

v. :

Docket No. 06-1114-CD

CLEARFIELD COUNTY, PIKE :
TOWNSHIP, GUARDIAN INSPECTION :
SERVICES, INC., and CLEARFIELD :
COUNTY PLANNING COMMISSION, :
Defendants. :

Praecipe for Expedited Disposition

TO THE COURT ADMINISTRATOR:

Expedited Disposition of the attached motion is requested for the following reasons:

The motion requests that the Court enter a preliminary injunction that allow Plaintiff Discovery House to continue serving its patients without disruption pending the determination by the Court of legal contentions regarding whether the services provided by Discovery House are restricted by section 621 of the Municipalities Planning Code.

Discovery House has provided those services to patients at Curwensville for over three years. Representatives of the Defendants have asserted that actions will be taken on or after **July 16, 2006** to direct Plaintiffs to discontinue providing those services.

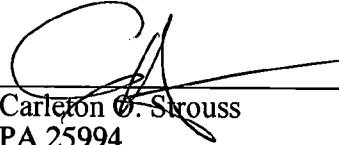
In order to prevent the threatened disruption, Discovery House seeks a preliminary injunction to preserve the status quo as it has existed for the past three years, pending the Court's review of the underlying issues. In light of the impending threatened action, Plaintiffs respectfully request the opportunity to present the motion to the Court at the earliest feasible date.

Plaintiffs respectfully suggest that a conference (perhaps telephonic) among counsel for the parties and the Court might afford an opportunity to establish an interim agreement or order that would allow for an orderly scheduling of the proceedings so that the time and resources of the Court and the parties can be put to best use.

A proposed form of order setting forth the relief requested is attachment 1 to the motion.

A proposed form of scheduling order is attachment 2 to the motion.

Respectfully submitted



Carleton C. Strouss
PA 25994

Ruth E. Granfors
PA 39508

Kirkpatrick & Lockhart Nicholson Graham LLP
17 N. Second St., 18th Floor
Harrisburg, PA 17101
717.231.4500

717.231.4501 (fax)

*Counsel for Plaintiffs David L. Piccoli, Sr. and
Discovery House CU, Inc.*

FOR THE COURT ADMINISTRATOR ACTION ONLY

_____ **MOTION OR PETITION ASSIGNED TO JUDGE**

_____ **COUNSEL FOR MOVING PARTY NOTIFIED OF JUDICIAL ASSIGNMENT**

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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,
Plaintiffs,

v.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC., and CLEARFIELD
COUNTY PLANNING COMMISSION,
Defendants.

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Docket No. _____

CERTIFICATE OF SERVICE

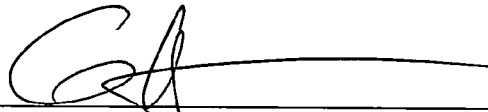
I hereby certify that on July 13, 2006, I caused a copy of the foregoing Praecipe for Expedited Disposition to be served upon the persons and in the manner set forth below:

1. By personal service on Kim C. Kesner, Esquire in his capacity as Solicitor for Clearfield County, Pike Township, and the Clearfield County Planning Commission.
2. By first class mail, postage prepaid addressed to:

Guardian Inspection Services, Inc.
5510 Memorial Blvd.
Tobyhanna, PA 18466

and

Mr. Brian Wruble
Guardian Inspection Services, Inc.
1739 Kiwanis Trail
DuBois, PA 15801



Carleton O. Strauss
PA 25994
Kirkpatrick & Lockhart Nicholson Graham LLP
17 N. Second St., 18th Floor
Harrisburg, PA 17101
717.231.4500
717.231.4501 (fax)
*Counsel for Plaintiffs David L. Piccoli, Sr. and
Discovery House CU, Inc.*

CA

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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE, CU, INC.,

vs.

:
:
:
: No. 06-1114-CD
:
:

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN
INSPECTION SERVICES, INC.,
and CLEARFIELD COUNTY
PLANNING COMMISSION

:
:
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:

ORDER

AND NOW, this 13th day of July, 2006, it is the Order of the Court
that hearing on Plaintiffs' Preliminary Injunction filed in the above-captioned
matter has been scheduled for the 17th day of July 2006, at 11:00 A.M., in
Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


HONORABLE PAUL E. CHERRY
Judge

FILED

01/4:00/SL
JUL 13 2006

William A. Shaw
Prothonotary/Clerk of Courts

ICC Atty
Strauss
ICC Atty Kesner
Faxed to
Guardian 7/14/06
ICC mailed to
Guardian Insp.

Prothonotary
PO Box 549
Clearfield, PA 16830
Phone: 814-765-2641, Ext. 1330
Fax: 814-765-7659

**Clearfield County
Courthouse**

Fax

To: Guardian Inspection Services-Susan **From:** William A. Shaw

Fax: 814-372-4726 **Date:** 7-14-06

Phone: **Pages:** 2

Re: Hearing July 17, 2006 **CC:**

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

•**Comments:**

*** FAX TX REPORT ***

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RESULT	OK

Prothonotary
PO Box 549
Clearfield, PA 16830
Phone: 814-765-2641, Ext. 1330
Fax: 814-765-7659

**Clearfield County
Courthouse**

Fax

To: Guardian Inspection Services-Susan **From:** William A. Shaw

Fax: 814-372-4726 **Date:** 7-14-06

Phone: **Pages:** 2

Re: Hearing July 17, 2006 **CC:**

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

•Comments:

LA

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DAVID L. PICCOLI, SR., and :
DISCOVERY HOUSE, CU, INC. :

-VS-

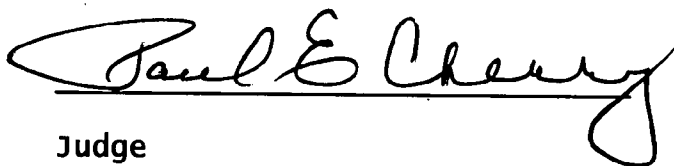
No. 06-1114-CD

CLEARFIELD COUNTY, PIKE :
TOWNSHIP, GUARDIAN :
INSPECTION, INC., and :
CLEARFIELD COUNTY PLANNING :
COMMISSION :

O R D E R

NOW, this 17th day of July, 2006, following
hearing on Motion for Injunction, following taking of
testimony and upon consideration of same, it is the ORDER
of this Court that said Motion be and is hereby denied.

BY THE COURT,


Judge

FILED

07/11/2006
JUL 18 2006

William A. Shaw
Prothonotary/Clerk of Courts

2cc
Atty: Strauss
Keshner
1cc: Guardian Insp.
SSIO Memorial
Blvd.
Tobyhanna, PA
18466
@K

FILED

JUL 18 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/18/06

 You are responsible for serving all appropriate parties.

 X The Prothonotary's office has provided service to the following parties:

 Plaintiff(s) X Plaintiff(s) Attorney Other

 X Defendant(s) X Defendant(s) Attorney
 Gardner

 Special Instructions:

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

DAVID L. PICCOLI, SR., and :
DISCOVERY HOUSE CU, INC., :
Plaintiffs, :

v. :

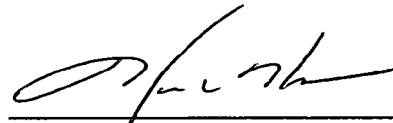
Docket No. 06-1114-cD

CLEARFIELD COUNTY, PIKE :
TOWNSHIP, GUARDIAN INSPECTION :
SERVICES, INC., and CLEARFIELD :
COUNTY PLANNING COMMISSION, :
Defendants. :

ACCEPTANCE OF SERVICE

I accept service of the Complaint for Declaratory Judgment and Injunctive Relief and Motion for Preliminary Injunction on behalf of **Clearfield County Planning Commission** and certify that I am authorized to do so.

July 19, 2006



Kim C. Kesner, Esquire
23 N. Second Street
Clearfield, PA 16830-2438

FILED

JUL 31 2006
m/11:20
William A. Shaw
Prothonotary
w/c/c

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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,
Plaintiffs,

v.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC., and CLEARFIELD
COUNTY PLANNING COMMISSION,
Defendants.

Docket No. 06-1114-CD

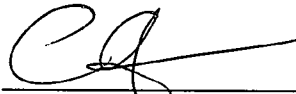
CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2006, I caused a copy of the foregoing Acceptance of Service to be served via United States first class mail upon the following persons:

Kim C. Kesner, Esq.
Solicitor for Clearfield County,
Pike Township and
Clearfield County Planning Commission
23 N. Second Street
Clearfield, PA 16830-2438

Guardian Inspection Services, Inc.
5510 Memorial Blvd.
Tobyhanna, PA 18466

Peter Vazquez, Esq.
Schwartz, Simon, *et al.*
10 James Street
Florham Park, NJ 07932



Carleton O. Strouss
PA 25994
Kirkpatrick & Lockhart Nicholson Graham LLP
17 N. Second St., 18th Floor
Harrisburg, PA 17101
717.231.4500
717.231.4501 (fax)
*Counsel for Plaintiffs David L. Piccoli, Sr. and
Discovery House CU, Inc.*

FILED

JUL 31 2006

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,
Plaintiffs,

v.

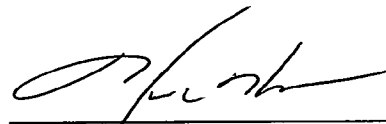
CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC., and CLEARFIELD
COUNTY PLANNING COMMISSION,
Defendants.

Docket No. 06-1114-CD

ACCEPTANCE OF SERVICE

I accept service of the Complaint for Declaratory Judgment and Injunctive Relief and
Motion for Preliminary Injunction on behalf of **Pike Township** and certify that I am authorized
to do so.

July 19, 2006



Kim C. Kesner, Esquire
23 N. Second Street
Clearfield, PA 16830-2438

FILED

JUL 31 2006

m/11:20/W

William A. Shaw
Prothonotary

1 CENT TO

ATTN

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,
Plaintiffs,

v.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC., and CLEARFIELD
COUNTY PLANNING COMMISSION,
Defendants.

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Docket No. 06-1114-CD

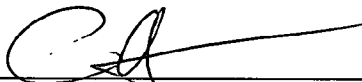
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I hereby certify that on July 28, 2006, I caused a copy of the foregoing Acceptance of
Service to be served via United States first class mail upon the following persons:

Kim C. Kesner, Esq.
Solicitor for Clearfield County,
Pike Township and
Clearfield County Planning Commission
23 N. Second Street
Clearfield, PA 16830-2438

Guardian Inspection Services, Inc.
5510 Memorial Blvd.
Tobyhanna, PA 18466

Peter Vazquez, Esq.
Schwartz, Simon, *et al.*
10 James Street
Florham Park, NJ 07932



Carleton O. Strauss
PA 25994
Kirkpatrick & Lockhart Nicholson Graham LLP
17 N. Second St., 18th Floor
Harrisburg, PA 17101
717.231.4500
717.231.4501 (fax)
*Counsel for Plaintiffs David L. Piccoli, Sr. and
Discovery House CU, Inc.*

FILED

JUL 3 1 2006

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

DAVID L. PICCOLI, SR., and :
DISCOVERY HOUSE CU, INC., :
Plaintiffs, :

v. :

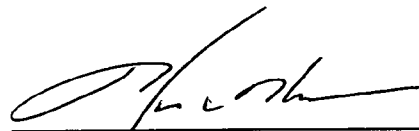
Docket No. 06-1114-CD

CLEARFIELD COUNTY, PIKE :
TOWNSHIP, GUARDIAN INSPECTION :
SERVICES, INC., and CLEARFIELD :
COUNTY PLANNING COMMISSION, :
Defendants. :

ACCEPTANCE OF SERVICE

I accept service of the Complaint for Declaratory Judgment and Injunctive Relief and
Motion for Preliminary Injunction on behalf of **Clearfield County** and certify that I am
authorized to do so.

July 19, 2006



Kim C. Kesner, Esquire
23 N. Second Street
Clearfield, PA 16830-2438

FILED

JUL 31 2006

W/11-20/06

William A. Shaw
Prothonotary

1 cent to Att

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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,
Plaintiffs,

v.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC., and CLEARFIELD
COUNTY PLANNING COMMISSION,
Defendants.

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Docket No. 06-1114-CD

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I hereby certify that on July 28, 2006, I caused a copy of the foregoing Acceptance of Service to be served via United States first class mail upon the following persons:

Kim C. Kesner, Esq.
Solicitor for Clearfield County,
Pike Township and
Clearfield County Planning Commission
23 N. Second Street
Clearfield, PA 16830-2438

Guardian Inspection Services, Inc.
5510 Memorial Blvd.
Tobyhanna, PA 18466

Peter Vazquez, Esq.
Schwartz, Simon, *et al.*
10 James Street
Florham Park, NJ 07932



Carleton O. Strouss
PA 25994
Kirkpatrick & Lockhart Nicholson Graham LLP
17 N. Second St., 18th Floor
Harrisburg, PA 17101
717.231.4500
717.231.4501 (fax)
*Counsel for Plaintiffs David L. Piccoli, Sr. and
Discovery House CU, Inc.*

6 CENS TO ATTN

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

DAVID L. PICCOLI, SR., and	:	No. 06-1114-CD
DISCOVERY HOUSE CU, INC.,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
CLEARFIELD COUNTY, PIKE	:	
TOWNSHIP, GUARDIAN INSPECTION	:	
SERVICES, INC., and CLEARFIELD	:	
COUNTY PLANNING COMMISSION,	:	
Defendants	:	

NOTICE

TO: David L. Piccoli, Sr. & Discovery House CU, Inc.
c/o Carleton O. Strouss, Esquire
Kirkpatrick & Lockhart Nicholson Graham LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507

You are hereby notified to file a written response to the enclosed Counterclaim within
twenty (20) days from service hereof or a judgment may be entered against you.

Kim C. Kesner, Esquire
Attorney for Defendant Pike Township
Supreme Ct. I.D. 28307
23 North Second Street
Clearfield, PA 16830
(814) 765-1706

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

DAVID L. PICCOLI, SR., and	:	No. 06-1114-CD
DISCOVERY HOUSE CU, INC.,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
CLEARFIELD COUNTY, PIKE	:	
TOWNSHIP, GUARDIAN INSPECTION	:	
SERVICES, INC., and CLEARFIELD	:	
COUNTY PLANNING COMMISSION,	:	
Defendants	:	

**ANSWER AND COUNTERCLAIM OF PIKE TOWNSHIP
TO COMPLAINT SEEKING DECLARATORY JUDGMENT**

AND NOW, comes Pike Township ("Township") by Kim C. Kesner, Esquire, Township Solicitor and files the following to Plaintiffs' Complaint Seeking Declaratory Judgment ("Complaint").

ANSWER

1. The averments contained in Paragraph 1 of Plaintiffs' Complaint are admitted based on information and belief.

2. The averments contained in Paragraph 2 of Plaintiffs' Complaint are admitted based on information and belief.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. The Township is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 10 and therefore, proof thereof at trial is requested.

11. It is specifically denied that in October 2002, Discovery House contacted the Township to obtain a building permit to renovate a building on the Property as the Township had no ordinance in effect at that time requiring prior approval or a permit to renovate any building in the Township. To the contrary, in order to receive Federal funds, the Township had previously enacted an ordinance requiring property owners and/or contractors to confirm prior to construction that any construction or renovation would not be in a flood zone. On October 28, 2002, the Township's Secretary issued a "building permit exemption" to Discovery House which only served to confirm that the proposed repair and remodeling of the existing building on the Property would not be within a flood zone. It is specifically denied that Township officials at that time had legislation in effect allowing it to approve or disapprove any planned use of any structure on the Property. It is also specifically denied that at that time Township officials received information informing them that the property would be used as a methadone treatment facility.

12. It is specifically denied that in October 2002, Discovery House contacted the Township to obtain a building permit to renovate a building on the Property as the Township had no ordinance in effect at that time requiring prior approval or a permit to renovate any building in the Township. To the contrary, in order to receive Federal funds, the Township had previously enacted an ordinance requiring property owners and/or contractors to confirm prior to construction that any construction or renovation would not be in a flood zone. On October 28, 2002, the Township's Secretary issued a "building permit exemption" to Discovery House which

only served to confirm that the proposed repair and remodeling of the existing building on the Property would not be within a flood zone. It is specifically denied that Township officials at that time had legislation in effect allowing it to approve or disapprove any planned use of any structure on the Property. It is also specifically denied that at that time Township officials received information informing them that the property would be used as a methadone treatment facility.

13. The Township believes and therefore avers that Discovery House has been operating a methadone treatment facility on the Property since 2003, but the Township is without sufficient knowledge or information to form a belief as to the number of patients treated.

14. The Township is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 14 and therefore, proof thereof at trial is requested.

15. The Township is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 15 and therefore, proof thereof at trial is requested.

16. While Guardian is the third party agency for Construction Code administration and enforcement within the Township, the Township lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 16 as to Guardian, which information is within the knowledge of Guardian, the best source for confirming or denying it and therefore, proof is requested at trial.

17. While Guardian is the third party agency for Construction Code administration and enforcement within the Township, the Township lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 17 as to Guardian, which

information is within the knowledge of Guardian, the best source for confirming or denying it and therefore, proof is requested at trial.

18. While Guardian is the third party agency for Construction Code administration and enforcement within the Township, the Township lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 18 as to Guardian, which information is within the knowledge of Guardian, the best source for confirming or denying it and therefore, proof is requested at trial.

19. The Township is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 19 and therefore, proof thereof at trial is requested.

20. The Township is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 20 and therefore, proof thereof at trial is requested.

21. While Guardian is the third party agency for Construction Code administration and enforcement within the Township, the Township lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 21 as to Guardian, which information is within the knowledge of Guardian, the best source for confirming or denying it and therefore, proof is requested at trial.

22. The Township is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 22 and therefore, proof thereof at trial is requested.

23. While Guardian is the third party agency for Construction Code administration and enforcement within the Township, the Township lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 23 as to Guardian, which

information is within the knowledge of Guardian, the best source for confirming or denying it and therefore, proof is requested at trial.

24. Admitted based upon information and belief.

25. It is specifically denied that the Township “suspended activity on the occupancy permit applications...” as the Township delegated Construction Code administration and enforcement to the Moshannon Valley Council of Governments. While Guardian is the third party agency for Construction Code administration and enforcement within the Township, the Township lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 25 as to Guardian, which information is within the knowledge of Guardian, the best source for confirming or denying it and therefore, proof is requested at trial.

26. The Township is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 26 and therefore, proof thereof at trial is requested.

27. It is admitted that Discovery House submitted its Application for Land Development to the Township prior to filing with the Planning Commission for review and comment in accordance with the County’s Subdivision and Land Development Ordinance and procedures established by the Planning Commission.

28. The Township is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 28 and therefore, proof thereof at trial is requested.

29. The Township is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 29 and therefore, proof thereof at trial is requested.

30. It is admitted that the Planning Commission disapproved Plaintiffs' Land Development application. Otherwise, the Township is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 30 and therefore, proof thereof at trial is requested.

31. The Township is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 31 and therefore, proof thereof at trial is requested.

32. The averments contained in Paragraph 32 constitute contentions or conclusions of law to which no response is required. By way of further answer, the averments of Defendants' Counterclaim are incorporated herein whereby Defendants' seek a declaration that §621 prohibits Plaintiffs' operation of a methadone treatment facility on the Property.

33. While Guardian is the third party agency for Construction Code administration and enforcement within the Township, the Township lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 33 as to Guardian, which information is within the knowledge of Guardian, the best source for confirming or denying it and therefore, proof is requested at trial.

34. While Guardian is the third party agency for Construction Code administration and enforcement within the Township, the Township lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 34 as to Guardian, which information is within the knowledge of Guardian, the best source for confirming or denying it and therefore, proof is requested at trial.

35. The averments contained in Paragraph 35 constitute contentions or conclusions of law to which no response is required. Otherwise, the Township is without sufficient knowledge

or information to form a belief as to the truth of the averments contained in Paragraph 35 and therefore, proof thereof is requested at trial.

36. The averments contained in Paragraph 36 constitute contentions or conclusions of law to which no response is required.

37. The answers in Paragraphs 1 to 36 hereof are incorporated by reference.

38. Admitted.

39. Admitted based upon information and belief.

40. Admitted.

41. The averments contained in Paragraph 41 constitute contentions or conclusions of law to which no response is required. Otherwise, the Township is without sufficient knowledge or information to form a belief as to whether Plaintiffs can or could meet UCC requirements for temporary or permanent permits for use of the existing trailers for treatment and therefore, proof thereof is requested at trial.

42. Admitted.

43. It is specifically denied that any administrative processes within the powers and authority of the Township have been improperly delayed or disrupted and/or that any injustice has been done to Plaintiffs.

44. The averments contained in Paragraph 44 of Plaintiffs' Complaint constitute contentions or conclusions of law to which no response is required. Otherwise, the averments pertain to the Planning Commission and not to the Township.

45. The averments contained in Paragraph 45 of Plaintiffs' Complaint constitute contentions or conclusions of law to which no response is required.

46. Admitted based on information and belief.

47. It is specifically denied that the “residential housing area” cited in the Planning Commission’s written decision was “a single rental residence”. To the contrary, multiple dwelling units exist within an area, the perimeter of which encroaches upon the prohibited area for operation of a methadone treatment facility under the §621 Restriction. It is also specifically denied that such residences are within a “commercial section” as the area is unregulated as to use and in actuality contains mixed usages.

48. The building referred to in Paragraph 19 of Plaintiffs’ Complaint was within five hundred (500’) feet of a residential housing area. The “new, larger structure” referred to in Paragraph 26 of Plaintiffs’ Complaint being the subject of Plaintiffs’ Application for Land Development approval would be within five hundred (500’) feet of a residential housing area.

49. The building referred to in Paragraph 19 of Plaintiffs’ Complaint was within five hundred (500’) feet of a residential housing area. The “new, larger structure” referred to in Paragraph 26 of Plaintiffs’ Complaint being the subject of Plaintiffs’ Application for Land Development approval would be within five hundred (500’) feet of a residential housing area.

50. The building referred to in Paragraph 19 of Plaintiffs’ Complaint was within five hundred (500’) feet of a residential housing area. The “new, larger structure” referred to in Paragraph 26 of Plaintiffs’ Complaint being the subject of Plaintiffs’ Application for Land Development approval would be within five hundred (500’) feet of a residential housing area.

51. The building referred to in Paragraph 19 of Plaintiffs’ Complaint was within five hundred (500’) feet of a residential housing area. The “new, larger structure” referred to in Paragraph 26 of Plaintiffs’ Complaint being the subject of Plaintiffs’ Application for Land Development approval would be within five hundred (500’) feet of a residential housing area.

52. The building referred to in Paragraph 19 of Plaintiffs’ Complaint was within five hundred (500’) feet of a public park. The “new, larger structure” referred to in Paragraph 26 of

Plaintiffs' Complaint being the subject of Plaintiffs' Application for Land Development approval would be within five hundred (500') feet of a public park.

53. The Rail Trail is publicly funded for use and enjoyment by the general public and is a lineal public park which is a part of the Pennsylvania Wilds initiative and the Susquehanna Greenway.

54. The averments contained in Paragraph 54 constitute contentions or conclusions of law to which no response is required. The building referred to in Paragraph 19 of Plaintiffs' Complaint was within five hundred (500') feet of a public park. The "new, larger structure" referred to in Paragraph 26 of Plaintiffs' Complaint being the subject of Plaintiffs' Application for Land Development approval would be within five hundred (500') feet of a public park.

55. The averments contained in Paragraph 55 constitute contentions or conclusions of law to which no response is required. The building referred to in Paragraph 19 of Plaintiffs' Complaint was within five hundred (500') feet of a public park. The "new, larger structure" referred to in Paragraph 26 of Plaintiffs' Complaint being the subject of Plaintiffs' Application for Land Development approval would be within five hundred (500') feet of a public park.

56. The averments contained in Paragraph 56 constitute contentions or conclusions of law to which no response is required. The building referred to in Paragraph 19 of Plaintiffs' Complaint was within five hundred (500') feet of a public park. The "new, larger structure" referred to in Paragraph 26 of Plaintiffs' Complaint being the subject of Plaintiffs' Application for Land Development approval would be within five hundred (500') feet of a public park.

57. The averments contained in Paragraph 57 constitute contentions or conclusions of law to which no response is required. The building referred to in Paragraph 19 of Plaintiffs' Complaint was within five hundred (500') feet of a public park. The "new, larger structure"

referred to in Paragraph 26 of Plaintiffs' Complaint being the subject of Plaintiffs' Application for Land Development approval would be within five hundred (500') feet of a public park.

58. It is specifically denied that any previous conclusion by Plaintiffs that the §621 Restriction would not be violated by its operation of a methadone treatment facility in the building destroyed by fire, the large and/or small trailer or the planned facility being the subject of its Application for Land Development gives rise to any vested rights or estoppel.

59. It is admitted that on October 28, 2002, the Township Secretary issued a building permit exemption for the "repair & remodel existing" building. It is specifically denied that the Township approved the use of the premises as a methadone treatment facility and/or that the Township had any legislation in effect at the time empowering it to pass on the use of the premises. It is admitted that no appeals were taken from the issuance of the "exemption" which merely confirmed that the renovation activities would not be within a flood zone.

60. The Township is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 60 and therefore, proof thereof is requested at trial. By further answer, any investment made by Plaintiffs was at risk given the existence and applicability of the §621 Restriction.

61. It is admitted that Township had been aware of operation of the methadone treatment clinic. The Township is without sufficient knowledge or information to form a belief as to the remaining allegations in Paragraph 61 and therefore, proof thereof is requested at trial.

62. It is specifically denied that no harm would result from and/or that the public interest would be served by a violation of the §621 Restriction.

63. It is specifically denied that enforcement of the §621 Restriction would be inequitable.

64. The averments contained in Paragraph 64 constitute contentions or conclusions of law to which no response is required. It is admitted that Guardian is the third party agency engaged by the Moshannon Valley Council of Governments for UCC administration and enforcement for its member municipalities, including the Township.

65. The averments contained in Paragraph 65 constitute contentions or conclusions of law to which no response is required. By way of further answer, the §621 Restriction by its terms prohibits the issuance of building or construction permits, occupancy permits or certificates of use for establishment or operation of a methadone treatment clinic within the specified area of prohibition.

66. The issuance of a building or construction permit, occupancy permit or certificate of use is prohibited by the §621 Restriction where the facility would be established or operated within the prohibited area. Moreover, §621(a)(2) prohibits operation "...whether or not an occupancy permit or certificate of use has been issued to the owner or operator of a methadone treatment facility for a location that is within five hundred (500') feet of..." a residential housing area or public park.

67. The averments contained in Paragraph 67 require no response.

68. The averments contained in Paragraph 68 require no response.

69. This Court previously denied Plaintiffs' request for a preliminary injunction. It is specifically denied that Plaintiffs are entitled to the permanent injunction requested.

70. The averments contained in Paragraph 70 constitute contentions or conclusions of law to which no response is required.

71. It is specifically denied that "no injury will result" from a violation of the §621 Restriction.

72. The averments contained in Paragraph 72 constitute contentions or conclusions of law to which no response is required. By way of further answer, the County and the Planning Commission are without sufficient knowledge to form a belief as to the truth of the averments contained in Paragraph 72 and therefore, proof thereof is requested at trial.

73. It is specifically denied that the Plaintiffs' right to relief is clear.

74. The averments contained in Paragraph 74 constitute contentions or conclusions of law to which no response is required.

WHEREFORE, the Township respectfully requests this Honorable Court to dismiss Plaintiffs' Complaint and deny the relief requested.

COUNTERCLAIM

1. As admitted in Paragraph 38 above, genuine controversy exists between the parties whether operation of the facility is prohibited by the §621 Restriction.

2. As admitted in Paragraph 39 above, there is an existing, open controversy between the parties on the applicability of the §621 Restriction to Plaintiffs' Application for Land Development.

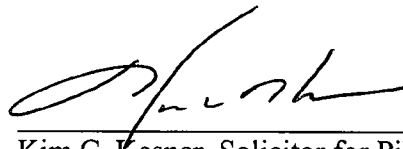
3. As admitted in Paragraph 40 above, there is an existing, open controversy between the parties on the applicability of the §621 Restriction to Plaintiffs' application for or interest in UCC permits to construct a new, larger structure and/or utilize the trailers for treatment and/or reconstruct the burnt building as a methadone treatment facility.

4. Aside from issues of the jurisdiction of the Township and/or Guardian, a genuine issue exists as to whether the §621 Restriction prohibits the operation of a methadone treatment facility in Plaintiffs' structures, previous, existing or proposed.

WHEREFORE, the Township requests this Court to:

1. Declare that there is a residential housing area within five hundred (500') feet of the burned building and/or proposed facility.
2. Declare that there is a public park within five hundred (500') feet of the burned building and/or proposed facility.
3. Declare that Plaintiffs' operation of a methadone treatment facility as proposed in any of their applications is prohibited by the §621 Restriction.
4. Grant such other relief as may be appropriate under the circumstances.

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'Kim C. Kesner', written over a horizontal line.

Kim C. Kesner, Solicitor for Pike Township
Supreme Ct. I.D. No. 28307

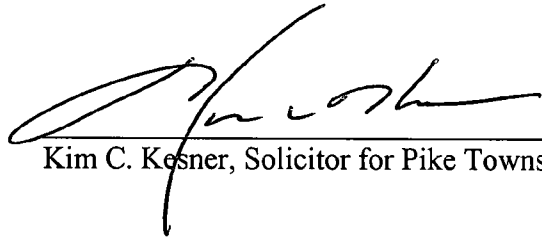
23 North Second Street
Clearfield, PA 16830
814-765-1706
814-765-7006 - facsimile

VERIFICATION

The undersigned verifies that he is the attorney for Pike Township, Defendant, named in the within action, that as such attorney he is authorized to make this verification, and that the statements made in the foregoing Answer & Counterclaim are true and correct, not from his own knowledge, but from the information supplied to him and believed to be true, and that this Verification is filed by him for the purposes of expediting this litigation, and in the event a Verification from Pike Township, Defendant, is required, same will be supplied. The undersigned understands that false statements made herein are subject to the penalties of 18 PA. C.S. 4904 relating to unsworn falsification to authorities.

Date: _____

8-4-06



Kim C. Kesner, Solicitor for Pike Township

CERTIFICATE OF SERVICE

AND NOW, I do hereby certify that on the 4th day of August, 2006, I caused to be served a true and correct copy of the Answer and Counterclaim of Pike Township to Complaint Seeking Declaratory Judgment by U.S. First Class Mail, Postage Prepaid upon the following:

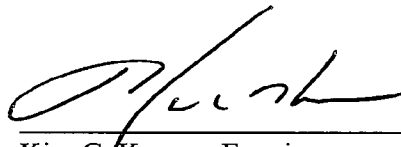
Carleton O. Strouss, Esquire
Kirkpatrick & Lockhart Nicholson Graham LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507
Counsel for Plaintiffs

Guardian Inspection Services, Inc.
5510 Memorial Boulevard
Tobyhanna, PA 18466

and

Mr. Brian Wruble
Guardian Inspection Services, Inc.
1739 Kiwanis Trail
DuBois, PA 15801

Date: 8-4-06



Kim C. Kesner, Esquire

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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,
Plaintiffs,

v.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC., and CLEARFIELD
COUNTY PLANNING COMMISSION,
Defendants

No. 06-1114-CD

Type of Case: Civil

Type of Pleading: Answer and Counterclaim
of Clearfield County and Clearfield County
Planning Commission to Complaint Seeking
Declaratory Judgment

Filed on behalf of: Defendants Clearfield
County and Clearfield County Planning
Commission

Counsel of Record for Clearfield County
and Clearfield County Planning
Commission:

Kim C. Kesner, Esquire
Supreme Ct. I.D. No. 28307

23 North Second Street
Clearfield, PA 16830
814-765-1706
814-765-7006 - facsimile

Other Counsel of Record:

Carleton O. Strouss, Esquire
Kirkpatrick & Lockhart Nicholson
Graham, LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507
(Counsel for Plaintiff)

FILED

AUG 04 2006

0/1:30/ was (GK)
William A. Shaw

Prothonotary/Clerk of Courts

2 CEN to Amy

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

DAVID L. PICCOLI, SR., and	:	No. 06-1114-CD
DISCOVERY HOUSE CU, INC.,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
CLEARFIELD COUNTY, PIKE	:	
TOWNSHIP, GUARDIAN INSPECTION	:	
SERVICES, INC., and CLEARFIELD	:	
COUNTY PLANNING COMMISSION,	:	
Defendants	:	

NOTICE

TO: David L. Piccoli, Sr. & Discovery House CU, Inc.
c/o Carleton O. Strouss, Esquire
Kirkpatrick & Lockhart Nicholson Graham LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507

You are hereby notified to file a written response to the enclosed Counterclaim within
twenty (20) days from service hereof or a judgment may be entered against you.

Kim C. Kesner, Esquire
Attorney for Defendants Clearfield
County and Clearfield County Planning
Commission
Supreme Ct. I.D. 28307
23 North Second Street
Clearfield, PA 16830
(814) 765-1706

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

DAVID L. PICCOLI, SR., and	:	No. 06-1114-CD
DISCOVERY HOUSE CU, INC.,	:	
Plaintiffs,	:	
	:	
v.	:	Type of Pleading: Answer and Counterclaim
	:	of Clearfield County and Clearfield County
CLEARFIELD COUNTY, PIKE	:	Planning Commission to Complaint Seeking
TOWNSHIP, GUARDIAN INSPECTION	:	Declaratory Judgment
SERVICES, INC., and CLEARFIELD	:	
COUNTY PLANNING COMMISSION,	:	
Defendants	:	

**ANSWER AND COUNTERCLAIM OF CLEARFIELD
COUNTY AND CLEARFIELD COUNTY
PLANNING COMMISSION TO COMPLAINT
SEEKING DECLARATORY JUDGMENT**

AND NOW, comes Clearfield County ("County") and the Clearfield County Planning Commission ("Planning Commission") by Kim C. Kesner, Esquire, County Solicitor and files the following to Plaintiffs' Complaint Seeking Declaratory Judgment ("Complaint").

ANSWER

1. The averments contained in Paragraph 1 of Plaintiffs' Complaint are admitted based on information and belief.

2. The averments contained in Paragraph 2 of Plaintiffs' Complaint are admitted based on information and belief.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. County and Planning Commission are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 10 and therefore, proof thereof at trial is requested.

11. County and Planning Commission are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 11 and therefore, proof thereof at trial is requested.

12. County and Planning Commission are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 12 and therefore, proof thereof at trial is requested.

13. County and Planning Commission are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 13 and therefore, proof thereof at trial is requested.

14. County and Planning Commission are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 14 and therefore, proof thereof at trial is requested.

15. County and Planning Commission are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 15 and therefore, proof thereof at trial is requested.

16. County and Planning Commission are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 16 and therefore, proof thereof at trial is requested.

17. County and Planning Commission are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 17 and therefore, proof thereof at trial is requested.

18. County and Planning Commission are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 18 and therefore, proof thereof at trial is requested.

19. County and Planning Commission are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 19 and therefore, proof thereof at trial is requested.

20. County and Planning Commission are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 20 and therefore, proof thereof at trial is requested.

21. County and Planning Commission are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 21 and therefore, proof thereof at trial is requested.

22. County and Planning Commission are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 22 and therefore, proof thereof at trial is requested.

23. County and Planning Commission are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 23 and therefore, proof thereof at trial is requested. By way of further answer, it is admitted that Plaintiffs' filed an Application for Land Development approval with the Planning Commission.

24. Admitted.

25. It is admitted that the Planning Commission disapproved Plaintiffs' Application for Land Development because the proposed development would violate §621 of the Pennsylvania Municipalities Planning Code, 53 P.S. §10621. Otherwise, County and Planning Commission are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 25 and therefore, proof thereof is requested at trial.

26. It is admitted that Plaintiffs' land development plan proposed a "new, larger structure" to replace the existing building. The balance of Paragraph 26 constitutes contentions or conclusions of law to which no response is required. To the extent that a response is required and is relevant, it is specifically denied that approval of Plaintiffs' land development plan was required by the Clearfield County Subdivision and Land Development Ordinance.

27. Admitted.

28. Admitted.

29. Admitted.

30. Admitted.

31. On July 17, 2006, Plaintiffs filed a Land Use Appeal with this Court challenging the Planning Commission's disapproval of Plaintiffs' Application for Land Development.

32. The averments contained in Paragraph 32 constitute contentions or conclusions of law to which no response is required. By way of further answer, the averments of Defendants' Counterclaim are incorporated herein whereby Defendants' seek a declaration that §621 prohibits Plaintiffs' operation of a methadone treatment facility on the Property.

33. County and Planning Commission are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 33 and therefore, proof thereof at trial is requested.

34. County and Planning Commission are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 34 and therefore, proof thereof at trial is requested.

35. The averments contained in Paragraph 35 constitute contentions or conclusions of law to which no response is required. Otherwise, County and Planning Commission are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 35 and therefore, proof thereof is requested at trial.

36. The averments contained in Paragraph 36 constitute contentions or conclusions of law to which no response is required.

37. The answers in Paragraphs 1 to 36 hereof are incorporated by reference.

38. Admitted.

39. Admitted.

40. Admitted.

41. The averments contained in Paragraph 41 constitute speculation and/or contentions or conclusions of law to which no response is required. Otherwise, County and Planning Commission are without sufficient knowledge or information to form a belief as to whether Plaintiffs can or could meet UCC requirements for temporary or permanent permits for use of the existing trailers for treatment and therefore, proof thereof is requested at trial.

42. Admitted.

43. County and the Planning Commission specifically deny that any planning or permitting processes have been improperly delayed or disrupted by the Planning Commission's proper consideration of the §621 Restriction or that any injustice has been done to Plaintiffs by the administration of proper procedures and the correct application of law.

44. The averments contained in Paragraph 44 of Plaintiffs' Complaint constitute contentions or conclusions of law to which no response is required. To the extent that a response is required and is relevant, it is specifically denied that the disapproval by the Planning Commission of Plaintiffs' Application for Land Develop constituted an error of law or an abuse of the Planning Commission's discretion.

45. The averments contained in Paragraph 45 of Plaintiffs' Complaint constitute contentions or conclusions of law to which no response is required.

46. Admitted.

47. It is specifically denied that the "residential housing area" cited in the Planning Commission's written decision was "a single rental residence". To the contrary, multiple dwelling units exist within an area, the perimeter of which encroaches upon the prohibited area for operation of a methadone treatment facility under the §621 Restriction. It is also specifically denied that such residences are within a "commercial section" as the area is unregulated as to use and in actuality contains mixed usages.

48. The building referred to in Paragraph 19 of Plaintiffs' Complaint was within five hundred (500') feet of a residential housing area. The "new, larger structure" referred to in Paragraph 26 of Plaintiffs' Complaint being the subject of Plaintiffs' Application for Land Development approval would be within five hundred (500') feet of a residential housing area.

49. The building referred to in Paragraph 19 of Plaintiffs' Complaint was within five hundred (500') feet of a residential housing area. The "new, larger structure" referred to in Paragraph 26 of Plaintiffs' Complaint being the subject of Plaintiffs' Application for Land Development approval would be within five hundred (500') feet of a residential housing area.

50. The building referred to in Paragraph 19 of Plaintiffs' Complaint was within five hundred (500') feet of a residential housing area. The "new, larger structure" referred to in

Paragraph 26 of Plaintiffs' Complaint being the subject of Plaintiffs' Application for Land Development approval would be within five hundred (500') feet of a residential housing area.

51. The building referred to in Paragraph 19 of Plaintiffs' Complaint was within five hundred (500') feet of a residential housing area. The "new, larger structure" referred to in Paragraph 26 of Plaintiffs' Complaint being the subject of Plaintiffs' Application for Land Development approval would be within five hundred (500') feet of a residential housing area.

52. The building referred to in Paragraph 19 of Plaintiffs' Complaint was within five hundred (500') feet of a public park. The "new, larger structure" referred to in Paragraph 26 of Plaintiffs' Complaint being the subject of Plaintiffs' Application for Land Development approval would be within five hundred (500') feet of a public park.

53. The Rail Trail is publicly funded for use and enjoyment by the general public and is a lineal public park which is a part of the Pennsylvania Wilds initiative and the Susquehanna Greenway.

54. The averments contained in Paragraph 54 constitute contentions or conclusions of law to which no response is required. By way of further answer, the building referred to in Paragraph 19 of Plaintiffs' Complaint was within five hundred (500') feet of a public park. The "new, larger structure" referred to in Paragraph 26 of Plaintiffs' Complaint being the subject of Plaintiffs' Application for Land Development approval would be within five hundred (500') feet of a public park.

55. The averments contained in Paragraph 55 constitute contentions or conclusions of law to which no response is required. By way of further answer, the building referred to in Paragraph 19 of Plaintiffs' Complaint was within five hundred (500') feet of a public park. The "new, larger structure" referred to in Paragraph 26 of Plaintiffs' Complaint being the subject of

Plaintiffs' Application for Land Development approval would be within five hundred (500') feet of a public park.

56. The averments contained in Paragraph 56 constitute contentions or conclusions of law to which no response is required. By way of further answer, the building referred to in Paragraph 19 of Plaintiffs' Complaint was within five hundred (500') feet of a public park. The "new, larger structure" referred to in Paragraph 26 of Plaintiffs' Complaint being the subject of Plaintiffs' Application for Land Development approval would be within five hundred (500') feet of a public park.

57. The averments contained in Paragraph 57 constitute contentions or conclusions of law to which no response is required. By way of further answer, the building referred to in Paragraph 19 of Plaintiffs' Complaint was within five hundred (500') feet of a public park. The "new, larger structure" referred to in Paragraph 26 of Plaintiffs' Complaint being the subject of Plaintiffs' Application for Land Development approval would be within five hundred (500') feet of a public park.

58. It is specifically denied that any previous conclusion by Plaintiffs that the §621 Restriction would not be violated by its operation of a methadone treatment facility in the building destroyed by fire, the large and/or small trailer or the planned facility being the subject of its Application for Land Development gives rise to any vested rights or estoppel.

59. County and Planning Commission are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 59 and therefore, proof thereof is requested at trial.

60. County and Planning Commission are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 60 and

therefore, proof thereof is requested at trial. By further answer, any investment made by Plaintiffs was at risk given the existence and applicability of the §621 Restriction.

61. It is admitted that County and the Planning Commission had been aware of operation of the methadone treatment clinic. The County and the Planning Commission are without sufficient knowledge or information to form a belief as to the remaining allegations in Paragraph 61 and therefore, proof thereof is requested at trial.

62. It is specifically denied that no harm would result from and/or that the public interest would be served by a violation of the §621 Restriction.

63. It is specifically denied that proper enforcement of the §621 Restriction would be inequitable.

64. The averments contained in Paragraph 64 constitute contentions or conclusions of law to which no response is required.

65. The averments contained in Paragraph 65 constitute contentions or conclusions of law to which no response is required. By way of further answer, the §621 Restriction by its terms prohibits the issuance of building or construction permits, occupancy permits or certificates of use for establishment or operation of a methadone treatment clinic within the specified area of prohibition.

66. The issuance of a building or construction permit, occupancy permit or certificate of use is prohibited by the §621 Restriction where the facility would be established or operated within the prohibited area. Moreover, §621(a)(2) prohibits operation "...whether or not an occupancy permit or certificate of use has been issued to the owner or operator of a methadone treatment facility for a location that is within five hundred (500') feet of..." a residential housing area or public park.

67. The averments contained in Paragraph 67 require no response.

68. The averments contained in Paragraph 68 require no response.

69. This Court previously denied Plaintiffs' request for a preliminary injunction. It is specifically denied that Plaintiffs are entitled to the permanent injunction requested.

70. The averments contained in Paragraph 70 constitute contentions or conclusions of law to which no response is required.

71. It is specifically denied that "no injury will result" from a violation of the §621 Restriction and that the status quo has been lawful.

72. The averments contained in Paragraph 72 constitute contentions or conclusions of law to which no response is required. By way of further answer, the County and the Planning Commission are without sufficient knowledge to form a belief as to the truth of the averments contained in Paragraph 72 and therefore, proof thereof is requested at trial.

73. It is specifically denied that the Plaintiffs' right to relief is clear.

74. The averments contained in Paragraph 74 constitute contentions or conclusions of law to which no response is required.

WHEREFORE, County and Planning Commission respectfully request this Honorable Court to dismiss Plaintiffs' Complaint and deny the relief requested.

COUNTERCLAIM

1. As admitted in Paragraph 38 above, genuine controversy exists between the parties whether operation of the facility is prohibited by the §621 Restriction.

2. As admitted in Paragraph 39 above, there is an existing, open controversy between the parties on the applicability of the §621 Restriction to Plaintiffs' Application for Land Development.

3. As admitted in Paragraph 40 above, there is an existing, open controversy between the parties on the applicability of the §621 Restriction to Plaintiffs' application for or

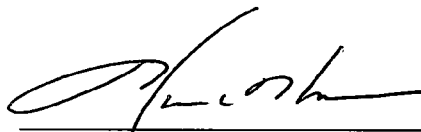
interest in UCC permits to construct a new, larger structure and/or utilize the trailers for treatment and/or reconstruct the burned building as a methadone treatment facility.

4. Aside from issues of the jurisdiction of the Planning Commission and/or Guardian, a genuine issue exists as to whether the §621 Restriction prohibits the operation of a methadone treatment facility on Plaintiffs' Property in previous, existing or proposed structures.

WHEREFORE, the County and the Planning Commission request this Court to:

1. Declare that there is a residential housing area within five hundred (500') feet of the burned building and/or proposed facility.
2. Declare that there is a public park within five hundred (500') feet of the burned building and/or proposed facility.
3. Declare that Plaintiffs' operation of a methadone treatment facility as proposed in any of their applications is prohibited by the §621 Restriction.
4. Grant such other relief as may be appropriate under the circumstances.

Respectfully submitted:



Kim C. Kesner, Solicitor for Clearfield
County and the Clearfield County Planning
Commission

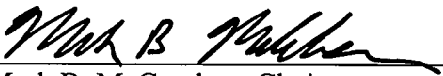
Supreme Ct. I.D. No. 28307

23 North Second Street
Clearfield, PA 16830
814-765-1706
814-765-7006 - facsimile

VERIFICATION

I, Mark B. McCracken, verify that I am the Chairman of the Board of Commissioners of Clearfield County, and as such am authorized and empowered to make this Verification and that the facts and circumstances contained in the foregoing Answer and Counterclaim as to Clearfield County are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: 8/4/06

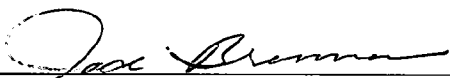


Mark B. McCracken, Chairman
Clearfield County Board of Commissioners

VERIFICATION

I, Jodi Brennan, verify that I am the Director of the Clearfield County Planning Commission, and as such am authorized and empowered to make this Verification and that the facts and circumstances contained in the foregoing Answer and Counterclaim as to Clearfield County Planning Commission are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: 8-4-06



Jodi Brennan, Director
Clearfield County Planning Commission

CERTIFICATE OF SERVICE

AND NOW, I do hereby certify that on the 4th day of August, 2006, I caused to be served a true and correct copy of the Answer and Counterclaim of Clearfield County and Clearfield County Planning Commission to Complaint Seeking Declaratory Judgment by U.S. First Class Mail, Postage Prepaid upon the following:

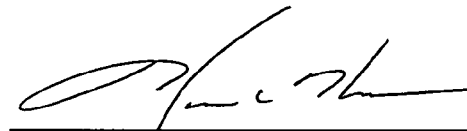
Carleton O. Strouss, Esquire
Kirkpatrick & Lockhart Nicholson Graham LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507
Counsel for Plaintiffs

Guardian Inspection Services, Inc.
5510 Memorial Boulevard
Tobyhanna, PA 18466

and

Mr. Brian Wruble
Guardian Inspection Services, Inc.
1739 Kiwanis Trail
DuBois, PA 15801

Date: 8-4-2006



Kim C. Kesner, Esquire

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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE, CU, INC.

-VS-

No. 06-1114-CD

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN
INSPECTION, INC., and
CLEARFIELD COUNTY PLANNING
COMMISSION

N O T I C E

In accordance with the Rules of Appellate Procedure, Rule 1922, Notice is hereby given that if no objections are made to the text of the transcript within five (5) days after such notice, the transcript in the above-captioned matter will become part of the record upon being filed in the Prothonotary's office.

DATE: 8/11/06

Thomas D. Snyder
Thomas D. Snyder, RPR
Official Court Reporter

FILED No cc
0/9:49
AUG 16 2006 (64)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101785

NO: 06-1114-CD

SERVICE # 1 OF 1

COMPLAINT SEEKING DECLARATORY JUDGMENT

al

PLAINTIFF: DAVID L. PICCOLI, SR. and DISCOVERY HOUSE CU, INC.

vs.

DEFENDANT: CLEARFIELD COUNTY, PIKE TOWNSHIP, GUARDIAN INSPECTION SERVICES, INC. and CLEARFIELD COUNTY PLANNING COMMISSION

SHERIFF RETURN

NOW, August 02, 2006, SHERIFF OF MONROE COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT SEEKING DECLARATORY JUDGMENT al ON GUARDIAN INSPECTION SERVICES, INC..

NOW, August 08, 2006 AT 1:50 PM SERVED THE WITHIN COMPLAINT SEEKING DECLARATORY JUDGMENT al ON GUARDIAN INSPECTION SERVICES, INC., DEFENDANT. THE RETURN OF MONROE COUNTY IS HERETO **ATTACHED** AND MADE PART OF THIS RETURN.

FILED

0/2.20 cm
AUG 17 2006

William A. Shaw
Prothonotary

SHERIFF'S OFFICE

MONROE COUNTY, PENNSYLVANIA

COURTHOUSE, STROUDSBURG, PA 18360

103-1 P 2:38

SHERIFF SERVICE PROCESS RECEIPT, and AFFIDAVIT OF RETURN

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE SHERIFF" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies. MCSO ENV.# G68255

1. PLAINTIFF/S/ David L. Piccoli, Sr. and Discovery House CU, Inc.		2. COURT NUMBER 06-1114-CD (Clearfield Co.)	
3. DEFENDANT/S/ Clearfield Co., Pike Township, Guardian Inspection Services, Inc. & Clearfield Co. Planning Com.		4. TYPE OF WRIT OR COMPLAINT Equity	
5. NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVICE OR DESCRIPTION OF PROPERTY TO BE LEVIED, ATTACHED OR SOLD. Guardian Inspection Services		PERSON IN CHARGE	
6. ADDRESS (Street or RFD, Apartment No., City, Boro, Twp., State and ZIP Code) 5510 Memorial Blvd., Tobyhanna, PA 18466			

SERVE

AT

7. SERVICE: ☐ PERSONAL ☒ PERSON IN CHARGE ☐ DEPUTIZE ☐ CERT. MAIL ☐ REGISTERED MAIL ☐ FIRST CLASS MAIL ☐ POSTED ☐ PUBLICATION

Now, _____, 19 __, I, SHERIFF OF MONROE COUNTY, PA, do hereby deputize the Sheriff of _____ County to execute this Writ and make return thereof according to law. This deputation being made at the request and risk of the plaintiff.


SHERIFF OF MONROE COUNTY

8. POSTING REQUIREMENT: TAX CODE# _____ PIN# _____

9. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE:

Do not send postcard.

NOTE ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN - Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, without liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction or removal of any such property before sheriff's sale thereof.

10. SIGNATURE of ATTORNEY or other ORIGINATOR requesting service on behalf of:  <input checked="" type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT	11. TELEPHONE NUMBER 717-231-4500	12. DATE 8-1-06
---	--------------------------------------	--------------------

SPACE BELOW FOR USE OF SHERIFF ONLY - DO NOT WRITE BELOW THIS LINE

13. I acknowledge receipt of the writ or complaint as indicated above.	SIGNATURE of Authorized MCSO Deputy or Clerk and Title EILEEN, CLERK	14. Date Received 7/13/06	15. Expiration/Hearing date 8/14/06
16. I hereby CERTIFY and RETURN that I <input type="checkbox"/> have personally served, <input checked="" type="checkbox"/> have served person in charge, <input type="checkbox"/> have legal evidence of service as shown in "Remarks" (on reverse) <input type="checkbox"/> have posted the above described property with the writ or complaint described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below by handing/or Posting a TRUE and ATTESTED COPY thereof.			

17. ☐ I hereby certify and return NO SERVICE because I am unable to locate the individual, company, corporation, etc., named above. (See remarks below)

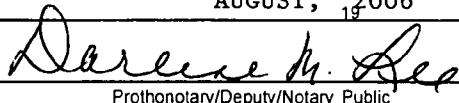
18. Name and title of individual served BILL WEBER	19. A person of suitable age and discretion then residing in the defendant's usual place of abode. <input type="checkbox"/> Read Order <input type="checkbox"/>
---	--

20. Address of where served (complete only if different than shown above) (Street or RFD, Apartment No., City, Boro, Twp., State and ZIP Code) SAME AS ABOVE (MUNICIPAL BUILDING)	21. Date of Service 8-8-06 TUES	22. Time 150 P
--	---------------------------------------	-------------------

23. ATTEMPTS	Date	Miles	Dept. Int.	Date	Miles	Dept. Int.	Date	Miles	Dept. Int.	Date	Miles	Dept. Int.	Date	Miles	Dept. Int.
24. Advance Costs \$150.00	25.	26.	27.	28. Total Costs \$31.90	29. COST DUE OR REFUND \$118.10										

AFFIRMED and subscribed to before me this 9TH

day of AUGUST, 2006


Prothonotary/Deputy/Notary Public

By (Sheriff/Dep. Sheriff) (Please Print or Type)
PETER E. KESSLER, DEPUTY SHERIFF
Signature of Sheriff

SHERIFF OF MONROE COUNTY

MY COMMISSION EXPIRES

I ACKNOWLEDGE RECEIPT OF THE SHERIFF'S RETURN SIGNATURE OF AUTHORIZED ISSUING AUTHORITY AND NOTARY PUBLIC

NOTARIAL SEAL
DARLENE M. LEE, Notary Public
Stroudsburg Boro, Monroe County
My Commission Expires July 7, 2007

30. Date Received

PROTHONOTARY

SHERIFF'S RETURN OF SERVICE

- () (1) The within _____
upon _____, the within named
defendant by mailing to _____
by certified _____ mail, return receipt requested, postage
prepaid, _____ on the _____
a true and attested copy thereof at _____

The return receipt signed by _____
defendant on the _____ is hereto attached and
made a part of this return.

- () (2) Outside the Commonwealth, pursuant to Pa. R.C.P. 405 (c) (1) (2), by mailing a true
and attested copy thereof at _____

in the following manner.

- () (a) To the defendant by () registered () certified mail, return receipt requested,
postage prepaid, addressee only on the _____
said receipt being returned NOT signed by defendant, but with a notation by the
Postal Authorities that Defendant refused to accept the same. The returned
receipt and envelope is attached hereto and made part of this return.
And thereafter:
- () (b) To the defendant by ordinary mail addressed to defendant at the same address, with
the return address of the Sheriff appearing thereon, on the _____

I further certify that after fifteen (15) days from the mailing date, I have not
received said envelope back from the Postal Authorities. A certificate of mailing
is hereto attached as a proof of mailing.

- () (3) By publication in the Monroe Legal Reporter, a weekly publication of general circulation
in the County of Monroe, Commonwealth of Pennsylvania, and the Pocono Record,
Inc., a daily newspaper published in the County of Monroe, Commonwealth of
Pennsylvania and having general circulation in said County for _____
successive weeks of _____

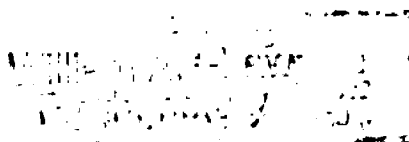
_____ The Affidavits
from said Monroe Legal Reporter and Pocono Record, Inc., are hereto attached and
made part of this return.

- () (4) By mailing to _____
by _____ mail, return receipt requested, postage prepaid,
_____ on the _____
a true and attested copy thereof at _____

The _____ returned by the Postal
Authorities marked _____
is hereto attached.

- () (5) Other _____

AUG 17 2003



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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,
Plaintiffs,

v.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC., and CLEARFIELD
COUNTY PLANNING COMMISSION,
Defendants.

No. 06-1114-CD

Type of Case: Civil

Type of Pleading: **Plaintiffs' Answer with
New Matter to Counterclaim of
Pike Township**

Filed on behalf of: Plaintiffs
David L. Piccoli, Sr., and
Discovery House CU, Inc.

Counsel of Record for David L. Piccoli, Sr., and
Discovery House CU, Inc.

Carleton O. Strouss, Esquire
PA Attorney I.D. No. 25994
Ruth E. Granfors, Esquire
PA Attorney I.D. No. 39508
KIRKPATRICK & LOCKHART
NICHOLSON GRAHAM LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507

Other Counsel of Record:

Kim C. Kesner, Esquire
23 N. Second Street
Clearfield, PA 16830-2438
*Counsel for Clearfield County, Clearfield
County Planning Commission, and
Pike Township*

Guardian Inspection Services, Inc.
5510 Memorial Boulevard
Tobyhanna, PA 18466
(No counsel of record)

FILED NO CC
m 11:01 AM
AUG 24 2006

William A. Shaw
Prothonotary/Clerk of Courts

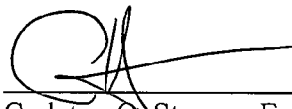
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID L. PICCOLI, SR., and	:	No. 06-1114-CD
DISCOVERY HOUSE CU, INC.,	:	
Plaintiffs,	:	
v.	:	
	:	
CLEARFIELD COUNTY, PIKE	:	
TOWNSHIP, GUARDIAN INSPECTION	:	
SERVICES, INC., and CLEARFIELD	:	
COUNTY PLANNING COMMISSION,	:	
Defendants.	:	

NOTICE TO PLEAD

TO: *Pike Township*
c/o Kim C. Kesner, Esquire
23 N. Second Street
Clearfield, PA 16830-2438

You are hereby notified to file a written response to the enclosed New Matter within
twenty (20) days from service hereof or a judgment may be entered against you.



Carleton O. Strauss, Esquire
PA Attorney I.D. No. 25994
Ruth E. Granfors, Esquire
PA Attorney I.D. No. 39508
KIRKPATRICK & LOCKHART
NICHOLSON GRAHAM LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507

*Counsel for Plaintiffs David L. Piccoli, Sr. and
Discovery House CU, Inc.*

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

DAVID L. PICCOLI, SR., and	:	No. 06-1114-CD
DISCOVERY HOUSE CU, INC.,	:	
Plaintiffs,	:	
v.	:	
	:	
CLEARFIELD COUNTY, PIKE	:	
TOWNSHIP, GUARDIAN INSPECTION	:	
SERVICES, INC., and CLEARFIELD	:	
COUNTY PLANNING COMMISSION,	:	
Defendants.	:	

**PLAINTIFFS' ANSWER WITH NEW MATTER TO
COUNTERCLAIM OF DEFENDANT PIKE TOWNSHIP**

AND NOW, come Plaintiffs by and true their undersigned counsel and present the following Answer with New Matter to the Counterclaim of Pike Township Seeking Declaratory Judgment ("Counterclaim"), as follows:

ANSWER

1. Admitted. By way of further answer, the operation of the Facility is not prohibited by the §621 Restriction.
2. Admitted. By way of further answer, the §621 Restriction does not apply to the Application for Land Development.
3. Admitted. By way of further answer, the §621 Restriction is not applicable to any UCC permits.
4. Denied as stated. It is admitted that a controversy exists as to whether the §621 Restriction prohibits the operation of a methadone treatment facility in Plaintiffs' structures, as

previously existing or proposed. By way of further answer, there is likewise an issue regarding the appropriate jurisdiction of Pike Township, Guardian Inspection Services, Inc., Clearfield County and/or the Clearfield County Planning Commission regarding the administration or enforcement of the §621 Restriction. By way of further answer, as a matter of both procedure and substance, the §621 Restriction is not applicable to the Premises or the Facility.

NEW MATTER

5. Prior to establishing the Facility, Piccoli and Discovery House made a good faith examination of the Premises and the surrounding community and concluded that the §621 Restriction was not applicable to the Facility.

6. Plaintiffs made appropriate inquiries regarding any land use restrictions applicable to the Premises and the Facility.

7. Piccoli and Discovery House inquired of Pike Township regarding whether there were any requirements that would govern its use of the property.

8. By letter dated June 7, 2002 and signed by the three Pike Township Supervisors and the Township Secretary, Pike Township informed Plaintiffs that "Pike Township, Clearfield County, Pennsylvania does not have zoning laws or ordinances governing the use of the property in Pike Township." The full text of said letter is incorporated herein by reference and attached hereto as Exhibit A.

9. The June 7, 2002 letter from Pike Township (Exhibit A) describes the addressee as "Addiction Treatment Center" demonstrating the Township's awareness of the services to be provided at the proposed Facility on the Premises.

10. On October 28, 2002, Piccoli received a building permit exemption from the Township in order to repair and remodel the Premises to accommodate the use as a methadone treatment facility. No appeal was taken from the grant of said exemption.

11. Piccoli and Discovery House made a substantial and unrecoverable investment in establishing the Facility on the Premises on the basis of a good faith belief that the use was lawful in all respects and, as demonstrated by its contentions in these proceedings, it still regards the use as lawful in all respects.

12. The Facility has been operated on the Premises since March, 2003, pursuant to a license issued by the Pennsylvania Department of Health, a circumstance of which all relevant governmental bodies and the public have been aware since that time.

13. No harm will result from the continued operation of the Facility on the Premises, and the public interest will be served by that continued use.

14. It would be inequitable to require the Facility to discontinue operations to the detriment of Piccoli, Discovery House and its patients.

15. Pike Township's Counterclaim is barred in whole or in part by the doctrine of laches.

16. Pike Township's Counterclaim is barred in whole or in part by the doctrines of estoppel or vested rights.

17. Pike Township's Counterclaim is barred in whole or in part by the doctrine of waiver.

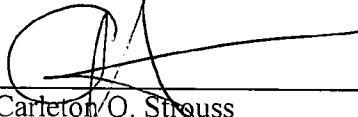
18. Pike Township's Counterclaim fails to state a claim on which relief can be granted.

WHEREFORE, the Plaintiffs respectfully request the Court to deny the Counterclaim of Pike Township. Plaintiffs further request the Court to order, as follows:

1. Declare that the §621 Restriction does not apply to the operation of the Facility on the Premises;
2. Declare that the §621 Restriction and Department of Health licensure requirements are not within the Defendants' scope of review of building or occupancy permits or land use approvals for the Facility;
3. Enjoin and restrain the Defendants, their agents and servants, from taking any action adverse to the Plaintiffs on the basis of the §621 Restriction;
4. Enjoin and restrain the Defendants, their agents and servants, from denying any land use approvals or building or occupancy permits on the basis of the §621 Restriction;
5. Enjoin and restrain the Defendants, their agents and servants, from taking any action (including but not limited to enforcement proceedings or citations of any kind), the direct or indirect effect of which would disrupt the ability of the Plaintiffs to provide methadone treatment services at the Facility pending further order of this Court;
6. Retain jurisdiction over the parties and this matter pending final resolution of any other land use or permitting issues arising from the Plaintiffs' efforts to maintain interim facilities and establish permanent facilities on the Premises through which the operations of the Facility may be continued.
7. Deny all relief sought by Pike Township's Counterclaim.

8. Grant such other relief as may be appropriate under the circumstances.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Carleton O. Strauss', written over a horizontal line.

Carleton O. Strauss

PA 25994

Ruth E. Granfors

PA 39508

Kirkpatrick & Lockhart Nicholson Graham LLP

17 North Second Street, 18th Floor

Harrisburg, PA 17101

717.231.4500

717.231.4501 (fax)

Counsel for Plaintiffs David L. Piccoli, Sr. and

Discovery House CU, Inc.

PIKE TOWNSHIP ROAD SUPERVISORS
BOX 219
CURWENSVILLE, PA 6833
TELEPHONE 814-236-0834
FAX 814-236-7414

June 7, 2002

Richard Froncillo
Discovery House
Addiction Treatment Center:

Please allow this letter to inform you that Pike Township, Clearfield County, Pennsylvania does not have zoning laws or ordinances governing the use of property in Pike Township.

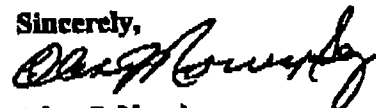
However, we do have two ordinances that must be satisfied before any development can be done.

- 1 The Federal Floodplain Management Act**
- 2 The Department of Environmental Protection Sewage Facilities Regulations.**

Also, please be advised that Clearfield County does have planning and sub-division regulations that must be adhered to. You may contact The Clearfield County Planning Committee by calling the county courthouse in Clearfield, PA.


If we can be of further assistance please contact our office.


Sincerely,




Olen J. Norris
Township Secretary

Pike Township Supervisors:

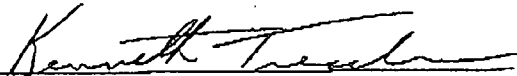
 **, Chairman**

 **, Vice Chairman**

 **, Supervisor**

VERIFICATION

I, Kenneth Tressler, declare that I am an authorized representative of Discovery House CU, Inc. and David L. Piccoli, Sr., and further declare that the facts set forth in Plaintiffs' Answer with New Matter to Counterclaim of Defendant Pike Township are true and correct to the best of my knowledge, information and belief, and I make this declaration subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.


Kenneth Tressler

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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,
Plaintiffs,

v.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC., and CLEARFIELD
COUNTY PLANNING COMMISSION,
Defendants.

Docket No. 06-1114-CD

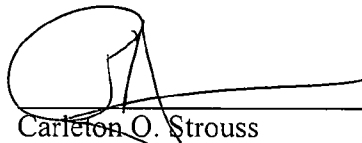
CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2006, I caused a copy of the foregoing Plaintiffs' Answer with New Matter to Counterclaim of Defendant Pike Township to be served upon the following via first class mail, postage prepaid addressed, as follows:

Kim C. Kesner, Esquire
23 North Second Street
Clearfield, PA 16830-2438
*Counsel for Clearfield County, Clearfield County Planning Commission
and Pike Township*

Guardian Inspection Services, Inc.
5510 Memorial Blvd.
Tobyhanna, PA 18466

Peter Vazquez, Esquire
Schwartz, Simon, et al.
10 James Street
Florham Park, NJ 07932
Counsel for Guardian Inspection Services, Inc.
(Not of Record)


Carleton O. Strauss
PA 25994
Kirkpatrick & Lockhart Nicholson Graham LLP
17 N. Second St., 18th Floor
Harrisburg, PA 17101
717.231.4500
717.231.4501 (fax)
*Counsel for Plaintiffs David L. Piccoli, Sr. and
Discovery House CU, Inc.*

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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,
Plaintiffs,

v.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC., and CLEARFIELD
COUNTY PLANNING COMMISSION,
Defendants.

No. 06-1114-CD

Type of Case: Civil

Type of Pleading: **Plaintiffs' Answer with
New Matter to Counterclaim of
Clearfield County and Clearfield County
Planning Commission**

Filed on behalf of: Plaintiffs
David L. Piccoli, Sr., and
Discovery House CU, Inc.

Counsel of Record for David L. Piccoli, Sr. and
Discovery House CU, Inc.

Carleton O. Strouss, Esquire
PA Attorney I.D. No. 25994
Ruth E. Granfors, Esquire
PA Attorney I.D. No. 39508
KIRKPATRICK & LOCKHART
NICHOLSON GRAHAM LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507

Other Counsel of Record:

Kim C. Kesner, Esquire
23 N. Second Street
Clearfield, PA 16830-2438
*Counsel for Clearfield County, Clearfield
County Planning Commission, and
Pike Township*

Guardian Inspection Services, Inc.
5510 Memorial Boulevard
Tobyhanna, PA 18466
(No counsel of record)

FILED ^{NO CC}
MTH: DNE
AUG 24 2006 (\$)

William A. Shaw
Prothonotary/Clerk of Courts

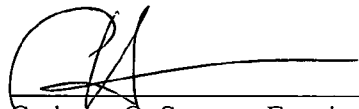
**IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

DAVID L. PICCOLI, SR., and	:	No. 06-1114-CD
DISCOVERY HOUSE CU, INC.,	:	
Plaintiffs,	:	
v.	:	
	:	
CLEARFIELD COUNTY, PIKE	:	
TOWNSHIP, GUARDIAN INSPECTION	:	
SERVICES, INC., and CLEARFIELD	:	
COUNTY PLANNING COMMISSION,	:	
Defendants.	:	

NOTICE TO PLEAD

TO: *Clearfield County and Clearfield County Planning Commission*
c/o Kim C. Kesner, Esquire
23 N. Second Street
Clearfield, PA 16830-2438

You are hereby notified to file a written response to the enclosed New Matter within
twenty (20) days from service hereof or a judgment may be entered against you.



Carleton O. Strauss, Esquire
PA Attorney I.D. No. 25994
Ruth E. Granfors, Esquire
PA Attorney I.D. No. 39508
KIRKPATRICK & LOCKHART
NICHOLSON GRAHAM LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507

*Counsel for Plaintiffs David L. Piccoli, Sr. and
Discovery House CU, Inc.*

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

DAVID L. PICCOLI, SR., and	:	No. 06-1114-CD
DISCOVERY HOUSE CU, INC.,	:	
Plaintiffs,	:	
v.	:	
	:	
CLEARFIELD COUNTY, PIKE	:	
TOWNSHIP, GUARDIAN INSPECTION	:	
SERVICES, INC., and CLEARFIELD	:	
COUNTY PLANNING COMMISSION,	:	
Defendants.	:	

**PLAINTIFFS' ANSWER WITH NEW MATTER TO
COUNTERCLAIM OF DEFENDANTS CLEARFIELD COUNTY AND
CLEARFIELD COUNTY PLANNING COMMISSION**

AND NOW, come Plaintiffs by and true their undersigned counsel and present the following Answer with New Matter to the Counterclaim of Clearfield County and Clearfield County Planning Commission Seeking Declaratory Judgment ("Counterclaim"), as follows:

ANSWER

1. Admitted. By way of further answer, the operation of the Facility is not prohibited by the §621 Restriction.
2. Admitted. By way of further answer, the §621 Restriction does not apply to the Application for Land Development.
3. Admitted. By way of further answer, the §621 Restriction is not applicable to any UCC permits.
4. Denied as stated. It is admitted that a controversy exists as to whether the §621 Restriction prohibits the operation of a methadone treatment facility in Plaintiffs' structures, as

previously existing or proposed. By way of further answer, there is likewise an issue regarding the appropriate jurisdiction of Pike Township, Guardian Inspection Services, Inc., Clearfield County and/or the Clearfield County Planning Commission regarding the administration or enforcement of the §621 Restriction. By way of further answer, as a matter of both procedure and substance, the §621 Restriction is not applicable to the Premises or the Facility.

NEW MATTER

5. Prior to establishing the Facility, Piccoli and Discovery House made a good faith examination of the Premises and the surrounding community and concluded that the §621 Restriction was not applicable to the Facility.

6. Plaintiffs made appropriate inquiries regarding any land use restrictions applicable to the Premises and the Facility.

7. Piccoli and Discovery House inquired of Pike Township regarding whether there were any requirements that would govern its use of the property.

8. By letter dated June 7, 2002 and signed by the three Pike Township Supervisors and the Township Secretary, Pike Township informed Plaintiffs that "Pike Township, Clearfield County, Pennsylvania does not have zoning laws or ordinances governing the use of the property in Pike Township." The full text of said letter is incorporated herein by reference and attached hereto as Exhibit A.

9. The June 7, 2002 letter from Pike Township (Exhibit A) describes the addressee as "Addiction Treatment Center" demonstrating the Township's awareness of the services to be provided at the proposed Facility on the Premises.

10. On October 28, 2002, Piccoli received a building permit exemption from the Township in order to repair and remodel the Premises to accommodate the use as a methadone treatment facility. No appeal was taken from the grant of said exemption.

11. Piccoli and Discovery House made a substantial and unrecoverable investment in establishing the Facility on the Premises on the basis of a good faith belief that the use was lawful in all respects and, as demonstrated by its contentions in these proceedings, it still regards the use as lawful in all respects.

12. The Facility has been operated on the Premises since March, 2003, pursuant to a license issued by the Pennsylvania Department of Health, a circumstance of which all relevant governmental bodies and the public have been aware since that time.

13. No harm will result from the continued operation of the Facility on the Premises, and the public interest will be served by that continued use.

14. It would be inequitable to require the Facility to discontinue operations to the detriment of Piccoli, Discovery House and its patients.

15. The Counterclaims of Clearfield County and the Clearfield County Planning Commission are barred in whole or in part by the doctrine of laches.

16. The Counterclaims of Clearfield County and the Clearfield County Planning Commission are barred in whole or in part by the doctrines of estoppel or vested rights.

17. The Counterclaims of Clearfield County and the Clearfield County Planning Commission are barred in whole or in part by the doctrine of waiver.


18. The Counterclaims of Clearfield County and the Clearfield County Planning Commission fail to state claims upon which relief can be granted.

WHEREFORE, the Plaintiffs respectfully request the Court to deny the Counterclaim of Clearfield County and Clearfield County Planning Commission. Plaintiffs further request the Court to order, as follows:

1. Declare that the §621 Restriction does not apply to the operation of the Facility on the Premises;
2. Declare that the §621 Restriction and Department of Health licensure requirements are not within the Defendants' scope of review of building or occupancy permits or land use approvals for the Facility;
3. Enjoin and restrain the Defendants, their agents and servants, from taking any action adverse to the Plaintiffs on the basis of the §621 Restriction;
4. Enjoin and restrain the Defendants, their agents and servants, from denying any land use approvals or building or occupancy permits on the basis of the §621 Restriction;
5. Enjoin and restrain the Defendants, their agents and servants, from taking any action (including but not limited to enforcement proceedings or citations of any kind), the direct or indirect effect of which would disrupt the ability of the Plaintiffs to provide methadone treatment services at the Facility pending further order of this Court;
6. Retain jurisdiction over the parties and this matter pending final resolution of any other land use or permitting issues arising from the Plaintiffs' efforts to maintain interim facilities and establish permanent facilities on the Premises through which the operations of the Facility may be continued.
7. Deny all relief sought by Defendants' Counterclaims.

8. Grant such other relief as may be appropriate under the circumstances.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'C. Strauss', written over a horizontal line.

Carleton Q. Strauss

PA 25994

Ruth E. Granfors

PA 39508

Kirkpatrick & Lockhart Nicholson Graham LLP

17 North Second Street, 18th Floor

Harrisburg, PA 17101

717.231.4500

717.231.4501 (fax)

Counsel for Plaintiffs David L. Piccoli, Sr. and

Discovery House CU, Inc.

A

PIKE TOWNSHIP ROAD SUPERVISORS
BOX 219
CURWENSVILLE, PA 6833
TELEPHONE 814-236-0834
FAX 814-236-7414

June 7, 2002

Richard Froncillo
Discovery House
Addiction Treatment Center:

Please allow this letter to inform you that Pike Township, Clearfield County, Pennsylvania does not have zoning laws or ordinances governing the use of property in Pike Township.

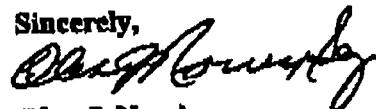
However, we do have two ordinances that must be satisfied before any development can be done.

- 1 The Federal Floodplain Management Act**
- 2 The Department of Environmental Protection Sewage Facilities Regulations.**

Also, please be advised that Clearfield County does have planning and sub-division regulations that must be adhered to. You may contact The Clearfield County Planning Committee by calling the county courthouse in Clearfield, PA.

If we can be of further assistance please contact our office.


Sincerely,



Olen J. Norris
Township Secretary

Pike Township Supervisors:

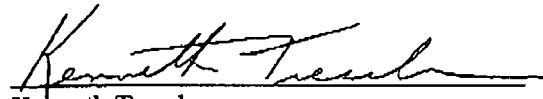
 **, Chairman**

 **, Vice Chairman**

 **, Supervisor**

VERIFICATION

I, Kenneth Tressler, declare that I am an authorized representative of Discovery House CU, Inc. and David L. Piccoli, Sr., and further declare that the facts set forth in Plaintiffs' Answer with New Matter to Counterclaim of Defendants Clearfield County and Clearfield County Planning Commission are true and correct to the best of my knowledge, information and belief, and I make this declaration subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.


Kenneth Tressler

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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,
Plaintiffs,

v.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC., and CLEARFIELD
COUNTY PLANNING COMMISSION,
Defendants.

Docket No. 06-1114-CD

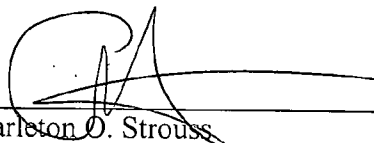
CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2006, I caused a copy of the foregoing Plaintiffs' Answer with New Matter to Counterclaim of Defendant Clearfield County and Clearfield County Planning Commission to be served upon the following via first class mail, postage prepaid addressed, as follows:

Kim C. Kesner, Esquire
23 North Second Street
Clearfield, PA 16830-2438
*Counsel for Clearfield County, Clearfield County Planning Commission
and Pike Township*

Guardian Inspection Services, Inc.
5510 Memorial Blvd.
Tobyhanna, PA 18466

Peter Vazquez, Esquire
Schwartz, Simon, et al.
10 James Street
Florham Park, NJ 07932
Counsel for Guardian Inspection Services, Inc.
(Not of Record)


Carleton O. Strouss
PA 25994
Kirkpatrick & Lockhart Nicholson Graham LLP
17 N. Second St., 18th Floor
Harrisburg, PA 17101
717.231.4500 (phone) 717.231.4501 (fax)
*Counsel for Plaintiffs David L. Piccoli, Sr. and
Discovery House CU, Inc.*

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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,
Plaintiffs,

v.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC., and CLEARFIELD
COUNTY PLANNING COMMISSION,
Defendants

No. 06-1114-CD

Type of Case: Civil

Type of Pleading: Reply of Defendants
Clearfield County and Clearfield County
Planning Commission to Plaintiffs' New
Matter to Counterclaim

Filed on behalf of: Defendants Clearfield
County and Clearfield County Planning
Commission

Counsel of Record for Clearfield County
and Clearfield County Planning
Commission:

Kim C. Kesner, Esquire
Supreme Ct. I.D. No. 28307

23 North Second Street
Clearfield, PA 16830
814-765-1706
814-765-7006 - facsimile

Other Counsel of Record:

Carleton O. Strouss, Esquire
Kirkpatrick & Lockhart Nicholson
Graham, LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507
(Counsel for Plaintiff)

FILED 5cc
01:46:01
SEP 11 2006
Att'y Kesner

William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID L. PICCOLI, SR., and	:	No. 06-1114-CD
DISCOVERY HOUSE CU, INC.,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
CLEARFIELD COUNTY, PIKE	:	
TOWNSHIP, GUARDIAN INSPECTION	:	
SERVICES, INC., and CLEARFIELD	:	
COUNTY PLANNING COMMISSION,	:	
Defendants	:	

REPLY OF DEFENDANTS CLEARFIELD
COUNTY AND CLEARFIELD COUNTY
PLANNING COMMISSION TO PLAINTIFFS'
NEW MATTER TO COUNTERCLAIM

AND NOW, comes Clearfield County and the Clearfield County Planning Commission ("Defendants") by Kim C. Kesner, Esquire, County Solicitor who file the following Reply to Plaintiffs' New Matter to the Counterclaim of Clearfield County and the Clearfield County Planning Commission ("New Matter" and "Counterclaim" respectively):

5. Defendants are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 5 of Plaintiffs' New Matter and therefore, strict proof at trial is requested. By way of further reply, Plaintiffs' subjective believe as to the applicability of the §621 Restriction is not relevant or material.

6. Defendants are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 6 of Plaintiffs' New Matter and therefore, strict proof at trial is requested.

7. Defendants are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 7 of Plaintiffs' New Matter and therefore, strict proof at trial is requested.

8. Subject to authentication and proof, Exhibit "A" speaks for itself. By way of further reply, Defendants are without sufficient knowledge or information of any correspondence or communication between Plaintiffs and the Pike Township Supervisors and Township Secretary and, therefore, strict proof thereof at trial is requested.

9. Subject to authentication and proof, Exhibit "A" speaks for itself. By way of further reply, Defendants are without sufficient knowledge or information of any correspondence or communication between Plaintiffs and the Pike Township Supervisors and Township Secretary and, therefore, strict proof thereof at trial is requested.

10. Defendants are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 10 and therefore, strict proof at trial is requested.

11. Defendants are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 11 of Plaintiffs' New Matter and therefore, strict proof at trial is requested. By way of further reply, it is averred that any investment made by Plaintiffs was at risk.

12. It is admitted that the Facility has operated on the Premises since on or about March 2002. Defendants are without sufficient knowledge or information to form a belief as to the truth of the averments regarding licensure and therefore strict proof at trial is requested.

13. It is specifically denied that no harm will result and/or that the public interest will be served by operation of the Facility on the Premises in violation of the §621 Restriction.

14. It is specifically denied that it would be inequitable to require the Facility to comply with the §621 Restriction.

15. The averments contained in Paragraph 15 of Plaintiffs' New Matter constitute contentions or conclusions of law to which no response is required.

16. The averments contained in Paragraph 16 of Plaintiffs' New Matter constitute contentions or conclusions of law to which no response is required.

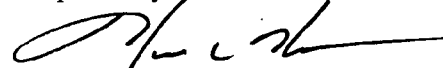
17. The averments contained in Paragraph 17 of Plaintiffs' New Matter constitute contentions or conclusions of law to which no response is required.

18. The averments contained in Paragraph 18 of Plaintiffs' New Matter constitute contentions or conclusions of law to which no response is required.

WHEREFORE, Defendants request this Court, upon Defendants' Counterclaims, to:

1. Declare that there is a residential housing area within five hundred (500') feet of the burned building and/or proposed facility.
2. Declare that there is a public park within five hundred (500') feet of the burned building and/or proposed facility.
3. Declare that Plaintiffs' operation of a methadone treatment facility as proposed in any of their applications is prohibited by the §621 Restriction.
4. Grant such other relief as may be appropriate under the circumstances.

Respectfully submitted:




Kim C. Kesner, Solicitor for Clearfield
County and the Clearfield County Planning
Commission

Supreme Ct. I.D. No. 28307
23 North Second Street
Clearfield, PA 16830
814-765-1706
814-765-7006 - facsimile

VERIFICATION

I, Mark B. McCracken, verify that I am the Chairman of the Board of Commissioners of Clearfield County, and as such am authorized and empowered to make this Verification and that the facts and circumstances contained in the foregoing Reply as to Clearfield County are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: 9/8/06



Mark B. McCracken, Chairman
Clearfield County Board of Commissioners

VERIFICATION

I, Jodi Brennan, verify that I am the Director of the Clearfield County Planning Commission, and as such am authorized and empowered to make this Verification and that the facts and circumstances contained in the foregoing Reply as to Clearfield County Planning Commission are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: 9/11/06


Jodi Brennan, Director
Clearfield County Planning Commission

CERTIFICATE OF SERVICE

AND NOW, I do hereby certify that on the 11th day of September, 2006, I caused to be served a true and correct copy of the Reply of Defendants Clearfield County and the Clearfield County Planning Commission to Plaintiffs' New Matter to Counterclaim by U.S. First Class Mail, Postage Prepaid upon the following:

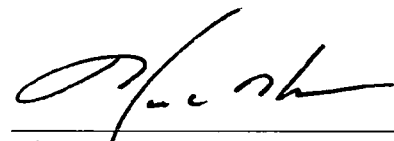
Carleton O. Strouss, Esquire
Kirkpatrick & Lockhart Nicholson Graham LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507
Counsel for Plaintiffs

Guardian Inspection Services, Inc.
5510 Memorial Boulevard
Tobyhanna, PA 18466

and

Mr. Brian Wruble
Guardian Inspection Services, Inc.
1739 Kiwanis Trail
DuBois, PA 15801

Date: 9-11-06



Kim C. Kesner, Esquire

William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID L. PICCOLI, SR., and	:	No. 06-1114-CD
DISCOVERY HOUSE CU, INC.,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
CLEARFIELD COUNTY, PIKE	:	
TOWNSHIP, GUARDIAN INSPECTION	:	
SERVICES, INC., and CLEARFIELD	:	
COUNTY PLANNING COMMISSION,	:	
Defendants	:	

REPLY OF DEFENDANT PIKE TOWNSHIP
TO PLAINTIFFS' NEW MATTER TO COUNTERCLAIM

AND NOW, comes Pike Township ("Defendant") by Kim C. Kesner, Esquire, Township Solicitor who file the following Reply to Plaintiffs' New Matter to the Counterclaim of Pike Township ("New Matter" and "Counterclaim" respectively):

5. Defendants are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 5 of Plaintiffs' New Matter and therefore, strict proof at trial is requested. By way of further reply, Plaintiffs' subjective believe as to the applicability of the §621 Restriction is not relevant or material.

6. Defendants are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 6 of Plaintiffs' New Matter and therefore, strict proof at trial is requested.

7. It is admitted that Richard Froncillo contacted Defendant and requested information on applicable zoning laws or ordinances on behalf of an entity he referred to as "Discovery House". Defendant is without sufficient knowledge or information to form a belief as to any agency he may have had with Plaintiffs and strict proof thereof at trial is requested. It

is specifically denied that Mr. Froncillo or anyone else on behalf of or connected with Plaintiffs fully or adequately described the Facility or Plaintiffs' intent to provide methadone treatment on the Premises. To the contrary, the Pike Township Supervisors and the Township Secretary were informed that the Facility would treat medical patients who had become addicted to pain killers.

8. Admitted.

9. It is admitted that the June 7, 2002 letter uses the reference "Addiction Treatment Center". It is specifically denied that Mr. Froncillo or anyone else on behalf of or connected with Plaintiffs fully or adequately described the Facility or Plaintiffs' intent to provide methadone treatment on the Premises. To the contrary, the Pike Township Supervisors and the Township Secretary were informed that the Facility would treat medical patients who had become addicted to pain killers.

10. Admitted. By way of further reply, Defendant's answers to Plaintiffs' Complaint, including by way of illustration but not limitation Paragraph 11, 12 and 59 are incorporated herein by reference as if set forth verbatim.

11. Defendant is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 11 of Plaintiffs' New Matter and therefore, strict proof at trial is requested. By way of further reply, it is averred that any investment made by Plaintiffs was at risk.

12. It is admitted that the Facility has operated on the Premises since on or about March 2002. Defendant is without sufficient knowledge or information to form a belief as to the truth of the averments regarding licensure and therefore strict proof at trial is requested.

13. It is specifically denied that no harm will result and/or that the public interest will be served by operation of the Facility on the Premises in violation of the §621 Restriction.

14. It is specifically denied that it would be inequitable to require the Facility to comply with the §621 Restriction.

15. The averments contained in Paragraph 15 of Plaintiffs' New Matter constitute contentions or conclusions of law to which no response is required.

16. The averments contained in Paragraph 16 of Plaintiffs' New Matter constitute contentions or conclusions of law to which no response is required.


17. The averments contained in Paragraph 17 of Plaintiffs' New Matter constitute contentions or conclusions of law to which no response is required.

18. The averments contained in Paragraph 18 of Plaintiffs' New Matter constitute contentions or conclusions of law to which no response is required.

WHEREFORE, the Defendant requests this Court, upon Defendant's Counterclaims, to:

1. Declare that there is a residential housing area within five hundred (500') feet of the burned building and/or proposed facility.
2. Declare that there is a public park within five hundred (500') feet of the burned building and/or proposed facility.
3. Declare that Plaintiffs' operation of a methadone treatment facility as proposed in any of their applications is prohibited by the §621 Restriction.
4. Grant such other relief as may be appropriate under the circumstances.

Respectfully submitted:



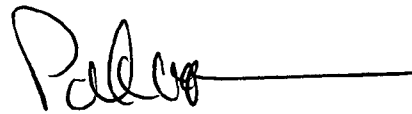
Kim C. Kesner, Solicitor for Pike Township
Supreme Ct. I.D. No. 28307

23 North Second Street
Clearfield, PA 16830
814-765-1706
814-765-7006 – facsimile

VERIFICATION

I, Patrick B. Morgan, verify that I am the Chairman of the Board of Supervisors of Pike Township, and as such am authorized and empowered to make this Verification and that the facts and circumstances contained in the foregoing Reply are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: 9-11-06

A handwritten signature in dark ink, appearing to read 'P. Morgan', followed by a horizontal line.

Patrick B. Morgan, Chairman
Pike Township Board of Supervisors

CERTIFICATE OF SERVICE

AND NOW, I do hereby certify that on the 11th day of September, 2006, I caused to be served a true and correct copy of the Reply of Defendant Pike Township to Plaintiffs' New Matter to Counterclaim by U.S. First Class Mail, Postage Prepaid upon the following:

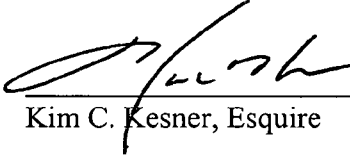
Carleton O. Strouss, Esquire
Kirkpatrick & Lockhart Nicholson Graham LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507
Counsel for Plaintiffs

Guardian Inspection Services, Inc.
5510 Memorial Boulevard
Tobyhanna, PA 18466

and

Mr. Brian Wruble
Guardian Inspection Services, Inc.
1739 Kiwanis Trail
DuBois, PA 15801

Date: 9-11-06



Kim C. Kesner, Esquire

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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,
Plaintiffs,

v.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC., and CLEARFIELD
COUNTY PLANNING COMMISSION,
Defendants

No. 06-1114-CD

Type of Case: Civil

Type of Pleading: Motion for Special Relief
(Injunction)

Filed on behalf of: Defendant Pike
Township

Counsel of Record for Pike Township

Kim C. Kesner, Esquire
Supreme Ct. I.D. No. 28307

23 North Second Street
Clearfield, PA 16830
814-765-1706
814-765-7006 - facsimile

Other Counsel of Record:

Carleton O. Strouss, Esquire
Kirkpatrick & Lockhart Nicholson
Graham, LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507
(Counsel for Plaintiff)

FILED 4cc AHK
0/9:45 am Kesner
DEC 29 2006 

William A. Shaw
Prothonotary/Clerk of Courts

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,
Plaintiffs,

V.

MOTION FOR SPECIAL RELIEF (INJUNCTION)

AND NOW, comes Defendant, Pike Township (“Township”) by its Solicitor Kim C. Kesner, Esquire, and files this Motion for Special Relief (Injunction) in accordance with Pa.R.Civ.P., Rule 1531 and in support hereof avers as follows:

1. As averred in Plaintiffs' Complaint, on January 17, 2006, fire destroyed the structure in Pike Township, Clearfield County operated by Discovery House as a methadone treatment facility. Plaintiffs' Complaint Paragraphs 7 and 19.

2. As averred in Plaintiffs' Complaint, from January 17, 2006 Discovery House as a temporary solution has served its patients in two (2) trailers while it pursued plans to rebuild a permanent building on the property. Plaintiffs' Complaint Paragraph 23.

3. As averred in Plaintiffs' Complaint, Plaintiffs filed two (2) Applications for Occupancy Permits for use of the trailer for treatment "as interim solutions to the disruption caused by the fire." Plaintiffs' Complaint Paragraph 23.

4. Plaintiffs' two Building Occupancy Permit Applications were dated May 16, 2006.

5. At all times material to this Motion, Defendant Pike Township was responsible under the Act for administration of the Uniform Construction Code.

6. At all times material to this Motion, Defendant Guardian Inspection Services, Inc. acted as a building code official under the Act on behalf of the Moshannon Valley Council of Governments, Pike Township's agent for administration of the Uniform Construction Code.

7. Defendant Pike Township believes and therefore avers that subsequent to May 16, 2006, Defendant Guardian Inspection Service, Inc. advised Plaintiffs that continued occupation and use of the trailers as a methadone treatment facility violated the Act and Uniform Commercial Code Regulations.

8. On July 27, 2006, Defendant Guardian Inspection Services, issued an "Order to Vacate" to Plaintiffs.

9. On August 25, 2006, Plaintiffs filed an appeal of this action with the Board of Appeals of the Moshannon Valley Council of Governments, Pike Township's agent for administration of the Pennsylvania Construction Code Act, Act 45 of 1999, 35 P.S. §7210.101 et seq. ("Act")

10. Uniform Construction Code Regulations promulgated by the Pennsylvania Department of Labor & Industry by authority of the Act require that such an appeal be heard within sixty (60) days. See 34 Pa. Code §403.122(e).

11. Defendant Pike Township believes and therefore avers that Plaintiffs contend that any enforcement of the "Order to Vacate" is suspended by 34 Pa. Code §403.122(c) of the

Uniform Construction Code Regulations pending the Moshannon Valley Council of Governments Board of Appeals disposition of the appeal on the merits.

12. §403.122(c) of the Regulations provides, in pertinent part, that “(a)n appeal or request for variance or extension of time to a board of appeals will automatically suspend an action to enforce an order to correct until the matter is resolved.” Emphasis added.

13. Defendant Pike Township respectfully contends that the “Order to Vacate” is not an “order to correct” within §403.122(c) of the Regulations and/or that enforcement of the “Order to Vacate” was not suspended or stayed as a matter of law by the filing of the appeal.

14. Upon information received, Defendant Pike Township avers that Plaintiffs requested and were granted by the Moshannon Valley Council of Governments an extension through December 20, 2006 of the 60-day time period within which its appeal was required to be heard by the Board of Appeals.

15. Upon information received, Pike Township avers that no appeal hearing was held by the Moshannon Valley Council of Governments on or before December 20, 2006.

16. Upon information received, Pike Township avers that by correspondence dated December 15, 2006, Plaintiffs requested a further indefinite extension of the 60-day time period within which the appeal (filed August 25, 2006) is required to be heard by the Board of Appeals.

17. Defendant Pike Township believes and therefore avers that no action has been taken by the Moshannon Valley Council of Governments on this request.

18. Defendant Pike Township respectfully contends that Plaintiffs’ operation of the trailers as a methadone treatment facility since at least July 27, 2006 has been unlawful and/or in violation of the Pennsylvania Construction Code Act and/or the Uniform Construction Code Regulations in that:

- a. Continued occupation and use of the trailers as a methadone treatment facility is in violation of Guardian Inspection Services lawful "Order to Vacate";
- b. The Order to Vacate was not suspended or stayed by Plaintiffs' Appeal to the Board of Appeals;
- c. Plaintiffs' use and occupation of the two trailers was permissible only for a temporary 180 day time after the fire;
- d. Plaintiffs' occupation and use of the trailers as a methadone treatment facility has been without any permit or authority under the Pennsylvania Construction Code Act and/or Uniform Construction Code Regulations which prohibit use or occupation of a structure without a certificate of occupancy issued by a building code official.

19. Defendant Pike Township avers that it has no adequate remedy at law to cease the continuing illegal occupation and operation of the methadone treatment facility and/or that it is entitled to an injunction of Plaintiffs' violations as a matter of law.

20. Defendant Pike Township believes and therefore avers that neither the Moshannon Valley Council of Governments or Guardian Inspection Services, Inc., plan any enforcement action of the "Order to Vacate" and/or any other effective action to cease or limit Plaintiffs' unlawful occupation and use of the trailers.

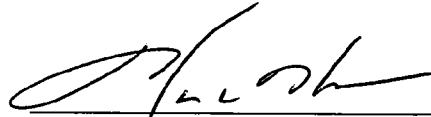
WHEREFORE, Defendant Pike Township respectfully requests this Honorable Court, after written notice and hearing, as required by Pa.R.Civ.P., Rule 1531 to order, as follows:

1. Enjoin and restrain the Plaintiffs from further use and occupation of the two trailers as a methadone treatment facility without the issuance of

certificates of occupancy issued by a building code official under the
Pennsylvania Construction Code Act;

2. Grant such other relief as may be appropriate under the circumstances.

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'Kim C. Kesner', written over a horizontal line.

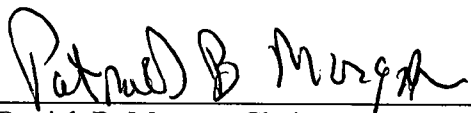
Kim C. Kesner, Solicitor for Pike Township
Supreme Ct. I.D. No. 28307

23 North Second Street
Clearfield, PA 16830
814-765-1706
814-765-7006 – facsimile

VERIFICATION

I, Patrick B. Morgan, verify that I am the Chairman of the Board of Supervisors of Pike Township, and as such am authorized and empowered to make this Verification and that the facts and circumstances contained in the foregoing Motion are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: 12-29-06



Patrick B. Morgan, Chairman
Pike Township Board of Supervisors

A

No. 06-1114-CD

Type of Case: Civil

Type of Pleading: Order

Filed on behalf of: Defendant Pike Township

Counsel of Record for Pike Township

Kim C. Kesner, Esquire
Supreme Ct. I.D. No. 28307

23 North Second Street
Clearfield, PA 16830
814-765-1706
814-765-7006 - facsimile

Other Counsel of Record:

Carleton O. Strouss, Esquire
Kirkpatrick & Lockhart Nicholson
Graham, LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507
(Counsel for Plaintiff)

FILED 4CC
01/04/00 (SD)
JAN 02 2001 (RS) Atty Kesner

William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,
Plaintiffs,

No. 06-1114-CD

v.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC., and CLEARFIELD
COUNTY PLANNING COMMISSION,
Defendants

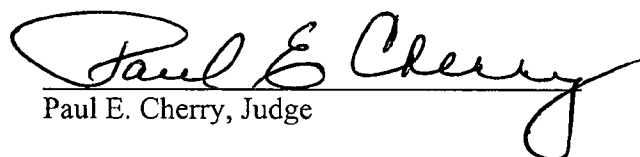
ORDER

AND NOW, this 2nd day of January, 2007, upon
consideration of Defendant Pike Township's Motion for Special Relief (Injunction), it is hereby
ORDERED and DECREED that hearing thereon in accordance with Pa.R.Civ.P. Rule 1531 shall
be held on the 6th day of February, 2007 in Courtroom No.
2 at 2:00 o'clock P.m.

Written notice to all parties shall be given by delivery of certified copies of the Petition
and this Order to counsel of record and to Guardian Inspection Services, Inc. by certified mail.

Written responses to the Motion are not required but may be filed by any party prior to
hearing.

BY THE COURT:


Paul E. Cherry, Judge

FILED

JAN 02 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/2/07

☒ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,
Plaintiff

v.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC., and CLEARFIELD
COUNTY PLANNING COMMISSION,
Defendant

No. 06-1114-CD

Type of Case: Civil

Type of Pleading: Certificate of Service

Filed on behalf of: Defendant Pike
Township

Counsel of Record for Pike Township

Kim C. Kesner, Esquire
Supreme Ct. I.D. No. 28307

15 North Front Street
P.O. Box 1
Clearfield, PA 16830
814-765-8972
814-765-9893 – facsimile

Other Counsel of Record:

Carleton O. Strouss, Esquire
Kirpatrick & Lockhart Nicholson
Graham, LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507
(Counsel for Plaintiff)

FILED *3cc*
01/05/07
JAN 05 2007 *Atty Kesner*

William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID L. PICCOLI, SR., and : No. 06-1114-CD
DISCOVERY HOUSE CU, INC., :
Plaintiff :

v. :

CLEARFIELD COUNTY, PIKE :
TOWNSHIP, GUARDIAN INSPECTION :
SERVICES, INC., and CLEARFIELD :
COUNTY PLANNING COMMISSION, :
Defendant :

CERTIFICATE OF SERVICE

AND NOW, I do hereby certify that on the 4 day of JAN., 2007, I
caused to be served a true and correct copy of the Motion for Special Relief (Injunction) and
Order by U.S. First Class Mail, Postage Prepaid upon the following:

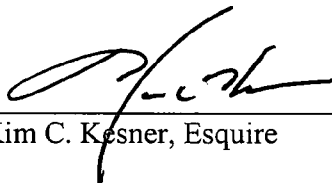
Carleton O. Strouss, Esquire
Kirkpatrick & Lockhart Nicholson Graham LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507
Counsel for Plaintiffs

and by certified mail, return receipt requested upon:

Guardian Inspection Services, Inc.
5510 Memorial Boulevard
Tobyhanna, PA 18466

Mr. Brian Wruble
Guardian Inspection Services, inc.
1739 Kiwanis Trail
DuBois, PA 15801

Date: 4 JAN. 2007



Kim C. Kesner, Esquire

cc: Clearfield County Commissioners
Clearfield County Planning Commission

CA

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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,
Plaintiffs,

v.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC., and CLEARFIELD
COUNTY PLANNING COMMISSION,
Defendants.

No. 06-1114-CD

Type of Case: Civil

Type of Pleading: **Motion for
Continuance of Hearing on
Motion for Special Relief**

Filed on behalf of: Plaintiffs
David L. Piccoli, Sr., and
Discovery House CU, Inc.

Counsel of Record for David L. Piccoli, Sr., and
Discovery House CU, Inc.

Carleton O. Strouss, Esquire
PA Attorney I.D. No. 25994
Ruth E. Granfors, Esquire
PA Attorney I.D. No. 39508
KIRKPATRICK & LOCKHART
PRESTON GATES ELLIS LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507

Other Counsel of Record:

Kim C. Kesner, Esquire
23 N. Second Street
Clearfield, PA 16830-2438
*Counsel for Clearfield County, Clearfield
County Planning Commission, and
Pike Township*

Guardian Inspection Services, Inc.
5510 Memorial Boulevard
Tobyhanna, PA 18466
(No counsel of record)

2cc-
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JAN 31 2007 (60)

William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID L. PICCOLI, SR., and	:	No. 06-1114-CD
DISCOVERY HOUSE CU, INC.,	:	
Plaintiffs,	:	
v.	:	
	:	
CLEARFIELD COUNTY, PIKE	:	
TOWNSHIP, GUARDIAN INSPECTION	:	
SERVICES, INC., and CLEARFIELD	:	
COUNTY PLANNING COMMISSION,	:	
Defendants.	:	

**MOTION FOR CONTINUANCE OF
HEARING ON MOTION FOR SPECIAL RELIEF**

TO: THE HONORABLE PAUL E. CHERRY, JUDGE:

AND NOW, come Plaintiffs David L. Piccoli, Sr. and Discovery House CU, Inc., by and through their undersigned counsel, and presents this Motion for Continuance of Hearing on Motion for Special Relief and in support hereof represent, as follows:

1. On December 29, 2006, Defendant Pike Township filed a Motion for Special Relief (Injunction), requesting that the Court enjoin the Plaintiffs from further use and occupation of two trailers in Pike Township without the issuance of certificates of occupancy issued by a building code official under the Pennsylvania Construction Code Act.

2. By Order entered January 2, 2007, the Court set a hearing on Pike Township's Motion for February 6, 2007 at 2:00 p.m.

3. Plaintiffs bring this motion seeking a continuance of the hearing because of their belief (as detailed below) that **the underlying controversy will soon be rendered moot.**

Therefore, there is no need for the Court to address the very substantial legal issues presented by Pike Township's motion (summarized below).

4. The Plaintiffs have determined to voluntarily remove the trailers in question from the Pike Township premises. Without limiting the generality of the foregoing, the Plaintiffs' specific plan of action is as follows:

a. The Plaintiffs have received sub-division approval for the construction of a replacement facility on property located in Lawrence Township, Clearfield County, Pennsylvania (recorded November 29, 2006);

b. The Plaintiffs have applied for and expect to shortly receive a building permit to construct the replacement facility in Lawrence Township; and

c. Upon the establishment of the new facility in Lawrence Township, the trailers will be removed from the Pike Township premises. The Pike Township premises are being offered for sale by Mr. Piccoli.

5. Plaintiffs request a continuance of the hearing and the scheduling of a status conference on March 15, 2006, based on the following:

a. The application for a building permit for the new facility in Lawrence Township was filed on January 22, 2007;

b. Lawrence Township's building code official has thirty (30) business days, or until March 6, 2006, to make a decision on the building permit (*See* 34 Pa. Code § 403.43);

c. Based on information from Lawrence Township, Discovery House anticipates receipt of the building permit much sooner than that date, potentially on or before February 9, 2006;

d. Upon receipt of the building permit, the work to complete the sewage and water lines will be concluded within one week;

e. Discovery House has arranged for electric utility site work to be completed by Penelec on or about March 1, 2007;

f. Discovery House has contracted for preparation of the foundation and site preparation for a modular building to be completed within 30 days of receipt of the building permit;

g. Discovery House is contracting with GE Modular Space to erect a modular structure on the Lawrence Township premises which is estimated to take approximately three weeks following the completion of the site work; and

h. Consequently, as long as the building permit is issued by Lawrence Township as expected, the trailers will be removed from the Pike Township premises as soon as all activities for site preparation, construction of the modular building and an expeditious and orderly transfer of the operations of the health care facility can be completed, thereby rendering this dispute moot at that time.

6. Plaintiffs believe that it will be possible to amicably discontinue the underlying litigation in its entirety as a result of the Plaintiffs' foregoing plan of action.

7. The proceedings initiated by Guardian Inspection Services, Inc. that are currently pending before the Moshannon Valley Council of Governments, and which are the subject of Pike Township's request for an injunction, will also be moot.

8. In light of the likely resolution of this matter, there is no need for the Court to address the significant issues presented by Pike Township's motion.

9. Pike Township's motion poses substantial legal issues. The Plaintiffs respectfully submit that Pike Township is not entitled to the injunction that it seeks. Without limiting the generality of the foregoing, the deficiencies in Pike Township's application include the following:

a. The matter on which Pike Township seeks relief is currently the subject of a pending administrative proceeding before the Moshannon Valley Council of Governments (“MVCOG”);

b. Pike Township has a full and complete remedy at law under the Pennsylvania Construction Code Act;

c. The Plaintiffs’ appeal to the MVCOG of the Notice/Order issued by the third party agency (Guardian Inspection Services Inc.) pursuant to Section 403.83 of the Uniform Construction Code Regulations (“Regulations”) was automatically suspended when the Plaintiffs herein appealed that determination to the MVCOG in accordance with Section 403.122(c) of the Regulations; and

d. Pike Township cannot demonstrate a clear right to relief or otherwise meet its heavy burden in seeking an injunction.

10. The Plaintiffs respectfully submit that there is no emergent need for the Court to address these substantial issues and Pike Township has not identified any emergent need in its motion.

11. At no time did Guardian Inspection Services, Inc. (or any other authorized official) indicate that the trailers were unsafe in any way. Specifically, no order to vacate has ever been issued under Section 403.84 of the Regulations.

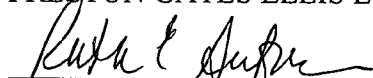
12. A postponement of the hearing set for February 6, 2007, and the scheduling of a status conference on or about March 15, 2007, will allow the parties and the Court to be informed of the progress of the transfer of Discovery House’s operations from Pike Township to Lawrence Township, without injury to any party, and will conserve the resources of the parties and the Court.

13. We have requested the concurrence of Pike Township in this Motion and that concurrence has not been granted.

Upon consideration of the foregoing, Plaintiffs respectfully request the Court to continue the hearing currently scheduled for February 6, 2007, and to schedule a status conference on or about March 15, 2007.

Respectfully submitted,

KIRKPATRICK & LOCKHART
PRESTON GATES ELLIS LLP

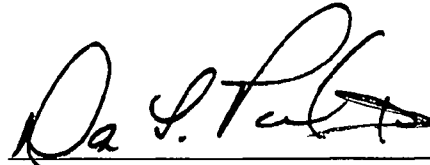


Carleton O. Strouss, Esquire
PA Attorney I.D. No. 25994
Ruth E. Granfors, Esquire
PA Attorney I.D. No. 39508
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507

*Counsel for Plaintiffs David L. Piccoli, Sr. and
Discovery House CU, Inc.*

VERIFICATION

I, David L. Piccoli II, verify that I am an authorized representative of Discovery House CU, Inc. and David L. Piccoli, Sr., and that the facts set forth in the foregoing Motion are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read "Da L. Piccoli II", written over a horizontal line.

David L. Piccoli II

Dated: _____

1/26/07

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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,

Plaintiffs,

v.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC., and CLEARFIELD
COUNTY PLANNING COMMISSION,

Defendants.

Docket No. 06-1114-CD

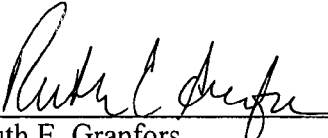
CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2007, I caused a copy of the foregoing Motion for Continuance of Hearing on Motion for Special Relief to be served upon the following via overnight delivery, addressed, as follows:

Kim C. Kesner, Esquire
23 North Second Street
Clearfield, PA 16830-2438
*Counsel for Clearfield County, Clearfield County Planning Commission
and Pike Township*

Guardian Inspection Services, Inc.
5510 Memorial Blvd.
Tobyhanna, PA 18466

Peter Vazquez, Esquire
Schwartz, Simon, et al.
10 James Street
Florham Park, NJ 07932
Counsel for Guardian Inspection Services, Inc.
(Not of Record)



Ruth E. Granfors
PA 39508
Kirkpatrick & Lockhart Preston Gates Ellis LLP
17 North Second St., 18th Floor
Harrisburg, PA 17101
717.231.4500
717.231.4501 (fax)
*Counsel for Plaintiffs David L. Piccoli, Sr. and
Discovery House CU, Inc.*

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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,
Plaintiffs,

v.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC., and CLEARFIELD
COUNTY PLANNING COMMISSION,
Defendants.

Docket No. 06-1114-CD

ORDER

AND NOW, this ____ day of _____, 2007, upon consideration of
Plaintiffs' Motion for Continuance of Hearing on Motion for Special Relief, it is hereby
ORDERED and DECREED that the Plaintiffs' Motion is GRANTED and the hearing,
previously scheduled for February 6, 2007, is hereby continued and a status conference is set for
March ____, 2007, at _____.

BY THE COURT,

By: _____
Paul E. Cherry, Judge

11A

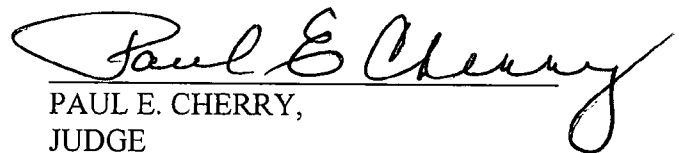
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID L. PICCOLI, SR. and	:	NO. 06-1114-CD
DISCOVERY HOUSE CU, INC.	:	
	:	
V.	:	
	:	
CLEARFIELD COUNTY, PIKE	:	
TOWNSHIP, GUARDIAN INSPECTION	:	
SERVICES, INC. and CLEARFIELD	:	
COUNTY PLANNING COMMISSION	:	

ORDER

AND NOW, 31 st day of January, 2007, upon consideration of Plaintiff's Motion for Continuance of Hearing on Motion for Special Relief scheduled for February 6, 2007, beginning at 2:00 P.M.; the Court being advised by Kim C. Kesner, Esquire that he opposes said continuance, it is the ORDER of this Court that said Motion for Continuance shall be and is hereby DENIED.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED
01/11/07
FEB 02 2007

William A. Shaw
Prothonotary/Clerk of Courts

ICC Atty's: Kesner
Granfors
ICC Guardian Insp.
5510 Memorial Blvd.
Tobyhanna, PA 18466
(6K)

FILED

FEB 02 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2/2/07

☐ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☒ Plaintiff(s) Attorney ☐ Other

☒ Defendant(s) ☒ Defendant(s) Attorney

☒ Guardian
Special Instructions:

FILED

FEB 05 2007

William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,
Plaintiffs,

v.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC., and CLEARFIELD
COUNTY PLANNING COMMISSION,
Defendants.

No. 06-1114-CD

Type of Case: Civil

Type of Pleading: **Plaintiffs' Answer
to Pike Township's Motion for Special
Relief (Injunction)**

Filed on behalf of: Plaintiffs
David L. Piccoli, Sr., and
Discovery House CU, Inc.

Counsel of Record for David L. Piccoli, Sr., and
Discovery House CU, Inc.

Carleton O. Strouss, Esquire
PA Attorney I.D. No. 25994
Ruth E. Granfors, Esquire
PA Attorney I.D. No. 39508
KIRKPATRICK & LOCKHART
PRESTON GATES ELLIS LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507

Other Counsel of Record

Kim C. Kesner, Esquire
23 N. Second Street
Clearfield, PA 16830-2438
*Counsel for Clearfield County, Clearfield
County Planning Commission, and
Pike Township*

Guardian Inspection Services, Inc.
5510 Memorial Boulevard
Tobyhanna, PA 18466
(No counsel of record)

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

DAVID L. PICCOLI, SR., and	:	No. 06-1114-CD
DISCOVERY HOUSE CU, INC.,	:	
Plaintiffs,	:	
v.	:	
	:	
CLEARFIELD COUNTY, PIKE	:	
TOWNSHIP, GUARDIAN INSPECTION	:	
SERVICES, INC., and CLEARFIELD	:	
COUNTY PLANNING COMMISSION,	:	
Defendants.	:	

**PLAINTIFFS' ANSWER TO PIKE TOWNSHIP'S
MOTION FOR SPECIAL RELIEF (INJUNCTION)**

Plaintiffs respond to the Motion for Special Relief (Injunction) filed by Pike Township on December 29, 2006 and respectfully represent, as follows:

1. Admitted.
2. Admitted with the qualification that Plaintiffs are in the process of developing and intend to construct a replacement facility in Lawrence Township, Clearfield County, Pennsylvania. Those efforts began not later than July of 2006. The construction of the new facility will obviate the need for Plaintiffs to utilize the trailers at issue in this matter and **will render this motion moot**. Without limiting the generality of the foregoing, the Plaintiffs' specifically represent, as follows:

- a. On September 26, 2006, Lawrence Township notified Discovery House that the methadone facility proposed to be established on Airport Road is compliant with local zoning law and Act 10. See Attachment F hereto.

- b. The Plaintiffs have received sub-division approval for the construction of

a replacement facility on property located in Lawrence Township, Clearfield County, Pennsylvania (recorded November 29, 2006);

c. The application for a building permit for the new facility in Lawrence Township was filed on January 22, 2007;

d. Based on information from Lawrence Township, Discovery House anticipates receipt of the building permit on or before February 9, 2007;

e. Upon receipt of the building permit, the work to complete the sewage and water lines will be concluded within approximately one week;

f. Discovery House has arranged for electric utility site work to be completed by Penelec on or about March 1, 2007;

g. Discovery House has arranged for preparation of the foundation and site preparation for a modular building to be completed within 30 days of receipt of the building permit;

h. Discovery House is contracting with GE Modular Space to erect a modular structure on the Lawrence Township premises which is estimated to take approximately three weeks following the completion of the site work; and

i. **Consequently, as long as the building permit is issued by Lawrence Township as expected, the trailers will be removed from the Pike Township premises as soon as all activities for site preparation, construction of the modular building and an expeditious and orderly transfer of the operations of the health care facility can be completed, thereby rendering this dispute moot at that time.**

3. Admitted with the qualification that the contents of the response to paragraph 2 are incorporated herein by reference.

4. Denied as stated. It is admitted that Plaintiffs submitted applications for the issuance of building occupancy permits for both trailers on May 16, 2006. Plaintiffs also submitted additional applications on June 6, 2006 and June 14, 2006 for the Small and Large Trailers respectively.

5. Denied as stated. Whether Pike Township is “responsible under the Act” is a legal conclusion to which no response is necessary.¹ By way of further answer, Pike Township is a member of the Moshannon Valley Council of Governments (“MVCOG”). Pike Township has delegated its code enforcement authority under the Pennsylvania Construction Code Act (“Act”) and the Uniform Construction Code Regulations (“Regulations”) to the MVCOG as set forth in Resolution 04-233 of Pike Township, dated August 4, 2004, and attached hereto as Attachment A. On information and belief, Pike Township has not rescinded that delegation (although it could do so at any time pursuant to item 4 of Resolution 04-233). In turn, the MVCOG, has engaged the services of Guardian Inspections Services, Inc. (“Guardian”) as the Third Party Agency as that term is defined under the Act.

6. Denied as stated. Whether or not the MVCOG, or by extension Guardian, are or were agents of Pike Township are legal conclusions to which no response is necessary. By way of further answer, the response to paragraph 5 is incorporated herein by reference.

7. Denied as stated. As set forth in the Complaint, subsequent to May 16, 2006, Guardian advised Plaintiffs that they would not be able to receive occupancy permits for the trailers as permanent structures unless certain modifications were made to the structures. By way of further answer, Guardian indicated that it would not grant an extension of the temporary occupancy permit for the trailers due, in material part, to the public controversy regarding the use

¹ Pike Township’s motion does not specify what “Act” it refers to. For purposes of this answer, we assume it refers to the Pennsylvania Construction Code Act.

of the trailers as a methadone treatment facility. The use of the trailers was not a circumstance that was material to review under the Act or the Regulations (i.e., it had nothing to do with the structural integrity or safety of the trailers). Guardian informed the Plaintiffs that, if they did not have a permanent occupancy permit by July 27, 2006, Guardian would view the trailers as not in compliance with the Regulations because the Plaintiffs' temporary authority to occupy the premises would allegedly expire. As detailed in response to paragraph 8 below (and incorporated herein), Guardian advised Plaintiffs that it would not be necessary for Plaintiffs to vacate the trailers because of the Plaintiffs' right to appeal any action by Guardian to the MVCOG with the corresponding right to occupy the trailers pending appeal.

8. Denied as stated. On or about July 27, 2006, Guardian delivered to Plaintiffs a notification "pursuant to section 403.83" (the "July 27 Notice"). While denominated an "Order to Vacate," the July 27 Notice triggered the administrative procedures contemplated in § 403.83 of the Regulations. More specifically, it stated:

YOU HAVE THE RIGHT TO APPEAL UNDER SECTION 403.122 of the Act by filing a petition with the Moshannon Valley Council of Governments Board of Appeals. You will be given thirty (30) days to submit a written answer as per Section 403.83 of the Act or to vacate within the thirty (30) day time period.

Moreover, pursuant to those regulations and the express text of the July 27 Notice, Plaintiffs were not directed or ordered to vacate the premises. Rather, they were afforded an opportunity to answer and/or appeal pursuant to the administrative processes outlined in § 403.83 and § 403.122 of the Regulations. Additionally, representatives of Guardian and the MVCOG expressly advised Plaintiffs that if they presented an appeal to the MVCOG, they would be permitted to occupy the premises pending the resolution of the appeal by the MVCOG.

9. Denied as stated. On the contrary, on August 25, 2006, Plaintiffs submitted an Answer and Petition for Appeal, Variance and/or Request for Extension of Time ("Appeal") to

the MVCOG (and Guardian) with respect to the July 27 Notice. The Appeal together with its Statement in Support (exclusive of exhibits) is Attachment B hereto. The response to paragraph 5 is incorporated herein by reference.

10. Denied as stated. It is admitted that the Regulations require the MVCOG to hold a hearing within 60 days unless the appellant grants the MVCOG an extension of time within which to hold the hearing. *See*, 34 Pa. Code § 403.122(e). By way of further answer, the Plaintiffs, by correspondence dated October 2, 2006 requested a postponement of the hearing and granted the MVCOG an extension until December 20, 2006 within which to hold the hearing. A copy of the October 2, 2006 letter is Attachment C hereto. Counsel for the MVCOG, Kim C. Kesner, Esquire, by correspondence dated October 3, 2006 advised the MVCOG that the grant of the extension by Plaintiffs met the requirements of the Regulations and specifically recommended “that the request be granted.” A copy of Mr. Kesner’s letter of October 3, 2006 is Attachment D hereto. By way of further answer, by correspondence dated December 13, 2006, Plaintiffs agreed to a further extension of the hearing date until February 20, 2007. A copy of the December 13, 2006 letter is Attachment E hereto. The Plaintiffs’ agreement to the extension was expressly conditioned on the agreement by the MVCOG that the pendency of the appeal suspended the July 27 Notice. The Plaintiffs’ letter of October 2, 2006 (Attachment C) states, in pertinent part, as follows:

In agreeing to this extension, Mr. Piccoli relies on the parties’ understanding that, pursuant to § 403.122(c), the “Order to Vacate” of July 27, 2006 is suspended pending the Board’s disposition on the merits.

Similarly, Plaintiffs’ letter of December 13, 2006 reiterated the condition, stating:

In agreeing to this extension, Mr. Piccoli relies on the parties’ understanding that, pursuant to § 403.122(c), the “Order to Vacate” of July 27, 2006 is suspended pending the Board’s disposition on the merits.

11. Admitted with the following qualification. The Regulations set forth an administrative protocol pursuant to which a building code official (such as Guardian) may initiate an action to vacate or close a building by issuing an order to show cause. This “order to show cause” authority was the basis on which Guardian was operating notwithstanding the erroneous title on the July 27 Notice of “Order to Vacate.” *See* 34 Pa. Code § 403.83(a). Subsequent to the issuance of an order to show cause under § 403.83(a) various administrative procedures come into play. As indicated in the text of the July 27, 2006 Notice (and the advice provided by the MVCOG and Guardian to Plaintiffs), those administrative procedures allowed the Plaintiffs to, among other things, appeal to the MVCOG and to request an extension of time within which to come into compliance. Once the appeal is taken, jurisdiction shifts from the building code official (Guardian) to the MVCOG. *See* § 403.83(d). An order to vacate is only authorized under the Regulations if (1) a property owner has not appealed and (2) the building code official issues an order to vacate after the 30 day period for answering the order to show cause has elapsed. Specifically, § 403.83(f) provides, as follows:

(f) After receipt of the answer, the building code official may take the following actions if the owner or owner’s agent did not previously file an appeal or request for variance or extension of time:

- (1) Issue a stop work order.
- (2) Vacate or close the building or structure or place equipment out of operation.
- (3) Abate or modify the alleged violation.
- (4) Order other action to protect persons or property.

The proceedings initiated by the July 27, 2006 Notice were suspended by the Plaintiffs’ action in perfecting the Appeal (including its request for a variance or for an extension of time within which to comply) with the MVCOG on August 25, 2006. *See* 34 Pa. Code § 403.122(c). No

order to vacate the premises was (or could have been) issued to the Plaintiffs on the state of the record.

12. Denied as stated. 34 Pa. Code § 403.122(c) in its entirety states, as follows:

(c) An appeal or request for variance or extension of time to a board of appeals will automatically suspend an action to enforce an order to correct until the matter is resolved. An action under § 403.84 (relating to unsafe building, structure or equipment) may not be stayed.

As a matter of regulatory construction, the taking of an appeal suspends actions of the building code official unless the official has taken an action involving the closing of an unsafe building pursuant to § 403.84 of the Regulations. At no time did Guardian take any action pursuant to § 403.84 of the Regulations. All activity by Guardian was pursuant to § 403.83 of the Regulations and Guardian's action was suspended by Plaintiffs' appeal to the MVCOG.

13. Denied as stated. The assertion of paragraph 13 constitutes a legal conclusion to which no response is necessary. By way of further answer, the responses to paragraphs 11 and 12 above are incorporated herein by reference.

14. Denied as stated. By correspondence dated October 2, 2006, Plaintiffs requested that any hearing be postponed until at least December 20, 2006 and granted the MVCOG an extension of time until at least December 20, 2006 within which to decide the Plaintiffs' appeal. (See Attachment C). By way of further answer, the Plaintiffs did not receive a written response to the request from the MVCOG. No hearing was scheduled. However, by a copy of a letter dated October 3, 2006 from Kim C. Kesner, Esquire to the MVCOG (as solicitor to the MVCOG), Plaintiffs were advised that the request was in a proper form. Specifically, Mr. Kesner, acting in his then role as counsel to the MVCOG, stated, as follows: "In my opinion Mr. Strouss' letter constitutes the written agreement to an extension necessary for the [MVCOG] and its appointed Board of Appeals to entertain Mr. Piccoli's request that the appeal hearing not be

scheduled until after November 30, 2006.” Mr. Kesner also recommended “that the request be granted.” (See Attachment D).

15. Admitted.

16. Denied as stated. By correspondence dated December 13, 2006, Plaintiffs requested that the scheduling of a hearing be deferred and granted an extension through February 20, 2007 for the MVCOG to decide their appeal. The letter of December 13, 2006 is Attachment E hereto. It likewise conditioned the extension on the agreement that the July 27 Notice remained suspended.

17. Denied as stated. Plaintiffs lack sufficient knowledge or information to form a belief as to what actions the MVCOG may or may not have taken in response to its request. However, the Plaintiffs have received no notification of the scheduling of a hearing or other action on their appeal.

18. Denied as stated. The allegations of paragraph 18 constitute conclusions of law to which no response is necessary. By way of further response, Plaintiffs have followed the procedures set forth in the Regulations and, by virtue of their pending appeal, they are not subject to any outstanding Order to Vacate. By way of further answer, the use of the facility as a methadone treatment facility has no bearing whatsoever on the issue on which Pike Township seeks its injunction. By way of further answer, on the state of the record:

- a. No lawful order to vacate has been issued to the Plaintiffs;
- b. The proceedings initiated by Guardian were suspended by the Plaintiffs’

Appeal;

- c. Plaintiffs’ occupancy is not unlawful; and

d. Under the Regulations, Plaintiffs may occupy the trailers pending their Appeal (and request for variance or extension of time to comply) that is pending before the MVCOC.

19. Denied as stated. The allegations of paragraph 19 constitute conclusions of law to which no response is necessary. By way of further response, Pike Township has an adequate remedy at law. Indeed, administrative proceedings established by statute to deal with precisely the circumstances presented are pending before the MVCOC, the agency designated by Pike Township for that purpose. Presumably, if Pike Township feels aggrieved by the conduct of those proceedings by the MVCOC, Pike Township may seek relief by one or a combination of the following:

- a. Withdrawing its delegation of authority to the MVCOC;
- b. Seeking leave to intervene in the proceedings pending before the MVCOC; and
- c. Bringing proceedings to enforce its rights, if any, pursuant to the statute governing the delegation.

By way of further answer, no harm will result to Pike Township if the *status quo* is maintained. To the contrary, the following harm will result if the injunction is granted:

- a. The 225 patients served by the Plaintiffs at the Pike Township facility will be required to locate alternative treatment, which may be difficult, if not impossible, in some cases because of job or family commitments in the area, or lack of adequate transportation;
- b. The Plaintiffs' patients will be subject to the hazards of driving hundreds of miles a day in winter weather conditions in central Pennsylvania;

c. The Plaintiffs will suffer a disruption in their operations, a corresponding loss of revenue and increase in expenses; and

d. The budgets of the counties in which the patients reside will be burdened by additional transportation costs associated with the travel required for the Medical Assistance patients to alternative treatment locations.

20. Denied as stated. Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 20. By way of further answer, if Pike Township is aggrieved by the conduct of the MVGOC, it should submit its grievance to the MVCOC in the proceedings pending before it.

WHEREFORE, Plaintiffs respectfully request this Court to deny the Motion for Special Relief (Injunction) of Pike Township. Alternatively, if any injunction is issued, the Plaintiffs request a 30 day grace period prior to the effective date of the injunction.

Respectfully submitted,

KIRKPATRICK & LOCKHART
PRESTON GATES ELLIS LLP



Carleton O. Strauss, Esquire
PA Attorney I.D. No. 25994
Ruth E. Granfors, Esquire
PA Attorney I.D. No. 39508
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507

*Counsel for Plaintiffs David L. Piccoli, Sr. and
Discovery House CU, Inc.*

A

TOWNSHIP OF PIKE
COUNTY OF CLEARFIELD
COMMONWEALTH OF PENNSYLVANIA

RESOLUTION 04-233

A RESOLUTION OF PIKE TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA DELEGATING AUTHORITY AND AGENCY TO THE MOSHANNON VALLEY COUNCIL OF GOVERNMENTS FOR PURPOSES OF ADMINISTRATION AND ENFORCEMENT OF THE PENNSYLVANIA UNIFORM CONSTRUCTION CODE.

WHEREAS, on August 4, 2004, by Ordinance Number 61, Pike Township became a member of the Moshannon Valley Council of Governments (Mo-Valley COG);

WHEREAS, on June 2, 2004, Pike Township enacted Ordinance Number 61 in accordance with 501 of the Pennsylvania Construction Code Act, Act 45 of 1999, 35PS 7210.101, et seq. (Act) electing to administer and enforce the Uniform Construction Code in Pike Township.

WHEREAS, the Mo-Valley COG offers a program for administration and enforcement of the Uniform Construction Code for its member municipalities;

WHEREAS, Pike Township wishes to formally delegate to the Mo-Valley COG its powers and duties for administration and enforcement of the Uniform Construction Code.

NOW THEREFORE, be it resolved and enacted and it is hereby resolved and enacted as follows:

1. In accordance with 501 (b) (3) of the Act, Pike Township hereby designates the Mo-Valley COG as its agent for the joint administration and enforcement of the Act in Pike Township as well as the Mo-Valley COG's other member municipalities.
2. Pike Township hereby makes a full and unqualified delegation of its powers and duties to the Mo-Valley COG to administer and enforce the provisions of the Act and the Uniform Construction

Code including by way of illustration but not limitation the full and complete power to:

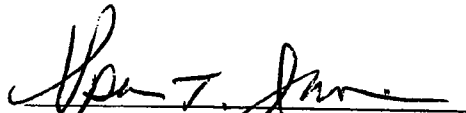
- a. Retain one or more construction code officials or third party agencies to act on behalf of the Mo-Valley COG for administration and enforcement of the Act in Pike Township.
 - b. Appointment of a board of appeals as required by 501 © of the Act and Department of Labor and Industry regulations (34 PA Code 403.101, et seq.) to handle appeals for Pike Township.
3. This delegation of authority is intended to provide to the Mo-Valley COG all powers necessary and appropriate for the Mo-Valley COG to administer and enforce the Act for and on behalf of Pike Township.
 4. This agency designation and delegation of authority shall continue for so long as Pike Township is a member of the Mo-Valley COG or until earlier rescinded by subsequent resolution duly enacted.

IN WITNESSS WHEREOF, Pike (Township Board of Supervisors) has duly adopted this Resolution and caused it to be executed by the officers below this 4th day of August, 2004.

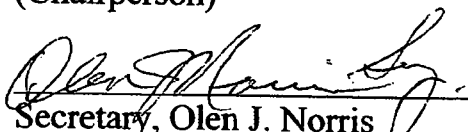
ATTEST:

Pike (Township)

By:


Spencer J. Irwin President

(Chairperson)


Secretary, Olen J. Norris
(SEAL)

MVCOG

MOHANNON VALLEY COUNCIL OF GOVERNMENTS
650 LEONARD STREET
CLEARFIELD, PA 16830

Phone: (814) 765-3080
Fax: (814) 765-3082
Toll Free 1-800-765-3088

FILED DATE

Filing Date:

Personal Service Date:

Answer and

Petition for Appeal, Variance and/or Request for Extension of Time

1. **Appellant/Petitioner:** Name David L. Piccoli, Sr.
Address 66 Pavilion Avenue
Providence, RI 20905
Phone Number _____
2. **Property Owner (if different from Appellant/Petitioner):**
Name _____
Address _____
Phone Number _____
3. **Permit Number(s) at issue:** MCB 4-05
4. **Address (location not mailing address) and municipality of property at issue:**
3888 Curwensville Grampian Highway, Curwensville, PA 16833
Municipality is: X Member of COG
_____ Not a member of COG
5. **Purpose of Petition:**
X Appeal
X Variance
X Extension of Time
6. **Reason for Appeal:**
X Code incorrectly interpreted.
X Request for approval of equivalent form of construction.
X Provisions of Code do not fully apply.
7. **Action of Building Code Official at issue:** "Order to Vacate" of July 27, 2006 - Attachment A to
Statement in Support

8. Name of Building Code and Section Numbers at issue: International Building Code of 2003 Section 3101.1 was cited.

9. Written Brief or Argument in Support of Appeal, Request for Variance and/or Extension of Time (Attach additional pages if necessary):
See attached Statement in Support.

10. Regulations Governing UCC Boards of Appeal promulgated by the Pennsylvania Department of Labor & Industry provide that a Board of Appeals shall decide an appeal, variance request or request for extension of time by reviewing documents and written brief or argument unless the owner or owner's agent requests a hearing.

A hearing: X is hereby requested.
_____ is not hereby requested.

In making a request for hearing, I/we understand that we will be responsible for the additional costs of a stenographer for recording of the hearing.

My/our signatures below certify that all of the above information and statements, as well as any other documents or information submitted with and made a part of this Application for Review, are true and correct to the best of my/our information, knowledge and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Appellant/Petitioner:

David L. Piccoli, Sr.
(Signature)

Date: 8-23-06

David L. Piccoli, Sr.

(Signature)

Date: _____

Property Owner(s) (if different from Appellant/Petitioner)

(Signature)

Date: _____

(Signature)

Date: _____

**PROPERTY OWNER'S STATEMENT IN SUPPORT
OF
ANSWER AND PETITION FOR APPEAL, VARIANCE
AND/OR REQUEST FOR EXTENSION OF TIME**

Carleton O. Strouss, Esquire
PA Attorney I.D. No. 25994
Ruth E. Granfors, Esquire
PA Attorney I.D. No. 39508
KIRKPATRICK & LOCKHART
NICHOLSON GRAHAM LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507

*Counsel for David L. Piccoli, Sr.
Property Owner*

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ATTACHMENTS

- A July 27, 2006 Order to Vacate
- B June 7, 2002 letter from Pike Township
- C October 28, 2002 Building Permit Exemption No. 383
- D January 6, 2005 Construction Permit MCB 4-05
- E June 28, 2005 Temporary Certificate of Occupancy/Compliance
- F December 28, 2005 Temporary Certificate of Occupancy/Compliance
- G June 19, 2006 statement of Jodi Brennan
- H June 20, 2006 notice of denial from Planning Commission
- I June 6, 2006 Occupancy Permit Application – Small Trailer
- J June 14, 2006 Occupancy Permit Application – Large Trailer
- K June 9, 2006 email from P. Shea to K. Kesner

- L June 13, 2006 letter from K. Kesner to P. Shea
- M June 27, 2006 letter from P. Shea to K. Kesner, Pike Township and Guardian
- N June 29, 2006 email from K. Kesner to P. Shea
- O July 3, 2006 letter from P. Shea to B. Wruble (Guardian)
- P July 5, 2006 letter from B. Wruble and W. Kulbacki (Guardian) to P. Shea
- Q July 5, 2006 letter from P. Shea to B. Wruble and W. Kulbacki (Guardian)
- R July 17, 2006 newspaper article
- S July 6, 2006 Plan Review Comment Sheet (additional items list)
- T Pike Township Resolution 04-233 (August 4, 2004)
- U Building Specifications

I. OVERVIEW

David L. Piccoli, Sr. ("Property Owner") seeks relief from a document denominated "Order to Vacate" (Attachment A) issued to him on July 27, 2006 by Guardian Inspection Services, Inc. ("Guardian") with respect to a property located at 3888 Curwensville Grampian Highway, Curwensville, Pennsylvania, 16833 ("Premises"). The alleged basis for the Order to Vacate is the absence of a Certificate of Occupancy. As detailed in the argument set forth in section V below, the Property Owner believes that issuance of the Order to Vacate was inappropriate under the Pennsylvania Uniform Construction Code Act and the relevant regulations (collectively "the UCC") and therefore appeals on that basis. However, under the unique circumstances presented, the Board of Appeals ("Board") should find it unnecessary to address that underlying issue because the granting of an extension of time or a variance is appropriate and will fully achieve the purposes of the UCC. The Property Owner's rationale for the extension of time is set forth below at section III and the rationale for a variance is set forth below at section IV.

Since 2003 the Premises have been occupied by Discovery House CU, Inc. ("Discovery House") which operates a methadone treatment facility ("Facility"). On January 17, 2006, the principal structure on the Premises was heavily damaged by fire. Since that time, the Property Owner has been seeking to develop a permanent replacement solution in response to the fire, preferably the construction of a new building on the Premises.

At the present time, the Facility is being operated on the Premises in two mobile manufactured buildings, one measuring approximately 10 feet by 26 feet ("Small Trailer") and one measuring 24 feet by 66 feet ("Large Trailer"). The Order to Vacate is based on the allegation that the Property Owner does not hold a Certificate of Occupancy for the Trailers.

The Property Owner sought and obtained temporary certificates of occupancy for the Small Trailer and was advised by Guardian that temporary occupancy of the Large Trailer was permitted for 180 days. Because Guardian would not consider applications for further "temporary" authority, the Property Owner sought permanent occupancy permits for the Trailers (even though the Trailers are to provide only an interim replacement Facility).

The permitting process was delayed due to a controversy that emerged before the Clearfield County Planning Commission regarding whether the use of the Premises as a methadone treatment facility was prohibited by Act 10 of 1999 which added §621 to the Pennsylvania Municipalities Planning Code ("§621 Restriction"). The controversy regarding the §621 Restriction has now been presented to the Court of Common Pleas of Clearfield County for a determination. The Order to Vacate is not based on the §621 Restriction and that controversy is not before this Board. If the Courts determine that the §621 Restriction does not apply to the Facility, then the Property Owner will be able to execute definitive plans for a replacement structure for which it will seek applicable governmental approvals including a Certificate of Occupancy. If the Courts determine that the §621 Restriction is applicable to the Facility, then the Trailers will be removed from the Premises, thereby rendering the Order to Vacate moot.

Allowing the Trailers to be occupied on the Premises pending a final determination by the Courts regarding the §621 Restriction will not create a safety hazard and will be substantially in compliance with the UCC. As noted below, the modifications suggested by Guardian in connection with the Property Owner's pending application for a Certificate of Occupancy do not require substantial modifications and certainly do not suggest the presence of a safety hazard.

Consequently, allowing the continued occupancy either through an extension of time to comply or by the granting of a variance would accommodate the property interests of the

Property Owner while achieving the objectives of the UCC. It would also avoid a disruption in care to the more than 200 patients of the Facility.

II. FACTUAL BACKGROUND

A. The Facility

In 2002, Discovery House contacted Pike Township to determine what governmental approvals might be necessary for its use of the building on the Premises, informing Township officials, and others, that the building would be used as a methadone maintenance clinic. The Township did not object to that use (See letter of June 7, 2002 issued by Pike Township – Attachment B). Indeed, on October 28, 2002, the Township issued Building Permit Exemption No. 383 (Attachment C) to Discovery House so that it could make repairs and modifications to the building to accommodate the contemplated use. Discovery House has been operating the Facility on the Premises since March of 2003.¹

Subsequently, the Small Trailer was placed on the Premises and the Property Owner sought an occupancy permit to use it as an additional meeting room for counseling patients. Guardian, as the Third-Party Agency working on behalf of Moshannon Valley Council of Governments (“MVCOG”), and thus the Township by virtue of the Township’s membership in

¹ Discovery House is licensed by the Pennsylvania Department of Health. It treats over 200 patients at the Facility. Methadone maintenance services involve daily administration of a physician-ordered methadone dose, periodic individual and group counseling, medical monitoring and case management services. The daily methadone dose is provided in person on site at the Facility, unless a patient is approved for take-home medications in accordance with applicable regulations. Disruption in this treatment regimen may result in adverse health affects to patients.

the MVCOC,² notified Discovery House that it must construct an access ramp to the Small Trailer to conform to the UCC.

On January 6, 2005, Guardian issued Construction Permit MCB 4-05 to Discovery House to construct the access ramp (See Permit Notice – Attachment D). Upon Guardian's inspection of the completed access ramp, Discovery House was issued a Temporary Certificate of Occupancy/Compliance on June 28, 2005 (Attachment E). On December 28, 2005, Guardian issued a six-month extension of the temporary certificate of occupancy (Attachment F). Discovery House notified Guardian that it planned to use the Small Trailer longer than six months and would need an extension beyond the six-month period.

B. Fire at the Property and Initial Response

On January 17, 2006, fire destroyed the building located on the Premises. The fire did not affect the Small Trailer, and some operations were moved to it. The Property Owner immediately began identifying options in response to the fire. As a temporary solution, the Large Trailer was placed on the Premises on January 27, 2006 while the Property Owner moved forward with plans to re-build.

At the time the Large Trailer was placed on the Premises, Brian S. Wruble, a building inspector for Guardian, informed the Property Owner's agent that he had a "verbal" temporary occupancy permit to use the Large Trailer. From January 27, 2006 until the present, Discovery House has served its patients through the use of the Small Trailer and the Large Trailer while the Property Owner pursued plans to rebuild a permanent building on the Premises.

The Property Owner made continual and extensive efforts to comply with all land use or occupancy permitting requirements. The Property Owner's initial concept was to build a new

² See Resolution 04-233 of Pike Township, Attachment T.

and larger building at approximately the same location on the Premises as the existing building. A land development plan was prepared and sent to Pike Township for comment on March 2, 2006 (approximately 6 weeks after the fire). Following receipt of comments from Pike Township on approximately April 6, 2006, the plan was submitted to the Clearfield County Planning Commission on April 11, 2006.

In the course of the review of the plan, the Planning Commission elected to consider the question of whether §621 of the Municipalities Planning Code ("MPC"), 53 P.S. §10621 ("§621 Restriction") precluded operation of the Facility. The Property Owner was informed that all conditions of the Clearfield County Subdivision and Land Development Ordinance were met (statement of Jodi Brennan of June 19, 2006 – Attachment G), but the Planning Commission disapproved the plan apparently because of its concern regarding whether the §621 Restriction applied (Planning Commission notice of June 20, 2006 – Attachment H). The Property Owner filed an appeal of the action of the Planning Commission with the Court of Common Pleas on July 17, 2006 which appears at docket number 06-1144-CD.

C. Extensive Permitting Process

Recognizing that the land development process and construction would take more than 180 days, the Property Owner advised Guardian that extensions of permission to occupy the Trailers would be needed in order to avoid a disruption in services to the patients. Mr. Wruble of Guardian stated that no extensions would be granted. Based on that information, the Property Owner decided to apply for "permanent" certificates of occupancy for the Trailers. Naturally, the Property Owner regarded the use of the Trailers as an interim step in the response to the fire. The application for permanent certificates of occupancy did not reflect an intention to have the

Trailers be the permanent solution to the problem posed by the fire. Rather, the application was in response to Guardian's advice that temporary certificates would not be considered.

On May 15, 2006, the Property Owner requested from Guardian all forms necessary to obtain permanent certificates of occupancy for the Trailers. Guardian provided the Residential/Light Commercial application forms, representing that those forms were the only forms necessary. The next day, on May 16, 2006, Property Owner hand-delivered the completed forms for both the Small Trailer and the Large Trailer to Guardian's office in DuBois. On May 17, 2006, Mr. Wruble of Guardian notified the Property Owner that an additional form, titled "Pike Township Municipal Prior Approvals" would also be required by which Pike Township would "certify that this application is in compliance with all relevant ordinances of Pike Township and therefore eligible for Municipal approval." (Emphasis added). This requirement was imposed notwithstanding the fact that Pike Township does not have any ordinances relevant to permanent occupancy permits generally or applicable to the Premises specifically.

On June 6 and June 14, 2006, Hess & Fisher Engineers, Inc. sent the completed applications, which included the Residential/Light Commercial Permit Application forms, the Pike Township Municipal Prior Approvals forms, and all requested attachments (collectively the "Occupancy Permit Applications") to the Township for the Small and Large Trailers, respectively. Copies of the Occupancy Permit Applications for the Small and Large Trailers are Attachments I and J, respectively, with the exception that the copies do not include the site plans.

On June 9, 2006, the Property Owner's counsel requested the Pike Township solicitor to have the Township expeditiously sign the Pike Township Prior Approvals forms to avoid the potential for any disruption in services to Discovery House's patients. A copy of this email is Attachment K.

On June 13, 2006, the Township's solicitor notified the Property Owner's counsel that Pike Township should not be required to sign the Pike Township Municipal Prior Approvals forms and asserted that Guardian should sign them – contrary to Guardian's direction as well as the instructions stated directly on the form. A copy of this correspondence is Attachment L.

On June 27, 2006, the Property Owner, through counsel, sent a letter to Pike Township, its solicitor, and Guardian that detailed the good faith steps the Property Owner had taken to follow Guardian's instructions for obtaining the permanent occupancy permits and the Property Owner's disappointment and frustration that as of that date, none of the responsible entities had taken any action other than to attempt to shift responsibility for acting upon the Occupancy Permit Applications. A copy of this letter, without attachments, is Attachment M.

On June 29, 2006, the Property Owner's counsel learned from the Pike Township solicitor that Pike Township's sign off on the Pike Township Municipal Prior Approvals forms would occur "imminently" but would include comments pertaining to (i) Act 10 compliance (the §621 Restriction), (ii) whether the Occupancy Permit Applications constitute land development, and (iii) whether the Department of Health should be involved. None of these considerations had been raised in the occupancy permit process previously (nor are they within Guardian's scope of review as a Third Party Agency). A copy of this email is Attachment N.

On July 3, 2006, the Property Owner, through counsel, sent Guardian a letter outlining the scope of authority granted to a Third-Party Agency under the UCC, contesting Guardian's authority to consider anything other than conformance of the applications to the UCC, and requesting that Guardian immediately process the applications. A copy of this correspondence is Attachment O.

On July 5, 2006, Mr. Wruble and Mr. Kulbacki of Guardian sent the Property Owner's counsel a letter stating that "As of this date, we have not received any plans whatsoever for the permanent installation of the two trailers for Discovery House." A copy of this correspondence is Attachment P.

On July 5, 2006, the Property Owner's counsel responded to Guardian's claims that it had not seen the Occupancy Permit Applications for the Trailers, noting that regardless of whether Guardian had current physical custody of the applications, Guardian appeared to have intentionally taken steps to prevent taking action on them. A copy of this correspondence is Attachment Q. Guardian did not respond to this letter.

On July 5, 2006, Mr. Wruble of Guardian notified Hess & Fisher that he would require an additional form, which he called a commercial checklist, as a part of the permanent occupancy permit applications. He stated that he does not normally require this form but that he was doing everything "to cover himself" with respect to these Occupancy Permit Applications. He faxed the form to Hess & Fisher later that day.

On July 5, 2006, Pike Township held a public meeting at which time it considered the Occupancy Permit Applications. The Township did not notify the Property Owner that the Occupancy Permit Applications would be considered at the meeting. A newspaper account of the meeting reported that Mr. Norris, the secretary for the Township, stated that Pike Township had the Occupancy Permit Applications and would be forwarding them to the Planning Commission on July 6, 2006. The newspaper article also reported that the Township would take steps to close the Facility on July 17, 2006. A copy of the newspaper article is Attachment R.

On July 6, 2006, Pike Township called the Property Owner's agent and stated that the Occupancy Permit Applications were at the Pike Township building where they could be picked

up. The Property Owner's agent picked up the Occupancy Permit Applications from Pike Township, at which time the Property Owner learned that Guardian had attached a list of 16 additional items that the Property Owner would be required to complete in order to have the Occupancy Permit Applications approved. The items included such things as constructing a permanent foundation for the temporary Trailers, and other time-consuming and costly items. Despite having received the applications on May 16, 2006 and the revised applications on June 6, and June 14, 2006, this was the first time that Pike Township or Guardian had ever identified any of these major items. A copy of the list of items is attached at Tab S.

On July 13, 2006, Kevin Bloom, of Hess & Fisher, and the Property Owner's agent met with Mr. Wruble to identify all requirements related to the Occupancy Permit Applications because the requirements as represented to the Property Owner by Guardian kept growing. Mr. Wruble represented that he would send a letter stating that the requirements for permanent occupancy had been identified and that there would not be any new requirements. To date, the Property Owner has not received this letter.

As reflected in this chronology, Pike Township and Guardian essentially suspended activity on the occupancy permit applications in light of the assertions raised regarding the §621 Restriction. Moreover, the permit process was bounced back and forth between Guardian and Pike Township, either as the result of their confusion regarding how to address the circumstances of the permits or because of a disagreement between Pike Township and Guardian regarding who had jurisdiction over and responsibility for the matter. Guardian has not issued extensions to the certificates of occupancy (or new certificates) for the Trailers, and Guardian contends in the Order to Vacate that such certificates are necessary. However, the absence of certificates of occupancy ultimately stems from the delay and disruption caused by the controversy surrounding

the §621 Restriction and the bureaucratic process described above. Said delay was contrary to the intent of the UCC and was prejudicial to the Property Owner who made repeated and timely applications under the circumstances.

D. Proposed Replacement Structure

The Property Owner has investigated an array of options to replace the structure destroyed by the fire. The Property Owner believes that the erection of a modular building on the Premises in approximately the same location as the former building is an appropriate solution. It would be a one-story structure with a footprint of approximately 36 feet by 76 feet. The building specifications are found at Attachment U. However, as a practical matter, the Property Owner is not in a position to conclude the permitting process (and land development process, if necessary) and construct the building until the controversy regarding the application of the §621 Restriction is resolved by the Courts.

III. AN EXTENTION OF TIME TO COMPLY SHOULD BE GRANTED

The Board's consideration of a request for an extension of time or a variance is governed by §403.122 of the UCC Regulations. It provides, in pertinent part, as follows:

(g) A board of appeals may consider the following factors when ruling upon a request for extension of time or the request for variance:

(1) The reasonableness of the Uniform Construction Code's application in a particular case.

(2) The extent to which the granting of a variance or an extension of time will pose a violation of the Uniform Construction Code or an unsafe condition.

(3) The availability of professional or technical personnel needed to come into compliance.

(4) The availability of materials and equipment needed to come into compliance.

(5) The efforts being made to come into compliance as quickly as possible.

(6) Compensatory features that will provide an equivalent degree of protection to the Uniform Construction Code.

UCC §403.122(g).

When these criteria are applied to the present matter, it is clear that the granting of an extension of time is appropriate. Clearly, the criteria are designed to allow the Board to address specific situations with flexibility in response to the circumstances encountered. Of course, the overarching theme is to provide structures that are safe for occupancy. However, the criteria are also intended to be responsive to deviations from the UCC where exigent circumstances exist and where the difficulties encountered make strict compliance impractical.

As reflected on the Plan Review Comment Sheet provided by Guardian (Attachment S), the comments relate primarily to alterations to the Trailers that would be envisioned if the Trailers were to remain on a permanent basis. The comments specify modifications such as permanent foundations and related soil tests and load tests. None of these modifications are required to make the Trailers safe. Since the Trailers are only an interim solution to the Property Owner's need to use the Premises to operate the Facility, those conditions of the UCC should not be imposed at this time. The design and construction criteria of these manufactured Trailers provide a degree of protection equivalent to the UCC.³

As outlined above, the Property Owner has taken all reasonable steps to respond to the difficulties presented by the fire and has made repeated applications to and conferred with the

³ It is noteworthy that the manufacture of the Trailers is akin to the construction of manufactured housing which has been heavily regulated for many years. See, for example, The Pennsylvania Manufactured Housing Construction and Safety Standards Authorization Act, 35 P.S. §§1656.1 to 1656.9 and regulations at 12 Pa. Code, Chapter 143, and The National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C.A. §5401-5426.

UCC Third Party Agency (Guardian) to address the situation in a manner that complies with all relevant requirements. Consequently, an extension should be granted. An extension would comport with the UCC regulations and would avoid disruption to the care provided by the Facility to its patients. It is a reasonable accommodation to the Property Owner's effort to respond to the fire on the Premises.

The UCC regulations provide that the Board may grant the requested extension in whole or in part and may attach conditions (§403.122(i)). As the focus of the Plan Review Comment Sheet is on making the Trailers permanent (which the Property Owner does view as an appropriate long term solution), the imposition of those conditions on the Trailers is impractical and therefore not appropriate. Naturally, the Property Owner would be prepared to consider any suggested conditions that reflect the interim character of the Trailers during the requested hearing in this matter.

The Property Owner requests the Board to grant it an extension of time within which to obtain occupancy permits for the Trailers until six (6) months after the date of the later of:

(1) the entry of a final and unappealed order in the Declaratory Judgment Action with respect to the §621 Restriction presently pending at Clearfield County docket 06-1114- CV (i.e., the extension would continue pending any appeals); or

(2) the entry of a final and unappealed order in the Land Use Appeal presently pending at Clearfield County docket 06-1144-CV (i.e., the extension would continue pending any appeals); or

(3) the unappealed grant of a construction permit for the construction of a new building on the Premises; or

(4) the unappealed grant of approval of a land development plan for the construction of a new building on the Premises.

Essentially, the Property Owner is requesting that he be deemed to have a Certificate of Occupancy for the Trailers until the controversy over the §621 Restriction is resolved by the

Courts and until any follow-up permitting and, if necessary, land development approvals may be obtained.

IV. A VARIANCE SHOULD BE GRANTED

As noted above, the request for a variance is evaluated on the same criteria as the request for an extension of time. For essentially the same reasons discussed above, the grant of a variance is appropriate under the circumstances. However, the essential point is that the comments on the Plan Review Comment Sheet (Attachment S) only relate to matters of concern if the Trailers were to be used on a permanent basis.⁴ The impracticality of using them on a permanent basis is obvious, and the Property Owner does not intend to do so. Consequently, a variance may be granted.

V. THE ORDER TO VACATE IS CONTRARY TO THE UNIFORM CONSTRUCTION CODE

The UCC Regulations also establish the criteria by which the Board shall evaluate an appeal. They provide in pertinent part, as follows:

(f) A board of appeals shall only consider the following factors when deciding an appeal under section 501(c)(2) of the act:

- (1) The true intent of the act or Uniform Construction Code was incorrectly interpreted.
- (2) The provisions of the act do not apply.
- (3) An equivalent form of construction is to be used.

UCC §403.122(f). The Property Owner's appeal should be granted for several reasons.

⁴ Property Owner sought a permanent certificate of occupancy on an interim basis because Guardian advised that an application for a further temporary certificate would not be considered.

It is respectfully submitted that Guardian has misinterpreted the UCC, a circumstance that is understandable given the lack of clarity in how the UCC regulations incorporated the International Building Code ("IBC"). The Order to Vacate cites §3103.1 of the IBC. That provision relates to temporary structures. However, in context, it is clear that §3103.1 is intended to address tents and other structures that are physically constructed and dismantled such as grandstands, bleachers, or other items used to accommodate *ad hoc* events. It clearly does not embrace manufactured structures which may have temporary locations (because they are mobile) but which are essentially permanent in their structural physical characteristics.⁵ It does not provide a valid basis for the Order to Vacate.⁶

Further, the Property Owner respectfully submits that it is within the inherent authority of a UCC Third Party Agency to grant a temporary certificate of occupancy. Guardian apparently agreed with this inherent authority when it provided the first and second temporary certificates of occupancy for the Small Trailer on June 28 and December 28, 2005 (Attachments E and F). Chapter 1 of the IBC provides authority for temporary certificates of occupancy (*See* §110.3). However, Chapter 1 of the IBC was not adopted as part of the UCC regulations. In context, this appears to be an inadvertent gap in the administrative provisions, but one where the exercise of such authority by a Third Party Agency (such as Guardian) would be within the reasonable purview of its general grant of authority. It would have been appropriate for Guardian to

⁵ As detail at footnote 3 on page 11, the manufactured housing industry is heavily regulated.

⁶ Also, as a matter of procedure, Guardian's proceedings under §403.83 should, if initiated at all, have been initiated by an order to show cause (§403.83(a) and (b)) to which a property owner may present an answer. The answer may also request an extension of time or variance (§403.83(c)). Here, Guardian essentially truncated the process, directing the Property Owner to appeal directly to the Board of Appeals of the Moshannon Valley Council of Governments. In light of this procedural irregularity, Property Owner is submitting its response both to Guardian and the Board. Under the circumstances, the Property Owner is satisfied to have the Board assume jurisdiction.

consider and grant additional temporary certificates of occupancy. However, irrespective of any gaps in the authority of the Third Party Agency (Guardian), it is clear that this Board has the authority to grant an extension of time to comply or a variance, and the Property Owner has made such requests to this Board.

Finally, an appeal may be granted where an equivalent form of construction is employed. An equivalent form of construction is being employed in this case. That is, the Trailers are subject to appropriate structural specifications and, as noted above, the modifications suggested by the Plan Review Comment Sheet (Attachment S) do not reflect any inherent deficiencies in the construction of the Trailers. Rather, they merely reflect modifications that would be made if the Trailers were to be present on a permanent basis (which is not intended).

VI. CONCLUSION

The Property Owner requests, in the alternative, that the Board grant the Property Owner relief from the Order to Vacate of July 27, 2006 by:

(a) granting the Property Owner an extension of time within which to obtain

certificates of occupancy for the Trailers until six (6) months after the date of the later of:

(1) the entry of a final and unappealed order in the Declaratory Judgment Action with respect to the §621 Restriction presently pending at Clearfield County docket 06-1114- CV (i.e., the extension would continue pending any appeals); or

(2) the entry of a final and unappealed order in the Land Use Appeal presently pending at Clearfield County docket 06-1144-CV (i.e., the extension would continue pending any appeals); or

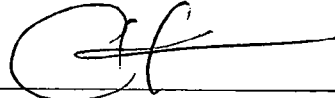
(3) the unappealed grant of a construction permit for the construction of a building on the Premises; or

(4) the unappealed grant of approval of a land development plan for the construction of a new building on the Premises; or

(b) granting the Property Owner a variance from the requirement of obtaining certificates of occupancy with respect to the Trailers; or

(c) granting the Property Owner's appeal by vacating the Order to Vacate.

Respectfully submitted,



Carleton O. Strouss, Esquire
PA Attorney I.D. No. 25994
Ruth E. Granfors, Esquire
PA Attorney I.D. No. 39508
KIRKPATRICK & LOCKHART
NICHOLSON GRAHAM LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507

*Counsel for David L. Piccoli, Sr.
Property Owner*



Kirkpatrick & Lockhart Nicholson Graham LLP

17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507
717.231.4500
Fax 717.231.4501
www.klmg.com

October 2, 2006

Via Facsimile & U.S. Mail

Kim C. Kesner, Esquire
23 North Second Street
Clearfield, PA 16830

Carleton O. Strauss

717.231.4503
Fax: 717.231.4501
cstrouss@klmg.com

**RE: Moshannon Valley Council of Governments Appeal
David L. Piccoli, Sr./Discovery House**

Dear Mr. Kesner:

Please allow this to respond to your letter of September 27, 2006 with respect to the September 19, 2006 correspondence of Kenneth Tressler.


We hereby confirm that Mr. Piccoli requests and agrees to an extension of the 60-day time period within which the appeal (filed August 25, 2006) may be heard by the Board of Appeals. This agreement is given in accordance with § 403.122(e) of the Uniform Construction Code Regulations. This extension is granted by Mr. Piccoli through December 20, 2006. Mr. Piccoli also agrees that the appeal will not be deemed to be granted by virtue of the passage of the 60-day time period.

In agreeing to this extension, Mr. Piccoli relies on the parties' understanding that, pursuant to § 403.122(c), the "Order to Vacate" of July 27, 2006 is suspended pending the Board's disposition on the merits.

Based on your correspondence, we understand that you will confer with Mr. Brink and advise us accordingly. If agreeable, we would anticipate a hearing being scheduled after November 30, 2006.

Thanking you, I remain

Very truly yours,



Carleton O. Strauss

cc: Mr. Jack Brink, Chairman, Board of Appeals
Dinesh Dadlani, Esquire
Guardian Inspection Services ATTN: Mr. Brian S. Wruble and Mr. William A. Kulbacki

D



Kirkpatrick & Lockhart Nicholson Graham LLP

17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507
717.231.4500
Fax 717.231.4501
www.klmg.com

December 13, 2006

Carleton O. Strouss

717.231.4503
Fax: 717.231.4501
cstrouss@klmg.com

Via Facsimile & U.S. Mail

Jack Brink, Chairman
Board of Appeals
Moshannon Valley Council of Governments
650 Leonard Street
Clearfield, PA 16830

Kim C. Kesner, Esquire
23 North Second Street
Clearfield, PA 16830

**RE: Moshannon Valley Council of Governments Appeal
David L. Piccoli, Sr./Discovery House**

Gentlemen:

Please allow this to supplement my correspondence to Mr. Kesner of October 2, 2006. As more fully detailed in that correspondence, Mr. Piccoli granted an extension through December 20, 2006 of the 60-day time period within which his appeal may be heard by the Board of Appeals.

As we believe you are aware, Discovery House is making arrangements to open a facility in Lawrence Township. As a consequence, it envisions that the trailers that are the subject of the appeal will be removed from the Pike Township site, probably early next year. Under those circumstances, there would be no need for the Board of Appeals to consider the present appeal. Moreover, Mr. Piccoli would then be in a position to withdraw the appeal presently before the Board. As a result, there is no need for the Board of Appeals to schedule a hearing at this time. However, in light of the 60 day requirement of the Uniform Construction Code Regulations, we felt it appropriate to formally grant the Board of Appeals a further extension of the 60-day time period.

Therefore, Mr. Piccoli hereby requests and agrees to an extension of the 60-day time period within which the appeal (filed August 25, 2006) may be heard by the Board of Appeals. This agreement is given in accordance with § 403.122(e) of the Uniform Construction Code Regulations. This extension is granted by Mr. Piccoli through February 20, 2007. Mr. Piccoli also agrees that the appeal will not be deemed to be granted by virtue of the passage of the 60-day time period.



Kirkpatrick & Lockhart Nicholson Graham LLP

Kim C. Kesner, Esquire

Mr. Jack Brink

December 13, 2006

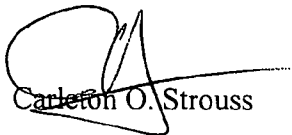
Page 2

In agreeing to this extension, Mr. Piccoli relies on the parties' understanding that, pursuant to § 403.122(c), the "Order to Vacate" of July 27, 2006 is suspended pending the Board's disposition on the merits.

If you have any questions or concerns regarding the foregoing, please do not hesitate to contact me.

Thanking you and wishing you a joyous holiday season, I remain

Very truly yours,



Carleton O. Strouss

cc: Dinesh Dadlani, Esquire

Guardian Inspection Services ATTN: Mr. Brian S. Wruble and Mr. William A. Kulbacki

LAWRENCE TOWNSHIP BOARD OF SUPERVISORS

SUPERVISORS

WILLIAM D. LAWHEAD
EDWARD E. BROWN
DANIEL G. MITCHELL, SR.

(814) 765-0176



P.O. BOX 508
CLEARFIELD, PA. 16830

SECRETARY-TREASURER
BARBARA SHAFFNER

(814) 765-4551

FAX (814) 765-5258

E-Mail ltbos@pennswoods.net

September 26, 2006

To:

Discovery House, Home Office
66 Providence Avenue
Providence, RI 02905

Mr. Ken Tressler
Regional Director PR Outreach Facilities
301 Smith Drive
Cranberry Township, PA 16066

RE: Zoning Certification; Airport Road, Property is located in C-H, Commercial Highway.

Dear Mr. Tressler:

According to Lawrence Township's Zoning Ordinance Section 125-14 and 125-16 C 12 Medical Clinics are approved in the Commercial Highway District of Lawrence Township.

Under Section 125-16C-12; "Medical Clinics - Rehabilitation Centers" must meet all required parking, loading and unloading requirements and shall be contained entirely on lot, including sufficient maneuvering room so that vehicles will not back onto a public street.

All lighting shall be so arranged to prevent glare to adjoining properties.

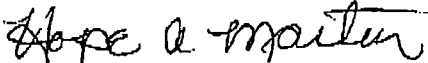
Any parking area next to a residential use shall be screened with a fence, screen planting or wall at least six feet high, provided in such a way that it will block a line of sight. Or shall be Screen Planting. An evergreen hedge at least six feet high, planted in such a way that it will block a line of sight. Screening may consist of either one, or multiple rows of bushes or trees and shall be at least four feet wide.

Lawrence Township is satisfied that the proposed site is compliant with The PA Municipal Planning 621 Code 1999, Act 10, (Section a, 1 and b, 2).

Lawrence Township also has a Subdivision and Land Development & Zoning Ordinance. They have adopted the International Building Code 2003 which we enforce regarding construction and development.

Hopefully this information is what you have requested.

Sincerely yours,

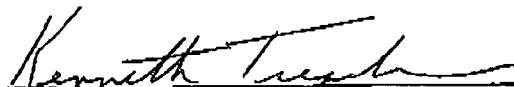
A handwritten signature in cursive script that reads "Hope A. Martin".

Hope A. Martin

Lawrence Township Code/Zoning Officer

VERIFICATION

I, Kenneth Tressler, verify that I am an authorized representative of Discovery House CU, Inc. and David L. Piccoli, Sr., and that the facts set forth in the foregoing Plaintiffs' Answer to Pike Township's Motion for Special Relief (Injunction) are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.


Kenneth Tressler

Dated: 2/2/07

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,
Plaintiffs,

v.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC., and CLEARFIELD
COUNTY PLANNING COMMISSION,
Defendants.

Docket No. 06-1114-CD

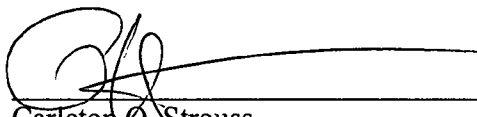
CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2007, I caused a copy of the foregoing Plaintiffs' Answer to Pike Township's Motion for Special Relief (Injunction) to be served upon the following via first class mail, postage prepaid addressed, as follows:

Kim C. Kesner, Esquire
23 North Second Street
Clearfield, PA 16830-2438
*Counsel for Clearfield County, Clearfield County Planning Commission
and Pike Township*

Guardian Inspection Services, Inc.
5510 Memorial Blvd.
Tobyhanna, PA 18466

Dinesh Dadlani, Esquire
Schwartz, Simon, Edelstein, Celso & Kessler
10 James Street
Florham Park, NJ 07932
Counsel for Guardian Inspection Services, Inc.
(Not of Record)


Carleton O. Strouss
PA 25994
Kirkpatrick & Lockhart Preston Gates Ellis LLP
17 North Second St., 18th Floor
Harrisburg, PA 17101
717.231.4500
717.231.4501 (fax)
*Counsel for Plaintiffs David L. Piccoli, Sr. and
Discovery House CU, Inc.*

CA

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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.

VS.

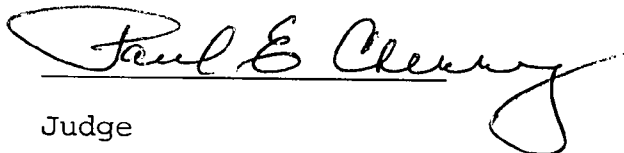
NO. 06-1114-CD

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC., and CLEARFIELD
COUNTY PLANNING COMMISSION

O R D E R

NOW, this 6th day of February, 2007, the Motion for Special Relief filed on behalf of Pike Township shall be and is hereby granted. The Court hereby enjoins Discovery House from further use or occupation of the trailers without the issuance of occupancy permits.

BY THE COURT,


Judge

FILED

2 CC Atty's:
2/3/07
FEB 08 2007

C. Strauss
Kesner

William A. Shaw
Prothonotary/Clerk of Courts

ICC Guardian Insp. Services, Inc.
5510 Memorial Blvd.
Tobyhanna, PA 18406

FILED

FEB 08 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2/8/07

☐ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☒ Plaintiff(s) Attorney ☐ Other

☒ Defendant(s) ☒ Defendant(s) Attorney

☒ Guardian ☐ Special Instructions

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

FILED

FEB 09 2007

William A. Shaw
Prothonotary/Clerk of Courts

2 clear to Att

DAVID L. PICCOLI, SR., and
DISCOVER HOUSE CU, INC.,

Plaintiff(s)

vs.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN
INSPECTION SERVICES, INC., and
CLEARFIELD COUNTY PLANNING
COMMISSION,

Defendant(s)

No. 06-1114-CD

Type of Case: Civil

Type of Pleading: Notice of Appearance on
behalf of Defendant Guardian Inspection
Services, Inc.

Filed on behalf of: Defendant Guardian
Inspection Services, Inc.

Counsel of Record for this Party:
Dinesh U. Dadlani, Esquire
PA Attorney I.D. No. 84631
Schwartz Simon Edelstein Celso & Kessler
LLP
Ten James Street
Florham Park, NJ 07932

Other Counsel of Record

Carleton O. Strauss, Esquire
Ruth E. Granfors, Esquire
Kirkpatrick & Lockhart
Nicholson Graham LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507
Counsel for Plaintiffs

Kim C. Kesner, Esquire
Belin, Kubista & Ryan
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
Counsel for Clearfield County, Clearfield
County Planning Commission, and Pike
Township

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

DAVID L. PICCOLI, SR., and
DISCOVER HOUSE CU, INC.,

Plaintiff(s)

vs.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN
INSPECTION SERVICES, INC., and
CLEARFIELD COUNTY PLANNING
COMMISSION,

Defendant(s)

NO. 06-1114-CD

ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter our appearance as counsel on behalf of Defendant, Guardian
Inspection Services, Inc. in the above-captioned matter.



Dinesh U. Dadlani, Esquire
PA Attorney I.D. No. 84631
Schwartz Simon Edelstein
Celso & Kessler LLP
Ten James Street
Florham Park, NJ 07932
Counsel for Defendant Guardian
Inspection Services, Inc.

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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,

Plaintiffs,

v.

CLEARFIELD COUNTY, PIKE
TOWNSHIP, GUARDIAN INSPECTION
SERVICES, INC. and CLEARFIELD
COUNTY PLANNING COMMISSION,

Defendants.

: No. 2006-1114-CD
:
: Type of Case: Civil
:
: Type of Pleading: **Joint Praecept to Discontinue**
:
: Filed on behalf of:
: Plaintiffs David L. Piccoli, Sr. and
: Discovery House CU, Inc.
:
: Counsel of Record for David L. Piccoli, Sr. and
: Discovery House CU, Inc.
:
: Carleton O. Strouss, Esquire
: PA Attorney I.D. No. 25994
: Ruth E. Granfors, Esquire
: PA Attorney I.D. No. 39508
: KIRKPATRICK & LOCKHART
: PRESTON GATES ELLIS LLP
: 17 North Second Street, 18th Floor
: Harrisburg, PA 17101-1507
:
: Other Counsel of Record:
:
: Kim C. Kesner, Esquire
: 23 N. Second Street
: Clearfield, PA 16830-2438
: *Counsel for Clearfield County, Clearfield*
: *County Planning Commission, and*
: *Pike Township*
:
: Dinesh Dadlani, Esquire
: Schwartz Simon Edelstein Celso & Kessler LLP
: 10 James Street
: Florham Park, NJ 07932
: *Counsel for Guardian Inspection Services, Inc.*

FILED 60006 Certificate
JUN 28 2007 10:53 AM
Att. Kesner

William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID L. PICCOLI, SR., and
DISCOVERY HOUSE CU, INC.,

Plaintiffs

v.

CLEARFIELD COUNTY, PIKE TOWNSHIP,
GUARDIAN INSPECTION SERVICES, INC.
and CLEARFIELD COUNTY PLANNING
COMMISSION,

Defendants.

Docket No. 2006-1114-CD

JOINT PRAECIPE TO DISCONTINUE

TO THE PROTHONOTARY:

WHEREAS, on July 13, 2006, Plaintiffs filed an action before this Court seeking a declaration of rights and other relief with respect to actions of some or all of the defendants;

WHEREAS, on August 23, 2006, Clearfield County, the Clearfield County Planning Commission and Pike Township (collectively "Governmental Parties") filed Answers containing counterclaims and, additionally, Pike Township filed a Motion for Special Relief which was granted as and to the extent reflected in the Court's order dated February 6, 2007 and entered February 8, 2007;

WHEREAS, Guardian Inspection Services, Inc. has not filed any claims in this matter;

WHEREAS, the contentions, claims, and counterclaims of all parties are collectively referred to herein as "Declaratory Judgment Action;"

WHEREAS, Discovery House has secured an alternative site at which to render the treatment services for its patients; and

WHEREAS, these changed circumstance have obviated and rendered moot the need for the Court to address the parties remaining contentions in the Declaratory Judgment Action.

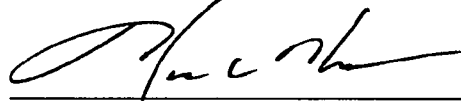
THEREFORE, the Plaintiffs and Governmental Parties, by their undersigned counsel,
discontinue the Declaratory Judgment Action as to all parties and request that it be marked
discontinued.

Respectfully submitted,



Carleton O. Strauss, Esquire
PA I.D. #25994
KIRKPATRICK & LOCKHART
PRESTON GATES ELLIS LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507
T: 717-231-4500
F: 717-231-4501

Counsel for Plaintiffs



Kim C. Kesner, Esquire
PA I.D. #28307
23 North Second Street
Clearfield, PA 16830
T: 814-765-1706
F: 814-765-7006

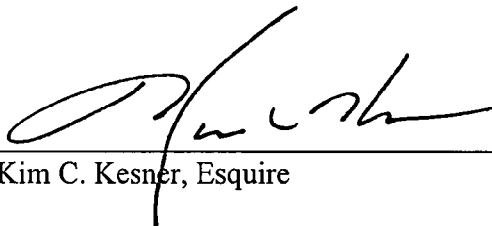
*Counsel for Clearfield County, Clearfield County
Planning Commission and Pike Township*

CERTIFICATE OF SERVICE

On June 28, 2007, I caused a copy of the Praecipe to Discontinue to be served by first class mail upon the following:

Carleton O. Strouss, Esquire
KIRKPATRICK & LOCKHART
PRESTON GATES ELLIS LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507

Dinesh Dadlani, Esquire
SCHWARTZ SIMON EDELSTEIN
CELSO & KESSLER LLP
10 James Street
Florham Park, NJ 07932



Kim C. Kesner, Esquire

FILED

JUN 28 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

David L. Piccoli Sr.
Discovery House CU, Inc.

Vs.

No. 2006-01114-CD

Clearfield County
Pike Township
Guardian Inspection Services, Inc.
Clearfield County Planning Commission

CERTIFICATE OF DISCONTINUATION

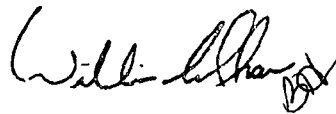
Commonwealth of PA
County of Clearfield

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 June 28, 2007, marked:

Discontinued

Record costs in the sum of \$85.00 have been paid in full by Carleton O. Strouss, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 28th day of June A.D. 2007.



William A. Shaw, Prothonotary