

08-1875-CD

Gary Berkley vs Cooper Township al

Brett M. Woodburn, Esquire  
Attorney I.D. # 81789  
Karen W. Miller, Esquire  
Attorney I.D. #200037  
Caldwell & Kearns, P.C.  
2621 North Front Street  
Harrisburg, PA 17110  
(717) 232-7661  
(717) 232-2766 (fax)  
Attorney for Appellant, Gary L. Berkley

**FILED**  
OCT 01 2008  
6/11:30/11  
William A. Shaw  
Prothonotary/Clerk of Courts  
Sent to P.C.F.

GARY L. BERKLEY,	:	IN THE COURT OF COMMON PLEAS
Appellant	:	CLEARFIELD COUNTY, PENNSYLVANIA
	:	
v.	:	
	:	NO.: 2008-1875-CD
	:	
BOARD OF SUPERVISORS OF	:	
COOPER TOWNSHIP, CLEARFIELD	:	
COUNTY, PENNSYLVANIA	:	CIVIL ACTION - LAW
Appellee	:	LAND USE APPEAL

**NOTICE OF LAND USE APPEAL**

AND NOW, Gary L. Berkley, Appellant, by and through his attorneys, Caldwell & Kearns, P.C., files this Notice of Land Use Appeal, appealing from the decision of the Board of Supervisors of Cooper Township, Pennsylvania, granting a subdivision approval on the grounds set forth below.

1. Appellant, Gary L. Berkley, (hereinafter "Berkley") is an adult individual, currently residing at 1395 German Road, Drifting, Cooper Township, Clearfield County, Pennsylvania, 16834.
2. Berkley is the owner of certain real estate located at 1395 German Road, Cooper Township, Clearfield County (hereinafter the "Subject Property").
3. The Appellee is the Board of Supervisors of Cooper Township.
4. On or about September 2, 2008, the Board of Supervisors of Cooper Township (hereinafter the "Board") issued a decision in regard to the Application of Allen and

Roger Larson, approving the subdivision of Mountain View Center, along German Road. A copy of the Board of Supervisor's Meeting Minutes is attached hereto as Exhibit "A". A copy of the subdivision plan has been requested, and will be provided to the Court upon receipt.

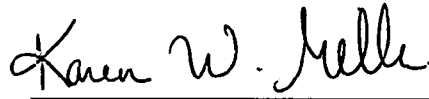
5. The proposed Subdivision Plan encompasses an area of land owned by Appellant.
6. Appellant instituted an Action to Quiet Title against the Shive Family on or about April 18, 2005, in the Court of Common Pleas of Clearfield County, Pennsylvania, at Docket No. 2005-582-CD.
7. By approving the subdivision plan, which includes land owned by Appellant and which is the subject of the quiet title action, the Board:
  - a. erred as a matter of law;
  - b. abused its discretion;
  - c. acted arbitrarily and capriciously; and/or
  - d. acted contrary to law and evidence.
8. Appellant reserves the right to supplement this appeal once he has had adequate opportunity to review the approved subdivision plan.

WHEREFORE, it is respectfully requested that this Court reverse the cited action of the Board of Supervisors of Cooper Township, and direct that the subdivision application which is the subject of this appeal be denied, or, in the alternative, that the Board stay the approval of the Subdivision Plan, pending the outcome of litigation between Appellant and the Shive Family, or, in the alternative, remand this matter to the Cooper Township Board of Supervisors for further proceedings.

Respectfully submitted,

Date: Sept. 29, 2008

By:



Brett M. Woodburn, Esquire

Attorney I.D. # 81789

Karen W. Miller, Esquire

Attorney I.D. # 200037

3631 North Front Street

Harrisburg, PA 17110

(717) 232-7661

Attorney for the Appellant

04668-138685

# EXHIBIT "A"

**COOPER TOWNSHIP**

PO BOX 208

KYLERTOWN, PA 16847

(814) 345-6571

Fax (814) 345-6069

UNOFFICIAL COPY

UNOFFICIAL COPY

**Cooper Township Supervisors Meeting Minutes  
Tuesday, September 02, 2008  
7:00 PM**

**Call to Order****Pledge to the Flag****Roll Call**

Present: Wayne T Josephson      Absent: Charles Engelman  
Charles Saggese  
Kate Roberts

**Others in Attendance:**

Laurie Josephson	Gae Kane - The Progress	Bonnie Liptak
Susan Cowder	Ann Kyler	Bill Verbeck
Janet Narehood	Randy & Deb Killion	Roger Larson
Gary Berkley		

**Minutes of August 4<sup>th</sup>, 2008 Supervisors Meeting****Minutes of August 11<sup>th</sup>, 2008 Special Meeting**

Supervisor Saggese made a motion to approve both minute minutes as submitted. Wayne seconded the motion. Motion carried.

**Correspondence**

- ✓ Clearfield County Association of Township Officials - Fall Convention
- ✓ DEP - Sewage Planning - Rensel & Brown Subdivision
- ✓ Clearfield County Recycler, Clearfield County Solid Waster Authority - Summer 2008 Issue
- ✓ PSATS Youth Awards Program
- ✓ Clearfield County Conservation District - Environmentally Sensitive Maintenance Training
- ✓ North Central Pennsylvania Regional Planning & Development Commission - Local Technical Assistance Program (LTAP) Training Opportunities
- ✓ Cooper Township Planning Commission July & August meeting minutes
- ✓ MVOCOG - Meeting Schedule and Guest speakers
- ✓ Stiffler, McGraw & Associates, Inc. - Steven McGraw President - passed away
- ✓ Surface Transportation Board, Anne K Quinlan concerning RJ Corman Railroad Company/PA Lines Inc. Construction and operation exemption in Clearfield County
- ✓ MDIA - Municipal Inspection Log Report
- ✓ Susquehanna River Basin Commission - Proposed Projects in Cameron County
- ✓ DEP - Lee Coal Contracting, Inc - Application for a Small Industrial Surface Mining Permit
- ✓ PSATS - Quarterly newsletter
- ✓ 2008 PennBOC Conference - Williamsport, PA - Oct 21 2008
- ✓ Beyer-Barber Company- Cooper Township Non-Uniformed Pens on Plan Certification of 2009 Minimum Municipal Obligation
- ✓ F. Cortez Bell III - Solicitor Position
- ✓ Salt Institute - newsletter
- ✓ Clearfield County Department of Emergency Management - MCM Consulting Group, Inc conduct a thorough analysis of 911 Communication System
- ✓ Whitaker Roads Corporation - Compatibility test results
- ✓ PSATS News Bulletin - July/August 2008
- ✓ Clearfield County Electronics Recycling Collection Day - Individual residents cost \$5 per item (limit 10 items per person)
- ✓ Clearfield County Planning Commission - Act 67 & 68 Land Use Review - Sky Haver Coal, Inc. Project Location: Cooper Township
- ✓ Burns & Burns Associates, Inc. - Insurance Premium
- ✓ Commonwealth of PA Department of Transportation - County Liquid Fuel funds
- ✓ National Safety Council - Offering Membership
- ✓ PSAT Training Program - Bookkeeping and Accounting Basics

**Supervisor's Meeting Minutes**  
**September 2, 2008**  
**Page 2**

**Correspondence (Cont'd)**

- ✓ Clearfield County Association of Township Officials - By Laws Amendments
- ✓ PSATS - 20<sup>th</sup> Annual President's Leadership Award
- ✓ PA Department of Transportation - Seminar on New Procedures for Submitting Your PennDot and DCED Forms
- ✓ NCPRPDC - Upcoming LTAP Training Opportunities
- ✓ PA One Call System, Inc. - Board Meeting Notice

**Future Meetings**

- Cooper Township Planning Commission 9/8/08 7:00
- Cooper Township Municipal Authority 9/2/08 7:00 P.M.
- Cooper Township Supervisors 9/18/08 12:30 P.M.
- Morris-Cooper Police Commission 9/25/08 7:00 P.M. At Morris Twp
- Cooper Township Supervisors Monday 10/6/08 7:00 P.M

**Public Input**

Randy Killion addresses the supervisors about a problem with unattended burning in his neighborhood. He said the land owner next to him has been burning all kinds of garbage 24 hours a day. He explained that he has been keeping a record of the burning since June 27. He said they can not open windows or run an air conditioner because of an excessive burning. The burning is also unattended. The burning could be started in the middle of the night and smolder for days. His wife has allergies and is often bothered by having a hard time breathing because of the smoke.

Randy asked if the supervisors would consider a burning ordinance. He has provided a burning ordinance that is in force at Decatur Township.

Mr. Killion also asked about Charles Engelman. Has he responded to any of the letters the supervisors have sent?

There were some comments from the public about Mr. Engelman wanting to have a meeting via telephone. And that he could not attend the meeting due to working but was willing to pay for the call and conduct the meeting over the telephone. But that was not favored by the supervisors. Other comment by the public was made about why he would want to be a supervisor because there is more to being a supervisor than just attending the meetings. Supervisor Josephson and Saggese both do more than just attend the meetings. Both supervisors have other responsibilities but still stay active with the every day business of the township. Supervisor Josephson said the township has sent two certified letters to Mr. Engelman and have gotten no response. Another comment was made that Mr. Engelman needs to come to a meeting and justify himself. Mr. Killion would like to be advised on the situation and if there is something he could do please let him know.

Susan Cowder asked if a member of each organization involved with the township have a representative present at the township meeting and give a report. She said she could not attend all the meeting because of her health but would like to be informed on the activities of each authority or organization. Supervisor Josephson said the Progress always has a report in the newspaper on each meeting. Supervisor Saggese said the township receives meeting minutes from each organization and said we could maybe have copies available for the public at the supervisors meeting.

Ms Cowder also had a second comment about the rats at the Truck shop in Kylertown. She asked if there was an ordinance that would be wrote about the truckers only being able to be parked at the truck stop for a period of 24 hours. Someone commented that they thought DEP had to regulate that. Supervisor Josephson said he didn't think there was anything the township could do about the problem. Ms. Cowder said her neighbor put out rat poison and had 17 rats in there backyard dead. A suggestion was to contract the Truck shop or DEP concerning the problem.

**Supervisor's Meeting Minutes  
September 2, 2008  
Page 3**

**Public Input (Cont'd)**

Gary Berkley commented about the recent 4 wheeler accident in the township. He asked if there was something the supervisors could do about the problem with the 4 wheelers running on the main roads in the township. His concern is for the common person driving down the road and possibly having an accident and being charged for the accident and being sued for the accidents. Mr. Berkley wants to know if the township could have an ordinance for controlling the 4 wheelers. A discussion was held on the problems and who would be responsible to control the 4 wheelers. Supervisors said they would have the township police get involved and may need to cite the wheelers for improper usage and suggest the citizens call the state police.

Anita & Lester Mann asked if the supervisors could sign off on the Rod & Helen Eminhizer Subdivision. Ms. Mann said they just came from the Water Authority Meeting and the property needing water and sewerage was approved for the subdivision. The Planning Commission was holding on to the subdivision until approval was given. With the approval given the Supervisors signed the subdivision. Roger Larson, President of Planning Commission was present at this meeting and seen no problem with now having the approval for the water and sewage.

Allen and Roger Larson presented the Board of Supervisors with a Subdivision for Mountain View Center. The owners are just dividing the property. The three lots are non-building wavier lots. Supervisor Saggese made a motion to approve the subdivision. Supervisor Josephson seconded the motion. Motion carried. Gary Berkley stated some concern on the property lines. He stated there is a problem with property line on the Shive property line. Mr. Larson stated that they are using the existing deed and they are not trying to change property lines.

**Old Business**

Awarded Bids for Tar & Chip Project at Special Meeting on August 11, 2008, 16614 Gallons of RS-2 or CRS-2 Oil - Whitaker Roads Corporation; and 555 tons of Type 1B, No 8 Aggregate to Glenn O Hawbaker. - Supervisor Josephson told about the Special Meeting on August 11<sup>th</sup> to awarded bids. The bids were awarded to Whitaker Road Corporation for the tar and stone to Glenn O Hawbaker. The tarring and chipping will be done on September 9, 10 & 11th if needed.

Subdivision: Rod & Helen Eminhizer Subdivision - Supervisors signed the subdivision with having the Water Authority's approval.

Need of New Solicitor - Supervisor Josephson stated the supervisors are in the process in interviewing for a new solicitor.

**New Business**

Clearfield County Association of Township Officials - Fall Convention - Friday October 3, 2008-

New Computer - North Central Regional Planning and Development Commission will reimburse the amount of \$2,394 for Energy Star Computer. - The computer has been ordered and NCRPDC will reimburse the total amount of the computer.



**Supervisor's Meeting Minutes  
September 2, 2008  
Page 4**

**New Business (Cont'd)**

Kate Roberts - Fulfilled Probation Period - Supervisor Josephson stated Kate has fulfilled her probation period and made a motion to give her a raise of a \$1.00. Supervisor Saggese questioned that the probation period was to be 90 days but ended her probation period after 60 days (Personnel Policy states Probation period is 60 days). He agreed to the raise but not \$1.00 because in a few months will be the beginning of the year and then raise will be given then. The decision was tabled until a later time.

Burning Problem - Deb Killion - was addressed at public input.

New Plow - Power Angle - 2004 International Truck - Will be taking phone bids on a new angle plow for the 2004 International Truck

Supervisor Saggese suggested that the 1985 Ford L8000 single axle Dump Truck be advertised. Supervisor Josephson said we could advertise and take sealed bids until October 6<sup>th</sup>.

Clearfield County Solid Waste Authority & Wal-Mart Super Center Will be sponsoring a one-day collection for the recycling of electronics on Saturday September 13<sup>th</sup> from 9am to 2 pm at the County Jail off US Route 322 in Clearfield

LTAP Fall Courses - Winter Maintenance at Goshen Township Building on September 23, 2008 from 8:00 am - 3:00 pm - Paul Moskol, Tony Rinehart & William Verbeck attending

Posting and Bonding of Local Roads on November 6, 2008 from 9 am to 12 pm at Ridgway Kate Roberts attending

Bonding Roads for Rorabaugh Lumber - T-720 Boxasen Road 8/10 mile & Knox Run Road T-725 1/10 mile. Supervisor Saggese made a motion to approve the bond of these roads. Supervisor Josephson seconded the motion. Motion carried.

**Treasurers Report** (Payroll, bills, report) - Secretary Roberts read the treasurer's report. She also explained the monies she moved into PLGIT I/Class the Interest will be given quarterly instead of monthly.

**Adjournment-** Meeting was adjourned at 8:10 PM

**VERIFICATION**

The undersigned hereby verifies that the facts set forth in the foregoing document are true and correct to the best of his knowledge, information and belief and further states that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 9-30-08

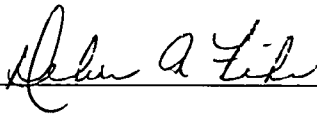
Gary L. Berkley  
Gary L. Berkley

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the within document this 30<sup>th</sup> day of September, 2008, on the following by depositing a true and correct copy of the same in the U.S. Mail at Harrisburg, Pennsylvania, postage prepaid, addressed to:

*Attorney for Board of Supervisors of Cooper Township  
P.O. Box 203  
Kylertown, PA 16847*

CALDWELL & KEARNS

By: 

**FILED**  
OCT 01 2008  
William A. Shaw  
Prothonotary/Clerk of Courts

GARY L. BERKLEY,  
Appellant

v.

BOARD OF SUPERVISORS OF  
COOPER TOWNSHIP, CLEARFIELD  
COUNTY, PENNSYLVANIA  
Appellee

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

:

:

: NO.: 2008-1875-CJ

:

:

: CIVIL ACTION - LAW  
: LAND USE APPEAL

**ORDER OF COURT**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2008, upon consideration of the within Notice of Land Use Appeal, it is hereby Ordered that this Court reverse the cited action of the Board of Supervisors of Cooper Township, and direct that the subdivision application which is the subject of this appeal be denied, or, in the alternative, that the Board stay the approval of the Subdivision Plan, pending the outcome of litigation between Appellant and the Shive Family, or, in the alternative, remand this matter to the Cooper Township Board of Supervisors for further proceedings.

BY THE COURT:

\_\_\_\_\_  
J.

Distribution

Brett M. Woodburn, Esquire, Karen W. Miller, Esquire, Caldwell & Kearns, 3631 North Front Street, Harrisburg, PA 17110

Attorney for Board of Supervisors of Cooper Township, P.O. Box 208, Kylertown, PA 16847

GARY L. BERKLEY,  
Appellant

v.

BOARD OF SUPERVISORS OF  
COOPER TOWNSHIP, CLEARFIELD  
COUNTY, PENNSYLVANIA  
Appellee

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

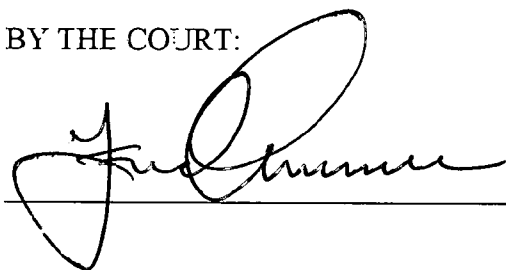
: NO.: 2008-1875-CN

: CIVIL ACTION - LAW  
: LAND USE APPEAL

**ORDER OF COURT**

AND NOW, this 8 day of October, 2008, upon consideration of  
the Notice of Land Use Appeal, the Court hereby schedules a hearing for  
November 7, 2008, at 2:30 p.m. in Courtroom # 1 of  
the Clearfield County Courthouse.

BY THE COURT:

  
J.

FILED 4CC  
013-412571 Amy Miller  
William A. Strickland  
Prothonotary/Clerk of Courts

FILED

OCT 08 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 10/8/08

☒ 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:

GARY L. BERKLEY,  
Appellant

v.

BOARD OF SUPERVISORS OF  
COOPER TOWNSHIP, CLEARFIELD  
COUNTY, PENNSYLVANIA  
Appellee

LA

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

: NO. 2008-1875-CD  
:  
:  
:  
:

: CIVIL ACTION - LAW  
: LAND USE APPEAL

MOTION FOR CONTINUANCE Filed on  
Behalf of Gary L. Berkley, Appellant

Counsel of Record for this Party:

Brett M. Woodburn, Esquire  
Attorney I.D. # 81786  
Karen W. Miller, Esquire  
Attorney I.D. # 200037  
3631 North Front Street  
Harrisburg, PA 17110  
(717) 232-7661

Opposing Counsel:

Kim C. Kesner, Esquire  
Clearfield County Solicitor's Office  
212 South Second Street  
Clearfield, PA 16830

FILED<sup>s</sup> 2cc Atty  
m/11:55 am Miller  
OCT 17 2008  
(initials)

William A. Shaw  
Prothonotary/Clerk of Courts



GARY L. BERKLEY,  
Appellant

v.

BOARD OF SUPERVISORS OF  
COOPER TOWNSHIP, CLEARFIELD  
COUNTY, PENNSYLVANIA  
Appellee

: IN THE COURT OF COMMON PLEAS  
: CLEARFIELD COUNTY, PENNSYLVANIA  
:  
:  
: NO. 2008-1875-CD  
:  
:  
: CIVIL ACTION - LAW  
: LAND USE APPEAL

**ORDER OF COURT**

AND NOW, this \_\_\_\_\_ day of October, 2008, upon consideration of the within  
Motion of Appellant, Gary L. Berkley, it is hereby Ordered that the above-referenced matter is  
continued.

BY THE COURT:

\_\_\_\_\_  
J.

Distribution:

Brett M. Woodburn, Esquire, Caldwell & Kearns, 3631 North Front Street, Harrisburg, PA  
17110

Kim C. Kesner, Esquire, Clearfield County Solicitor's Office, 212 South Second Street,  
Clearfield, PA 16830

Brett M. Woodburn, Esquire  
Attorney I.D. # 81786  
Karen W. Miller, Esquire  
Attorney I.D. #200037  
Caldwell & Kearns, P.C.  
3631 North Front Street  
Harrisburg, PA 17110  
(717) 232-7661  
(717) 232-2766 (fax)  
Attorney for Appellant, Gary L. Berkley

---

GARY L. BERKLEY,	:	IN THE COURT OF COMMON PLEAS
Appellant	:	CLEARFIELD COUNTY, PENNSYLVANIA
	:	
v.	:	
	:	NO. 2008-1875-CD
	:	
BOARD OF SUPERVISORS OF	:	
COOPER TOWNSHIP, CLEARFIELD	:	
COUNTY, PENNSYLVANIA	:	CIVIL ACTION - LAW
Appellee	:	LAND USE APPEAL

### **MOTION FOR CONTINUANCE**

AND NOW, comes the Appellant, Gary L. Berkley, by and through his attorney, Brett M. Woodburn, Esquire, and files this Motion for Continuance and in support thereof, avers as follows:

1. On October 1, 2008, Appellant filed a Notice of Land Use Appeal, instituting the above-referenced action.
2. On October 8, 2008, the Honorable Fredric J. Ammerman, entered an Order, scheduling a Hearing for November 7, 2008, at 2:30 p.m., in Courtroom #1 of the Clearfield County Courthouse. A true and correct copy is attached hereto as Exhibit "A".
3. Brett M. Woodburn, Esquire, counsel for Gary L. Berkley, will be out of state on business on the date scheduled for such Hearing, November 7, 2008, and is currently scheduled to return to Pennsylvania on Monday, November 10, 2008.

4. Counsel for Appellant, Gary L. Berkley, respectfully requests a continuance.

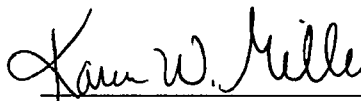
5. Counsel for Appellee, Board of Supervisors of Cooper Township, Clearfield County, Pennsylvania, concurs with the within Motion.

WHEREFORE, it is respectfully requested that this matter be continued to permit counsel for Appellant to be present for the Hearing to address the Notice of Land Use Appeal.

Respectfully submitted,

Date: October 15, 2008

By:



Brett M. Woodburn, Esquire  
Attorney I.D. # 81786  
Karen W. Miller, Esquire  
Attorney I.D. # 200037  
3631 North Front Street  
Harrisburg, PA 17110  
(717) 232-7661  
Attorney for the Appellant

04568-139533



GARY L. BERKLEY,  
Appellant

v.

BOARD OF SUPERVISORS OF  
COOPER TOWNSHIP, CLEARFIELD  
COUNTY, PENNSYLVANIA  
Appellee

: IN THE COURT OF COMMON PLEAS  
: CLEARFIELD COUNTY, PENNSYLVANIA  
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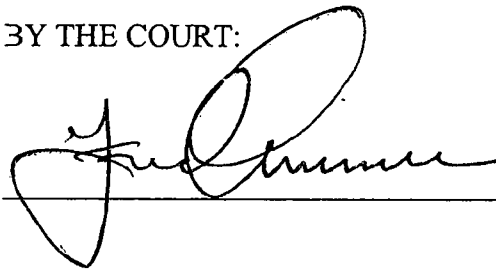
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BY THE COURT:

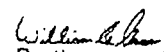


J.

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

OCT 08 2008

Attest.

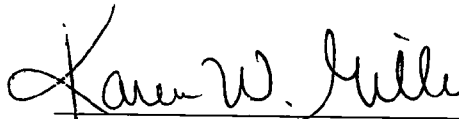
  
Prothonotary/  
Clerk of Courts

**VERIFICATION**

I, Karen W. Miller, Esquire, attorney for Plaintiff, hereby verify that the matters contained herein constitute conclusions of law, facts of record and matters exclusively within the knowledge of counsel and is true and correct to the best of my knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S. 4904, relating to unsworn falsification to authorities.

Dated: \_\_\_\_\_

October 15, 2008



\_\_\_\_\_  
Karen W. Miller, Esquire

**CERTIFICATE OF SERVICE**

AND NOW this 15<sup>th</sup> day of October 2008, I hereby certify that I have served a copy of the within document on the following by depositing a true and correct copy of the same in the U.S. Mail at Harrisburg, Pennsylvania postage prepaid, addressed to:

Kirk C. Kesner, Esquire  
Clearfield County Solicitor's Office  
212 South Second Street  
Clearfield, PA 16830

CALDWELL & KEARNS

By: Heather A. Felt

FILED

OCT 20 2008

2cc Amy Miller  
M12-32801  
I went to Kim C.  
Kesner, Esq. (Clerk)  
William A. Shaw  
Prothonotary/Clerk of Courts  
County)  
Cert. Mail  
# 7008 1140 0004 4482  
5329  
(610)

Brett M. Woodburn, Esquire  
Attorney I.D. # 81786  
Karen W. Miller, Esquire  
Attorney I.D. #200037  
Caldwell & Kearns, P.C.  
3631 North Front Street  
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(717) 232-7661  
(717) 232-2766 (fax)  
Attorney for Appellant, Gary L. Berkley

GARY L. BERKLEY,	:	IN THE COURT OF COMMON PLEAS
Appellant	:	CLEARFIELD COUNTY, PENNSYLVANIA
	:	
v.	:	
	:	NO. 2008-1875-CD
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BOARD OF SUPERVISORS OF	:	
COOPER TOWNSHIP, CLEARFIELD	:	
COUNTY, PENNSYLVANIA	:	CIVIL ACTION - LAW
Appellee	:	LAND USE APPEAL

**PRAECIPE FOR WRIT OF CERTIORARI**

TO THE PROTHONOTARY:

Please issue a Writ of Certiorari upon the Board of Supervisors of Cooper Township commanding said governing body, board or agency, within twenty (20) days after receipt thereof, to certify to the Court its entire record in the matter in which the Land Use Appeal has been taken, or a true and complete copy thereof, including any transcript of testimony in existence and available to the governing body, board or agency, at the time it received the Writ of Certiorari. 53 P.S. Sec. 11003-A. See also, Land Use Appeal attached hereto as Exhibit "A".



Respectfully submitted,

Date: October 17, 2008

Ey: Karen W. Miller  
Brett M. Woodburn, Esquire  
Attorney I.D. # 81786  
Karen W. Miller, Esquire  
Attorney I.D. # 200037  
3631 North Front Street  
Harrisburg, PA 17110  
(717) 232-7661  
Attorney for the Appellant

04668/139585



Brett M. Woodburn, Esquire  
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Karen W. Miller, Esquire  
Attorney I.D. #200037  
Caldwell & Kearns, P.C.  
3631 North Front Street  
Harrisburg, PA 17110  
(717) 232-7661  
(717) 232-2766 (fax)  
Attorney for Appellant, Gary L. Berkley

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

OCT 01 2008

Attest.

*William A. Shaw*  
Prothonotary/  
Clerk of Courts

GARY L. BERKLEY,  
Appellant

v.

BOARD OF SUPERVISORS OF  
COOPER TOWNSHIP, CLEARFIELD  
COUNTY, PENNSYLVANIA  
Appellee

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

:  
: NO.: 2008-1875-CO

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1. Appellant, Gary L. Berkley, (hereinafter "Berkley") is an adult individual, currently residing at 1395 German Road, Drifting, Cooper Township, Clearfield County, Pennsylvania, 16834.
2. Berkley is the owner of certain real estate located at 1395 German Road, Cooper Township, Clearfield County (hereinafter the "Subject Property").
3. The Appellee is the Board of Supervisors of Cooper Township.
4. On or about September 2, 2008, the Board of Supervisors of Cooper Township (hereinafter the "Board") issued a decision in regard to the Application of Allen and

Roger Larson, approving the subdivision of Mountain View Center, along German Road. A copy of the Board of Supervisor's Meeting Minutes is attached hereto as Exhibit "A". A copy of the subdivision plan has been requested, and will be provided to the Court upon receipt.

5. The proposed Subdivision Plan encompasses an area of land owned by Appellant.
6. Appellant instituted an Action to Quiet Title against the Shive Family on or about April 18, 2005, in the Court of Common Pleas of Clearfield County, Pennsylvania, at Docket No. 2005-582-CD.
7. By approving the subdivision plan, which includes land owned by Appellant and which is the subject of the quiet title action, the Board:
  - a. acted as a matter of law;
  - b. abused its discretion;
  - c. acted arbitrarily and capriciously; and/or
  - d. acted contrary to law and evidence.

8. Appellant reserves the right to supplement this appeal once he has had a adequate opportunity to review the approved subdivision plan.

WHEREFORE, it is respectfully requested that this Court reverse the cited action of the Board of Supervisors of Cooper Township, and direct that the subdivision application which is the subject of this appeal be denied, or, in the alternative, that the Board stay the approval of the subdivision plan, pending the outcome of litigation between Appellant and the Shive Family, or, in the alternative, remand this matter to the Cooper Township Board of Supervisors for further proceedings.

Respectfully submitted,

Date: Sept. 29, 2008

By: Karen W. Miller

Brett M. Woodburn, Esquire

Attorney I.D. # 81789

Karen W. Miller, Esquire

Attorney I.D. # 200037

3631 North Front Street

Harrisburg, PA 17110

(717) 232-7661

Attorney for the Appellant

04668-138663

# EXHIBIT "A"

**COOPER TOWNSHIP**

PO BOX 208

KYLERTOWN, PA 16847

UNOFFICIAL COPY

UNOFFICIAL COPY

(814) 345-6571

Fax (814) 345-6069

**Cooper Township Supervisors Meeting Minutes**  
**Tuesday, September 02, 2008**  
**7:00 PM**

**Call to Order****Pledge to the Flag****Roll Call**

Present: Wayne T Josephson  
 Charles Saggese  
 Kate Roberts

Absent: Charles Engelman

**Others in Attendance:**

Laurie Josephson  
 Susan Cowder  
 Janet Natchood  
 Gary Berkley

Gae Kane - The Progress  
 Ann Kyler  
 Randy & Deb Killion

Bonnie Liptak  
 Bill Verbeck  
 Roger Larson

**Minutes of August 4<sup>th</sup>, 2008 Supervisors Meeting****Minutes of August 11<sup>th</sup>, 2008 Special Meeting**

Supervisor Saggese made a motion to approve both minute minutes as submitted. Wayne seconded the motion. Motion carried.

**Correspondence**

- ✓ Clearfield County Association of Township Officials - Fall Convention
- ✓ DEP - Sewage Planning - Rensel & Brown Subdivision
- ✓ Clearfield County Recycler, Clearfield County Solid Waster Authority - Summer 2008 Issue
- ✓ PSATS - Waste Awards Program
- ✓ Clearfield County Conservation District - Environmentally Sensitive Maintenance Training
- ✓ North Central Pennsylvania Regional Planning & Development Commission - Local Technical Assistance Program (LTAAP) Training Opportunities
- ✓ Cooper Township Planning Commission July & August meeting minutes
- ✓ LYNDON - Meeting Schedule and Guest speakers
- ✓ McGraw Hill - Steven McGraw President - passed away
- ✓ Surface Transportation Board, Anne K Quinlan concerning RJ Corman Railroad Company/PA Lines Inc. Construction and operation exemption in Clearfield County
- ✓ MDA - Municipal Inspection Log Report
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**Supervisor's Meeting Minutes**  
**September 2, 2008**  
**Page 2**

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- Cooper Township Supervisors Monday 10/6/08 7:00 P.M

**Public Input:**

Randy Millon addresses the supervisors about a problem with unattended burning in his neighborhood. He said the land owner next to him has been burning all kinds of garbage 24 hours a day. He explained that he has been keeping a record of the burning since June 27. He said they can not open windows or run an air conditioner because of an excessive burning. The burning is also unattended. The burning could be started in the middle of the night and smolder for days. His wife has allergies and is often bothered by having a hard time breathing because of the smoke.

Randy asked if the supervisors would consider a burning ordinance. He has provided a burning ordinance that is in force at Decatur Township.

Mr. Blitch also asked about Charles Engelman. Has he responded to any of the letters the supervisors have sent?

There were some comments from the public about Mr. Engelman wanting to have a meeting via telephone. And that he could not attend the meeting due to working but was willing to pay for the call and conduct the meeting over the telephone. But that was not favored by the supervisors. Other comment by the public was made about why he would want to be a supervisor because there is more to being a supervisor than just attending the meetings. Supervisor Josephson and Saggese both do more than just attend the meetings. Both supervisors have other responsibilities but still stay active with the every day business of the township. Supervisor Josephson said the township has sent two certified letters to Mr. Engelman and have gotten no response. Another comment was made that Mr. Engelman needs to come to a meeting and justify himself. Mr. Killion would like to be advised on the situation and if there is something he could do please let him know.

Erin Cowder asked if a member of each organization involved with the township have a representative present at the township meeting and give a report. She said she could not attend all meetings because of her health but would like to be informed on the activities of each authority or organization. Supervisor Josephson said the Progress always has a report in the newspaper on each meeting. Supervisor Saggese said the township receives meeting minutes from each organization and said we could maybe have copies available for the public at the supervisors meeting.

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**Supervisor's Meeting Minutes**  
**September 2, 2008**  
**Page 3**

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**Old Business**

Awarded Bids for Tar & Chip Project at Special Meeting on August 11, 2008, 16614 Gallons of RS-2 or CRS-2 Oil - Whitaker Roads Corporation; and 555 tons of Type 1B, No 8 Aggregate to Glenn O Hawbaker. - Supervisor Josephson told about the Special Meeting on August 11<sup>th</sup> to awarded bids. The bids were awarded to Whitaker Road Corporation for the tar and stone to Glenn O Hawbaker. The tarring and chipping will be done on September 9, 10 & 11<sup>th</sup> if needed.

Subdivision: Rod & Helen Emlnhizer Subdivision - Supervisors signed the subdivision with having the Water Authority's approval.

Need of New Solicitor - Supervisor Josephson stated the supervisors are in the process in interviewing for a new solicitor.

**New Business**

Clarion County Association of Township Officials - Fall Convention - Friday October 3, 2008-

New Computer - North Central Regional Planning and Development Commission will reimburse the amount of \$2,394 for Energy Star Computer. - The computer has been ordered and NCRPDC will reimburse the total amount of the computer.

**Supervisor's Meeting Minutes**  
**September 2, 2008**  
**Page 4**

**New Business (Cont'd)**

Kate Roberts - Fulfilled Probation Period - Supervisor Josephson stated Kate has fulfilled her probation period and made a motion to give her a raise of a \$1.00. Supervisor Saggese questioned that the probation period was to be 90 days but ended her probation period after 60 days (Personnel Policy states Probation period is 60 days). He agreed to the raise but not \$1.00 because in a few months will be the beginning of the year and then raise will be given then. The decision was tabled until a later time.

Burning Problem - Deb Killon - was addressed at public input.

New Plow - Power Angle - 2004 International Truck - Will be taking phone bids on a new angle plow for the 2004 International Truck

Supervisor Saggese suggested that the 1985 Ford L8000 single axle Dump Truck be advertised. Supervisor Josephson said we could advertise and take sealed bids until October 6<sup>th</sup>.

Clearfield County Solid Waste Authority & Wal-Mart Super Center Will be sponsoring a one-day collection for the recycling of electronics on Saturday September 13<sup>th</sup> from 9am to 2 pm at the County Jail off US Route 322 in Clearfield

LEAP Fall Courses - Winter Maintenance at Goshen Township Building on September 23, 2008 from 8:00 am - 3:00 pm - Paul Moskol, Tony Rinehart & William Verbeck attending

Posting and Bonding of Local Roads on November 6, 2008 from 9 am to 12 pm at Ridgway Kate Roberts attending

Bonding Roads for Rorabaugh Lumber - T-720 Boxasen Road 8/10 mile & Knox Run Road T-720 1.5 mile. Supervisor Saggese made a motion to approve the bond of these roads. Supervisor Josephson seconded the motion. Motion carried.

**Treasurer's Report (Payroll, bills, report)** - Secretary Roberts read the treasurer's report. She also explained the monies she moved into PLGIT I/Class the Interest will be given quarterly instead of monthly.

**Adjournment** - Meeting was adjourned at 8:10 PM

**VERIFICATION**

The undersigned hereby verifies that the facts set forth in the foregoing document are true and correct to the best of his knowledge, information and belief and further states that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Dated: \_\_\_\_\_

9-30-08

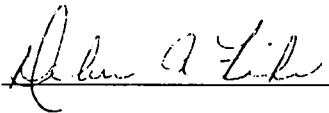
Gary L Berkley  
Gary L Berkley

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the within document this 30<sup>th</sup> day of September, 2008, on the following by depositing a true and correct copy of the same in the U.S. Mail at Harrisburg, Pennsylvania, postage prepaid, addressed to:

*Attorney for Board of Supervisors of Cooper Township  
P.O. Box 208  
Kylertown, PA 16847*

CALDWELL & KEARNS

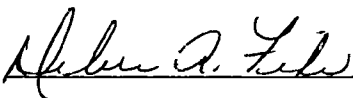
By: 

**CERTIFICATE OF SERVICE**

AND NCW, this 17<sup>th</sup> day of October, 2008, I hereby certify that I have served a copy of the foregoing document on the following by depositing a true and correct copy of the same in the U.S. Mail at Harrisburg, Pennsylvania, postage prepaid, addressed to:

Kim C. Kesner, Esquire  
Clearfield County Solicitor's Office  
212 South Second Street  
Clearfield, PA 16830

CALDWELL & KEARNS

By: 

Brett M. Woodburn, Esquire  
Attorney I.D. # 81786  
Karen W. Miller, Esquire  
Attorney I.D. #200037  
Caldwell & Kearns, P.C.  
3631 North Front Street  
Harrisburg, PA 17110  
(717) 232-7661  
(717) 232-2766 (fax)  
Attorney for Appellant, Gary L. Berkley

---

GARY L. BERKLEY,  
Appellant

v.

BOARD OF SUPERVISORS OF  
COOPER TOWNSHIP, CLEARFIELD  
COUNTY, PENNSYLVANIA  
Appellee

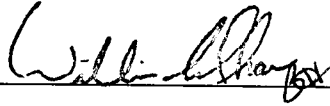
: IN THE COURT OF COMMON PLEAS  
: CLEARFIELD COUNTY, PENNSYLVANIA  
:  
:  
: NO. 2008-1875-CD  
:  
:  
: CIVIL ACTION - LAW  
: LAND USE APPEAL

---

**RULE**

To: Kim C. Kesner, Esquire  
Clearfield County Solicitor's Office  
212 South Second Street  
Clearfield, PA 16830

A Rule is hereby issued upon you to certify, within twenty (20) days after receipt thereof, to the Court your entire record in the matter in which the Land Use Appeal has been taken, or a true and complete copy thereof, including any transcript of testimony in existence and available to the governing body, board or agency, at the time you received the Writ of Certiorari. 53 P.S. Sec. 11003-A.

  
\_\_\_\_\_  
Prothonotary

Dated: 10/20/08

GARY L. BERKLEY,  
Appellant

v.

BOARD OF SUPERVISORS OF  
COOPER TOWNSHIP, CLEARFIELD  
COUNTY, PENNSYLVANIA  
Appellee

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

: NO. 2008-1875-CD  
:  
:

: CIVIL ACTION - LAW  
: LAND USE APPEAL

**ORDER OF COURT**

AND NOW, this 20<sup>th</sup> day of October, 2008, upon consideration of the within Motion of Appellant, Gary L. Berkley, it is hereby Ordered that the above-referenced matter is continued until the 19<sup>th</sup> day of November, 2008, at 1:30 P.m. in Courtroom #1 of the Clearfield County Courthouse.

BY THE COURT:



J.

**FILED** 4cc

01/21/08  
OCT 20 2008

Att'y Miller

William A. Shaw  
Prothonotary/Clerk of Courts

GD

FILED

OCT 20 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 10/20/08

☒ 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

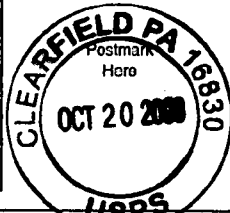
\_\_\_\_ Defendant(s) \_\_\_\_ Defendant(s) Attorney

\_\_\_\_ Special Instructions:



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Return Receipt Fee (Endorsement Required)	2.20
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.07
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Sent to	Kim C. Kesner Esquire
Street, Apt. No., or PO Box No.	Clearfield County Scholastic Office
City, State, ZIP+4	212 South Second Street Clearfield PA 16830
PS Form 3800, August 2006 See Reverse for Instructions	



08-1875-CD

FILED  
OCT 21 2008  
William A. Shaw  
Prothonotary/Clerk of Courts  
(610)

**FILED**

**OCT 21 2008**

**William A. Shaw**  
**Prothonotary/Clerk of Courts**

7 7

9 9

9 9

9 9

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

GARY L. BERKLEY,

Appellant

Vs.

BOARD OF SUPERVISORS OF  
COOPER TOWNSHIP, CLEARFIELD  
COUNTY, PENNSYLVANIA,

Appellee

No. 2008-1875-CD

Type of Pleading:

**CERTIFICATION OF RECORD**

Filed on Behalf of:  
APPELLEE

Counsel of Record for This Party:

Kim C. Kesner, Esquire  
Supreme Court No. 28307  
212 South Second Street  
Clearfield, PA 16830  
(814) 765-1706

**FILED**

OCT 27 2008

William A. Shaw  
Prothonotary/Clerk of Courts

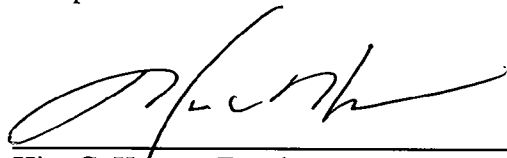
IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

GARY L. BERKLEY,	:	No. 2008-1875-CD
Appellant	:	
	:	
Vs.	:	
	:	
BOARD OF SUPERVISORS OF	:	
COOPER TOWNSHIP, CLEARFIELD	:	
COUNTY, PENNSYLVANIA,	:	
Appellee	:	

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I, Kim C. Kesner, Esquire, hereby certify that I am Solicitor of Cooper Township and as such, I do hereby certify in accordance with Section 1003-A of the Municipalities Planning Code, 53 P.S. Section 11003-A that the entire record of Cooper Township in the matter concerning the land use appeal is annexed hereto in the forms of:

1. A copy of the approved minutes from the September 2, 2008 meeting; and
2. A duplicate original of the approved subdivision plan;
3. A transcript of the tape recording of discussion prior to action by the supervisors approving the subdivision plan.

  
\_\_\_\_\_  
Kim C. Kesner, Esquire  
Solicitor for Cooper Township

# COOPER TOWNSHIP

PO BOX 208  
KYLERTOWN, PA 16847

(814) 345-6571  
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## Cooper Township Supervisors Meeting Minutes Tuesday, September 02, 2008 7:00 PM

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### Pledge to the Flag

### Roll Call

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Susan Cowder	Ann Kyler	Bill Verbeck
Janet Narehood	Randy & Deb Killion	Roger Larson
Gary Berkley	Allen Larson – Did not sign the Attendance Book	

### Minutes of August 4<sup>th</sup>, 2008 Supervisors Meeting

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**Supervisor's Meeting Minutes**  
**September 2, 2008**  
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**Supervisor's Meeting Minutes**  
**September 2, 2008**  
**Page 3**

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**Supervisor's Meeting Minutes**  
**September 2, 2008**  
**Page 4**

**New Business (Cont'd)**

Kate Roberts – Fulfilled Probation Period – Supervisor Josephson stated Kate has fulfilled her probation period and made a motion to give her a raise of a \$1.00. Supervisor Saggese questioned that the probation period was to be 90 days but ended her probation period after 60 days (Personnel Policy states Probation period is 60 days). He agreed to the raise but not \$1.00 because in a few months will be the beginning of the year and then raise will be given then. The decision was tabled until a later time.

Burning Problem – Deb Killion – was addressed at public input.

New Plow – Power Angle – 2004 International Truck - Will be taking phone bids on a new angle plow for the 2004 International Truck

Supervisor Saggese suggested that the 1985 Ford L8000 single axle Dump Truck be advertised. Supervisor Josephson said we could advertise and take sealed bids until October 6<sup>th</sup>.

Clearfield County Solid Waste Authority & Wal-Mart Super Center Will be sponsoring a one-day collection for the recycling of electronics on Saturday September 13<sup>th</sup> from 9am to 2 pm at the County Jail off US Route 322 in Clearfield

LTAP Fall Courses – Winter Maintenance at Goshen Township Building on September 23, 2008 from 8:00 am – 3:00 pm – Paul Moskol, Tony Rinehart & William Verbeck attending

Posting and Bonding of Local Roads on November 6, 2008 from 9 am to 12 pm at Ridgway Kate Roberts attending

Bonding Roads for Rorabaugh Lumber – T-720 Boxasen Road 8/10 mile & Knox Run Road T-725 1/10 mile. Supervisor Saggese made a motion to approve the bond of these roads. Supervisor Josephson seconded the motion. Motion carried.

**Treasurers Report** (Payroll, bills, report) – Secretary Roberts read the treasurer's report. She also explained the monies she moved into PLGIT I/Class the interest will be given quarterly instead of monthly.

**Adjournment-** Meeting was adjourned at 8:10 PM



Wayne Josephson – asked Roger Larson if he had something for the meeting.

Roger Larson – he said yes he had Mountain View Center Subdivision on German Road.

Wayne Josephson - ok.

Allen Larson - basically what we are doing is splitting the ground we owe into three pieces. It is the three families that own the ground and currently each one is taking one third.

Roger Larson - yea and it is non building wavier.

Wayne Josephson – ok, so each person taking a third?

Allen Larson – each person or family is taking a third. As you can see it is all equal acres.

Wayne Josephson – ok I need a motion to accept the subdivision for Mountain View Center.

Charles Saggese – I will make the motion.

Wayne Josephson – I will second the motion. This is all non building wavier, you said right Roger?

Roger Larson – Right then this is where the supervisor will sign.

Wayne Josephson – yep, We have a second, do we have any comments or questions?

Tape ended here and then on the other side of the tape the conversion starts with.

Wayne Josephson – that in dispute?

Gary Berkley – yes

Charles Saggese – where that at? Over here?

Gary Berkley – no not with them, the Shive property.

Allen Larson – want to look at the line Charlie?

Charles Saggese – yea

Allen Larson – the one Gary is talking about that one and we are basically we just referencing are deed description, Gary

Wayne Josephson – Yea that all.

Allen Larson – we are not trying to take any more that is on our deed description calls for.

Gary Berkley – well their I , I, I'm not saying anything about you, but the others is trying to move the line 40 feet.

Wayne Josephson– oh

Gary Berkley – so I just, just something I wanted to let you know.

Charles Saggese – yours is right here?

Gary Berkley – yea that the line. I don't know if that will change them I don't know how it

Allen Larson – All we did was divide , All we did was split the basic line deed description.

Wayne Josephson – ok I seconded the motion, comment or questions, All in favor say I.

Wayne Josephson & Charles Saggese – I

Wayne Josephson – Opposed?

Wayne Josephson – Motion carried.

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

GARY L. BERKLEY,

Appellant

Vs.

BOARD OF SUPERVISORS OF  
COOPER TOWNSHIP, CLEARFIELD  
COUNTY, PENNSYLVANIA,

Appellee

No. 2008-1875-CD

Type of Pleading:

**CERTIFICATE OF SERVICE**

Filed on Behalf of:  
APPELLEE

Counsel of Record for This Party:

Kim C. Kesner, Esquire  
Supreme Court No. 28307  
212 South Second Street  
Clearfield, PA 16830  
(814) 765-1706

**FILED**  
0/11:35  
OCT 27 2008

3cc Atty  
Kesner  
GKD

5  
William A. Shaw  
Prothonotary/Clerk of Courts

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

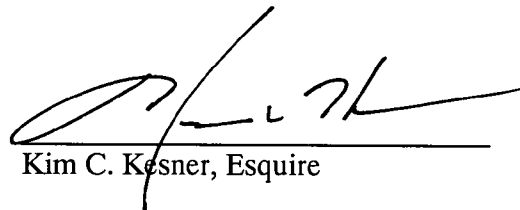
GARY L. BERKLEY,	:	No. 2008-1875-CD
Appellant	:	
	:	
Vs.	:	
	:	
BOARD OF SUPERVISORS OF	:	
COOPER TOWNSHIP, CLEARFIELD	:	
COUNTY, PENNSYLVANIA,	:	
Appellee	:	

**CERTIFICATE OF SERVICE**

I do hereby certify that on the \_\_\_\_ day of October, 2008, I served a true and correct copy of the within Certification of Record by first class mail, postage prepaid, on the following:

Brett M. Woodburn, Esquire  
Karen W. Miller, Esquire  
3631 North Front Street  
Harrisburg, PA 17110

Oct. 27, 2008  
Date

  
\_\_\_\_\_  
Kim C. Kesner, Esquire

**FILED**

**OCT 27 2008**

William A. Shaw  
Prothonotary/Clerk of Courts

Brett M. Woodburn, Esquire  
Attorney I.D. # 81786  
Karen W. Miller, Esquire  
Attorney I.D. #200037  
Caldwell & Kearns, P.C.  
3631 North Front Street  
Harrisburg, PA 17110  
(717) 232-7661  
(717) 232-2766 (fax)  
Attorney for Appellant, Gary L. Berkley

FILED ICC Atty  
m/12:02pm Miller  
NOV 10 2008

William A. Shaw  
Prothonotary/Clerk of Courts

GARY L. BERKLEY,  
Appellant  
v.  
BOARD OF SUPERVISORS OF  
COOPER TOWNSHIP, CLEARFIELD  
COUNTY, PENNSYLVANIA  
Appellee  
: IN THE COURT OF COMMON PLEAS  
: CLEARFIELD COUNTY, PENNSYLVANIA  
:  
:  
: NO. 2008-1875-CD  
:  
:  
: CIVIL ACTION - LAW  
: LAND USE APPEAL

**CERTIFICATE OF SERVICE**

AND NOW, this 21st day of October 2008, I hereby certify that I have served a Writ of Certiorari by depositing a true and correct copy of the same via certified U.S. Mail docketed to No. 7008 1140 0004 4882 5529, at Harrisburg, Pennsylvania, attached hereto and addressed to:

Kim C. Kesner, Esquire  
Clearfield County Solicitor's Office  
212 South Second Street  
Clearfield, PA 16830

CALDWELL & KEARNS

By: Karen W. Miller  
Karen W. Miller, Esquire

04668/140365

**SENDER: COMPLETE THIS SECTION**

- ☐ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- ☐ Print your name and address on the reverse so that we can return the card to you.
- ☐ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

John G. Mesner, Esquire  
Greenfield County Solicitor's Office  
212 South Second Street  
Greenfield, PA 16830

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

*Tammie McClintick*

☐ Agent

☐ Addressee

\*B. Received by (Printed Name)

TAMMIE MCCLINTICK

C. Date of Delivery

10-21-00

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

04668 08-1975-00

7008 1140 0004 4882 5529

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-11/1630

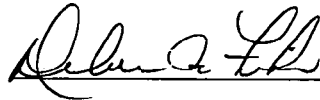
**CERTIFICATE OF SERVICE**

AND NOW, this 5<sup>th</sup> day of November, 2008, I hereby certify that I have served a copy of the foregoing document on the following by depositing a true and correct copy of the same in the U.S. Mail at Harrisburg, Pennsylvania, postage prepaid, addressed to:

Kim C. Kesner, Esquire  
Clearfield County Solicitor's Office  
212 South Second Street  
Clearfield, PA 16830

CALDWELL & KEARNS

By:

\_\_\_\_\_

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

GARY L. BERKLEY

v.

NO. 08-1875-CD

BOARD OF SUPERVISORS OF COOPER  
TOWNSHIP, CLEARFIELD COUNTY  
PENNSYLVANIA

PRAECIPE FOR ENTRY OF APPEARANCE

TO: WILLIAM A. SHAW, PROTHONOTARY

Kindly enter my appearance in the above captioned matter on behalf of Mountain View  
Center, Inc.

F. Cortez Bell, III  
F. CORTEZ BELL, III  
Attorney for Mountain View Center, Inc.  
PA. ID # 30183

Dated: November 19, 2008

318 East Locust Street  
P.O. Box 1088  
Clearfield, PA. 16830  
(814) 765-5537

FILED 4CC  
of 1:01/30 Amy Bell  
NOV 19 2008

William A. Shaw  
Prothonotary/Clerk of Courts



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

GARY L. BERKLEY

v.

BOARD OF SUPERVISORS OF COOPER  
TOWNSHIP, CLEARFIELD COUNTY  
PENNSYLVANIA

NO. 08-1875-CD

**CERTIFICATE OF SERVICE**

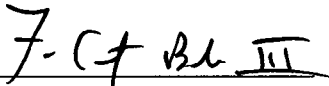
It is hereby certify that a true and correct copy of the Praecipe for Entry of Appearance on behalf of Mountain View Center, Inc. was served in the manner indicated upon the following:

(Personal Delivery)

Kim C. Kesner, Esquire  
212 South Second Street  
Clearfield, PA. 16830

Karen W. Miller, Esquire  
Caldwell & Kearns  
3631 North Front Street  
Harrisburg, PA. 17110

Date: November 19, 2008

  
F. Cortez Bell, III, Esquire  
Attorney for Mountain View Center

Brett M. Woodburn, Esquire  
Attorney I.D. # 81786  
Karen W. Miller, Esquire  
Attorney I.D. #200037  
Caidwell & Kearns, P.C.  
3631 North Front Street  
Harrisburg, PA 17110  
(717) 232-7661  
(717) 232-2766 (fax)  
Attorney for Appellant, Gary L. Berkley

S  
FILED 2cc Atty  
m/11:45 am  
NOV 24 2008  
William A. Shaw  
Prothonotary/Clerk of Courts

GARY L. BERKLEY,  
Plaintiff

v.

BOARD OF SUPERVISORS OF  
COOPER TOWNSHIP, CLEARFIELD  
COUNTY, PENNSYLVANIA  
Defendant

: IN THE COURT OF COMMON PLEAS  
: CLEARFIELD COUNTY, PENNSYLVANIA  
:  
:  
: NO. 2008-1875-CD  
:  
:  
: CIVIL ACTION - LAW  
: LAND USE APPEAL

**PRAECIPE TO WITHDRAW LAND USE APPEAL**

TO: The Prothonotary

AND NOW, comes Plaintiff, Gary Berkley, by and through his attorneys, Caidwell & Kearns P.C, and files the within Praeipce to Withdraw the Land Use Appeal regarding the above-referenced matter.

Respectfully submitted,

Date: November 21, 2008

By:

Karen W. Miller

Brett M. Woodburn, Esquire  
Attorney I.D. # 81786  
Karen W. Miller, Esquire  
Attorney I.D. # 200037  
3631 North Front Street  
Harrisburg, PA 17110  
(717) 232-7661  
*Attorney for the Plaintiff, Gary Berkley*

**CERTIFICATE OF SERVICE**


AND NOW, this 21<sup>st</sup> day of November, 2008, I hereby certify that I have served a copy of the foregoing document on the following by depositing a true and correct copy of the same in the U.S. Mail at Harrisburg, Pennsylvania, postage prepaid, addressed to:

Kim C. Kesner, Esquire  
Clearfield County Solicitor's Office  
212 South Second Street  
Clearfield, PA 16830

F. Cortez Bell, III, Esquire  
318 Locust Street  
P.O. Box 1083  
Clearfield, PA 16830

CALDWELL & KEARNS

By:

  
Debra A. Fike

04668/141182