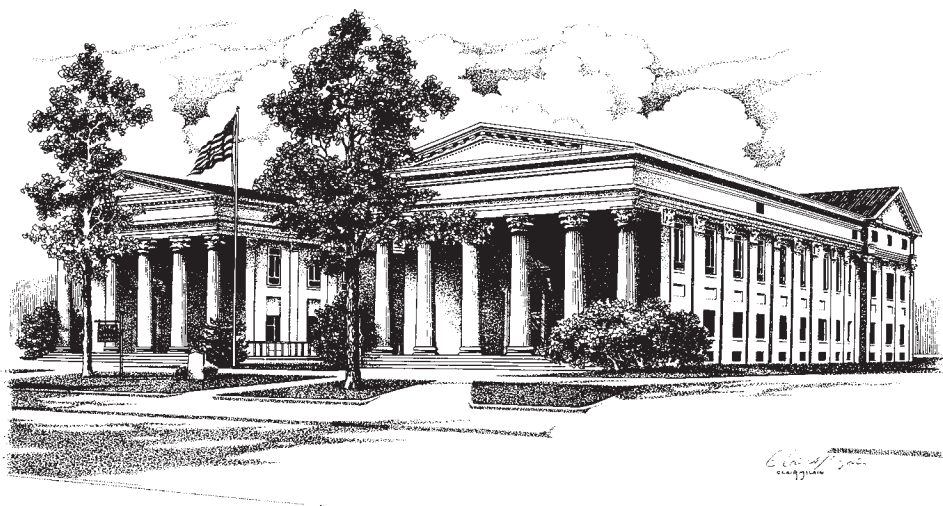


*Erie
County
Legal
Journal*

October 26, 2018

Vol. 101 No. 43



101 ERIE 174 - 198

**Conti v. Zoning Hearing Bd. of Fairview Twp. and Up State Tower Co., LLC and
Fairview Twp. v. Fairview Twp. Zoning Hearing Bd. and Up State Tower Co., LLC**

Erie County Legal Journal

*Reporting Decisions of the Courts of Erie County
The Sixth Judicial District of Pennsylvania*

Managing Editor: Megan E. Black

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Erie County Bar Association

Calendar of Events and Seminars

MONDAY, OCTOBER 29, 2018

Bankruptcy Section Meeting
The Will J. & Mary B. Schaaf Education Center
Noon

FRIDAY, NOVEMBER 2, 2018

SATURDAY, NOVEMBER 3, 2018

Bench-Bar Conference
Seneca Niagara Resort

MONDAY, NOVEMBER 5, 2018

Workers' Compensation Section Meeting
The Will J. & Mary B. Schaaf Education Center
Noon

MONDAY, NOVEMBER 12, 2018

Veteran's Day Observed
Erie County and Federal Courthouses Closed

MONDAY, NOVEMBER 12, 2018

Budget Committee Meeting
ECBA Headquarters
8:30 a.m.

TUESDAY, NOVEMBER 13, 2018

In-House Counsel Meeting
ECBA Headquarters
Noon

MONDAY, NOVEMBER 19, 2018

ECBA Board of Directors Meeting
ECBA Headquarters
Noon

TUESDAY, NOVEMBER 20, 2018

Family Law Section Meeting
Judge Walsh's Courtroom
Noon

THURSDAY, NOVEMBER 22, 2018

FRIDAY, NOVEMBER 23, 2018

Thanksgiving Holiday
ECBA Office Closed
Erie County and Federal Courthouses Closed

TUESDAY, NOVEMBER 27, 2018

ECBA Live Seminar
Bridge the Gap
ECBA Headquarters
1:00 p.m. - 5:00 p.m.
Free for those required to attend
4 hours ethics

THURSDAY, NOVEMBER 29, 2018

Defense Bar Only Meeting
ECBA Headquarters
Noon



Erie County Bar
Association



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To view PBI seminars visit the events calendar
on the ECBA website
<http://www.eriebar.com/public-calendar>

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ASSISTANT FEDERAL PUBLIC DEFENDER POSITION

The Federal Public Defender for the Western District of Pennsylvania is accepting applications for an experienced trial attorney to serve as an Assistant Federal Public Defender in its **Erie branch office**. The position primarily involves legal representation of indigent persons charged with criminal offenses in the United States District Court, though the position may also require providing representation to individuals in federal habeas corpus proceedings. Travel to the Pittsburgh headquarters or the Johnstown branch office may be required. **Responsibilities** include managing a caseload with cases at varying stages of litigation; preparing pleadings, briefs and motions; appearing on behalf of the client in court hearings and at other related proceedings; developing litigation strategies; meeting with clients, experts, witnesses and family members, and other duties as assigned. Trial experience, as well as excellent research, writing and oral advocacy skills, are required. The applicant should be prepared to immediately undertake the representation of clients in serious criminal cases, and have a working knowledge of the United States Sentencing Guidelines. The full announcement can be found at <http://paw.fd.org/pdf/2019-01-ERIE-AFPD.pdf>. Qualified applicants should apply by submitting a letter of interest, a current and detailed resume, and a writing sample in one Adobe Acrobat document to paw_employment@fd.org using the subject line "2019-01."

Oct. 26

NOMINATIONS TO THE ECBA BOARD OF DIRECTORS

Pursuant to Article V, Section 4 of the Erie County Bar Association By-Laws, the Nominating Committee intends to propose the following for nomination at the Annual Membership Meeting on Thursday, December 6, 2018:

Second Vice President:	Nicholas R. Pagliari
Treasurer:	Matthew B. Wachter
Board Members (3 yr. terms):	Maria J. Goellner
	Michael P. Kruszewski
	William S. Speros

Oct. 26 and Nov. 2

SEEKING PARALEGAL OR LEGAL SECRETARY

Paralegal or legal secretary with experience in both Federal and State Court matters, especially in Criminal area. Knowledge of QuickBooks and basic bookkeeping necessary. Applicants are invited to send their resume to: Leonard Ambrose, Esquire, 3702 Volkman Road, Erie, PA 16506. Feel free to also respond by telephone or by email.

lambrose@ambroselawfirm.net

Office: 814-459-5900

Cellphone: 814-397-9071

Position for a qualified individual is available immediately.

Oct. 12, 19, 26 and Nov. 2

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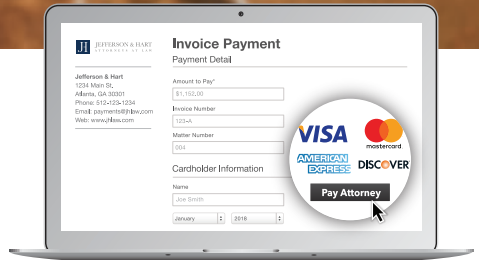
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JOSEPH P. CONTI and ANN MARIE CONTI, Appellants

v.

**THE ZONING HEARING BOARD OF FAIRVIEW TOWNSHIP also referred to
as, THE FAIRVIEW TOWNSHIP ZONING HEARING BOARD, Appellee
and UP STATE TOWER CO., LLC, Intervener**

FAIRVIEW TOWNSHIP, Appellant

v.

**FAIRVIEW TOWNSHIP ZONING HEARING BOARD, Appellee
and UP STATE TOWER CO., LLC, Intervener**

ZONING / SCOPE OF REVIEW

Where a trial court hears additional evidence on the merits of case after a governing body, board, or agency whose decision or action is brought up for review, the trial court must determine the case *de novo* and make its own findings of fact. *See* 53 P.S. § 11005-A.

ZONING / REQUEST FOR VARIANCE / STANDARD

The five elements to determine whether a variance should be granted are: (1) there are unique physical circumstances or conditions; (2) causing unnecessary hardship in the form of an unreasonable inhibition of usefulness of the property; (3) the hardship is not self-inflicted; (4) the grant of the variance will not adversely impact public health, safety, and welfare; and (5) the variance sought is the minimum that will afford relief. *See* 53 P.S. § 10910.2.

ZONING / REQUEST FOR VARIANCE / PUBLIC WELFARE

The concept of ‘public welfare’ is a broad one, in which an application for a variance may include traffic effects, impact on the character of the neighborhood, impact on property values, the effect on surrounding zoning, and other variables.

ZONING / REQUEST FOR VARIANCE / MINIMIZATION REQUIREMENT

The minimization requirement of the Municipalities Planning Code clearly applies in dimensional variance requests; however, the applicability of this requirement to use variance requests is often not relevant or tenuous.

ZONING / REQUEST FOR VARIANCE / SELF-INFLICTED HARDSHIP

The law does not permit a developer to subdivide his land and then make a subsequent claim for a variance because a remnant of that land does not conform with a zoning ordinance. The opportunity for greater profit from more lots in a subdivision is not a ground for the grant of a variance. When a landowner divides a parcel into two lots, and one of the lots is undersized, any resulting hardship is self-inflicted.

ZONING / USE VARIANCE / UNNECESSARY HARDSHIP

In determining whether unnecessary hardship has been established to justify the grant of a use variance, the hardship must be shown to be unique or peculiar to the property as distinguished from a hardship arising from the impact of zoning regulations on an entire district. Personal or economic hardship does not warrant the granting of a variance. Where the asserted hardship amounts to a landowner’s desire to increase profitability or maximize development potential, the unnecessary hardship criterion required to obtain a variance is not satisfied. Showing a lot can be used in a more profitable fashion is insufficient; the land must have no feasible, permitted use before a use variance is granted.

ZONING / VARIANCES / UNNECESSARY HARDSHIP

In evaluating hardship, the use of adjacent and surrounding land is unquestionably relevant. Moreover, testimony indicating a property could be used for alternative permitted uses should not be taken out of context, and if the testimony as a whole demonstrates that the uses are not feasible, the property owner should not be required to bear the burden of converting the property to those uses.

ZONING / VARIANCES / UNNECESSARY HARDSHIP

The mere fact that an applicant for a variance purchased the property with knowledge of the hardship does not alone preclude him from being granted the variance.

ZONING / DIMENSIONAL VARIANCE

A dimensional variance involves a request to adjust zoning regulations to use property in a manner consistent with regulations, as opposed to a use variance, which involves a request to use property in a manner that is wholly outside zoning regulations.

ZONING / DIMENSIONAL VARIANCE / UNNECESSARY HARDSHIP

In determining whether unnecessary hardship has been established to justify the grant of a dimensional variance, courts may consider multiple factors, including the economic detriment to the applicant if the variance was denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements, and the characteristics of the surrounding neighborhood.

*ZONING / DIMENSIONAL VARIANCE / UNNECESSARY HARDSHIP /
QUANTUM OF EVIDENCE*

The quantum of evidence required to establish an unnecessary hardship is lesser when a dimensional variance, rather than a use variance, is sought.

TELECOMMUNICATIONS / TELECOMMUNICATIONS ACT OF 1996

The construction, operation and maintenance of wireless telecommunications towers are controlled by regulations adopted and enforced by the Federal Communications Commission. *See* 47 U.S.C. § 301, *et seq.*

TELECOMMUNICATIONS / TELECOMMUNICATIONS ACT OF 1996

Congress may preempt state and local governments from regulating the operation and construction of a national telecommunications infrastructure, including construction and operation of personal wireless communications facilities. Congress enacted the Telecommunications Act of 1996 to provide a pro-competitive, de-regulatory national policy framework designed to rapidly accelerate private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.

TELECOMMUNICATIONS / LOCAL GOVERNMENT REGULATION

Under the Telecommunications Act of 1996, state and local governments retain authority over zoning and land use issues; however, the Telecommunications Act places several procedural and substantive limitations on such authority when exercised in relation to personal wireless service facilities. The Telecommunications Act of 1996 was intended to promote competition by limiting the ability of local authorities to regulate and control the expansion of telecommunications technologies.

TELECOMMUNICATIONS / LOCAL GOVERNMENT REGULATION

The purpose of Section 332(c)(7) of the Telecommunications Act of 1996 is to reduce the

impediments imposed by local governments upon the installation of facilities for wireless communications, such as antenna towers. This purpose is effectuated through Section 332(c)(7)'s limitations on the general authority of state or local governments or instrumentalities thereof to make decisions regarding the placement, construction, and modification of personal wireless service facilities.

TELECOMMUNICATIONS / LOCAL GOVERNMENT REGULATION

State or local government, or instrumentalities thereof, shall not prohibit or have the effect of prohibiting the provision of personal wireless services. 47 U.S.C. § 332(c)(7)(B)(i)(II).

TELECOMMUNICATIONS / LOCAL GOVERNMENT REGULATION

To show a violation of Section 332(c)(7)(B)(i)(II) of the Telecommunications Act of 1996, an unsuccessful provider applicant must show (1) its telecommunications facility will fill an existing significant gap in the ability of remote users to access the national telephone network; and (2) the manner in which the applicant proposes to fill the significant gap in service is the least intrusive means of remedying that gap.

*ADMINISTRATIVE LAW AND PROCEDURE /
DEFERENCE TO AGENCY INTERPRETATION*

If a court of appeals interprets an ambiguous statute one way, and the agency charged with administering that statute subsequently interprets the statute in another way, even that same court of appeals may not then ignore the agency's more recent interpretation.

TELECOMMUNICATIONS / LOCAL GOVERNMENT REGULATION

The FCC has adopted a standard that requires a provider to show a gap in its own service. See Ruling to Clarify Provisions of 332(C)(7)(b), 24 F.C.C.R. 13994 ¶ 56-61 (Nov. 18, 2009). Indeed, the U.S. District Court for the Eastern District of Pennsylvania has stated courts are required to give deference to the FCC's interpretation, which holds a provider must plead a significant gap in service in any area exists for that particular service provider. *Liberty Towers, LLC v. Zoning Hearing Bd. of Twp. Lower Makefield, Bucks Cty., Pa.*, 748 F.Supp.2d 437, 444 (E.D. Pa. 2010).

TELECOMMUNICATIONS / LOCAL GOVERNMENT REGULATION

To determine if a significant gap in coverage exists, courts consider the quality of the service in the area and the effect on remote users. Propagation maps as well as reports from radio-frequency engineers are suitable to support a claim for a substantial gap in coverage.

TELECOMMUNICATIONS / LOCAL GOVERNMENT REGULATION

The applicant of a zoning variance for the construction of a telecommunications tower need only show a good faith effort has been made in identifying and evaluating less intrusive alternatives, e.g., that the provider has considered less sensitive sites, alternative system designs, alternative tower designs, placement of antennae on existing structures, etc.

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

No. 13076 – 2017
No. 13100 – 2017 and
No. 13101 – 2017

Appearances: Joseph P. Conti, Esq., for Appellants Joseph P. Conti and Ann Marie Conti
Paul F. Burroughs, Esq., for Appellant Fairview Township
David J. Rhodes, Esq., & Bryan L. Spry, Esq., for Appellee Fairview Township
Zoning Hearing Board
Thomas S. Kubinski, Esq., & T. Scott Thompson, Esq., for Intervener Up
State Tower Co., LLC

OPINION

Domitrovich, J.

October 11, 2018

Up State Tower Co., LLC (“Intervener Up State”) had filed two zoning variance applications to construct two telecommunications towers at two separate real properties located within Fairview Township. The Zoning Hearing Board granted both of Intervener Up State’s zoning variance applications. Appellants appealed the Zoning Hearing Board’s decisions to this Trial Court.¹ The matters before this Trial Court are the land use appeals of Appellants Joseph P. Conti and Ann Marie Conti as well as Appellant Fairview Township challenging the decisions entered by the Fairview Township Zoning Hearing Board (the “Zoning Hearing Board”). A *de novo* hearing was held at which this Trial Court received new evidence. This Trial Court provides the following Findings of Fact and Conclusions of Law:

I. PROCEDURAL HISTORY

On May 2, 2017, Fairview Evergreen Nurseries, Inc. (“Fairview Evergreen”) and Intervener Up State entered into two separate land lease agreements wherein Fairview Evergreen agreed to lease portions of two separate real properties located in Fairview Township to Intervener Up State for the purposes of Intervener Up State constructing and operating a wireless telecommunications tower upon each property. On September 12, 2017, Intervener Up State submitted two separate variance applications to the Fairview Township Zoning Hearing Board with respect to each property requesting several variances from the Fairview Township Zoning Ordinance, including use variances, height variances, and numerous dimensional variances.

On October 3, 2017, a hearing was held before the Fairview Township Zoning Hearing Board on Intervener Up State’s variance applications. The Zoning Hearing Board voted to grant Intervener Up State’s requests for variances with respect to both applications, and on November 14, 2017, the Zoning Hearing Board issued two sets of Findings of Fact and Conclusions for Law setting forth the reasons for its decisions. On November 1, 2017, Joseph P. Conti, Esq., on behalf of himself and his wife, Ann Marie Conti (“Conti”), filed a Land Use Notice of Appeal at Docket Number 13076-2017. On November 2, 2018, Fairview Township filed two Notices of Land Use Appeals at Docket Numbers 13100-2017 and 13101-2017, by and through its counsel, Paul F. Burroughs, Esquire. On November 2, 2018, various landowners living in close physical proximity to the Dutch Road Property (“Landowners”), by and through their counsel, Gary Eiben, Esq., filed a Notice of Land Use Appeal/Petition for Review.² On November 28, 29, and 30, 2017, Intervener Up State filed, by and through its counsel, Thomas S. Kubinski, Esq., its Notices of Intervention at all four dockets.

¹ This Trial Court has jurisdiction of these land use appeals pursuant to Section 1001-A, *et seq.* of the Pennsylvania Municipalities Planning Code, 53 P.S. § 11002-A, *et seq.*

² On May 3, 2018, the Landowners filed their Praecepto to Discontinue their action against Zoning Hearing Board of Fairview Township at Docket Number 13099-2017. Therefore, this Trial Court will not address the remaining procedural history at Docket Number 13099-2017 as this procedural history is now rendered moot.

On December 4, 2017, Fairview Township filed its Motion for Additional Evidence and Appellant Conti filed his Motion to Present Additional Evidence. On December 27, 2017, both Fairview Township and Appellant Conti also filed separate Motions to Consolidate. By Order dated January 5, 2018, this Trial Court consolidated all dockets for trial purposes only. By Order dated March 9, 2018, after a scheduled Argument on the Motions to Present Additional Evidence, this Trial Court granted said Motions in part as well as Intervener Up State's oral request to the extent that a *de novo* hearing was scheduled for the purpose of this Trial Court receiving new evidence and the parties developing a thorough and complete record by providing an opportunity for all parties to be heard fully and to admit relevant evidence and testimony. This *de novo* hearing was scheduled to begin on May 31, 2018; however, since Attorney Conti was unable to appear on behalf of himself and Ann Marie Conti due to a last-minute, unforeseen illness, this Trial Court continued said *de novo* hearing.

On July 23, and 24, 2018, said *de novo* hearing was held; at which Thomas S. Kubinski, Esq., appeared on behalf of Intervener Up State Tower; Joseph P. Conti, Esq., appeared on behalf of himself and his wife; Paul F. Burroughs, Esq., appeared on behalf of Appellant Fairview Township; and David Rhodes, Esq., as well as Bryan Spry, Esq., appeared on behalf of Appellee Fairview Township Zoning Hearing Board. Said *de novo* hearing provided all counsel with the opportunity to present evidence and examine as well as cross-examine all witnesses. At said *de novo* hearing, counsel for Intervener Up State called several witnesses in support of Intervener Up State's Zoning Permit Applications, including Hagan Hetz, the CEO and Chair of the Board of Directors for Fairview Evergreen Nurseries, Inc.; Eric Wong, radio-frequency engineer for Blue Wireless; Richard Conroy, an expert radio-frequency engineer; Brian Gelfand, General Manager of Blue Wireless; and Don Carpenter, site acquisition and site development agent. Counsel for Appellant Fairview Township called Eve Hanlon to testify.

On August 29, 2018, Attorney Kubinski on behalf of Intervener Up State filed his "Application for Admission *Pro Hac Vice* of T. Scott Thompson" to appear and participate on behalf of Intervener Up State in these consolidated land use appeals. Said Motion was granted.

On September 13, 2018, Attorney Kubinski filed "Intervenor's Motion for Leave to File Reply Conclusions of Law." On September 17, 2018, Attorney Conti filed his "Opposition to Intervenor's Motion for Leave to File Reply Conclusions of Law." By Order dated September 17, 2018, this Trial Court permitted Attorney Kubinski to submit Reply Conclusions of Law and provided counsel for both Appellants with the opportunity to submit their Responses thereto. On September 20, 2018, Attorney Kubinski filed "Intervenor's Reply Conclusions of Law." On September 24, 2018, Attorney Burroughs filed "Appellant Fairview Township's Response to Up State's Reply Conclusions of Law." On September 26, 2018, Attorney Conti filed his "Response to Intervenor's Reply Conclusions of Law."

Where a deemed approval of a zoning application is appealed and the trial court accepts new evidence, the findings of the zoning board are rendered null and the trial court must render its own findings of fact and conclusions of law. *See DeSantis v. Zoning Hearing Bd. of the City of Aliquippa*, 53 A.3d 959, 962 (Pa. Cmwlth. 2012). Accordingly, these matters are ripe for this Trial Court's *de novo* review.

II. FINDINGS OF FACT

1. Fairview Township is a Pennsylvania municipality organized and existing under the laws of the Commonwealth of Pennsylvania.
2. Appellants Joseph P. Conti and Ann Marie Conti reside at 7498 Water Street, Fairview, Pennsylvania 16415.
3. Intervener Up State Tower Co., LLC is a limited liability company with a business address of 4915 Auburn Avenue, #200, Bethesda, Maryland, 20814.
4. Intervener Up State is in the business of acquiring real estate by either purchase or license, constructing cellular towers, and providing space for cellular carriers to collocate antennas on said cellular towers. (Notes of Testimony, De Novo Hearing, July 23, 2018, at pg. 17:8-19 (“N.T.1”)).
5. If a particular parcel of real estate is not zoned to allow for telecommunications facilities, Intervener Up State will apply for zoning variances. (N.T.1 at 17:8-19).
6. Blue Wireless operates a facilities-based cellular telephone network and is a federal licensee of commercial mobile radio services. Blue Wireless also operates stores at which consumers purchase cell phones for voice and data services. (N.T.1 at 15:24-16:3).
7. To operate a cell phone network and provide voice and data services, Blue Wireless requires placement of radio equipment at certain heights, based on radio-frequency engineering, typically either on dedicated cell towers or tall buildings, in order for radio equipment to communicate with each other properly. (N.T.1 at 16:6-11).
8. Fairview Township Zoning Ordinance permits the construction and operation of wireless telecommunications towers in the I-1 Light Industrial, I-2 Industrial Park, or I-3 Heavy Industrial Districts. These three industrially zoned districts comprise approximately eight percent of the township. (Notes of Testimony, De Novo Hearing, July 24, 2018, at pg. 125:25-126:4 (“N.T.2”)).
9. On September 12, 2017, Intervener Up State submitted to the Fairview Township Zoning Hearing Board: (1) an Application for Zoning Permit for 7463 West Ridge Road, Fairview, PA 16415 (“Dutch Road Property”); and (2) an Application for Zoning Permit for 7475 West Ridge Road, Fairview, PA 16415 (“Water Street Property”).³
10. In both Applications, Intervener Up State requested use, dimensional, and height variances to construct wireless telecommunications towers at the Dutch Road Property and the Water Street Property. Specifically, Intervener Up State proposed to construct 50 foot by 50 foot wireless telecommunications facilities with a height of 160 feet on both the Dutch Road Property and Water Street Property.
11. The Fairview Township Zoning Ordinance requires a telecommunications tower constructed in any of the “I” Industrially Zoned Districts with a height of 160 feet to have a minimum setback of 208 feet (160 feet by 130%). (N.T.1 at 31:7-13; 33:12-13).
12. The proposed telecommunications towers will not produce noise or light and will not increase local traffic in the area. (N.T.1 at 21:16-22:1). A technician will only visit the site “a couple times a year for regular maintenance checks.” (N.T.1 at 22:2-7).
13. The 160 foot height of the proposed telecommunications towers are the minimum heights necessary to provide the radio-frequency coverage Blue Wireless desires to produce in

³ Intervener Up State also identifies the Dutch Road Property as “ERI-664” and the Water Street Property as “ERI-675.” (N.T.1 at 6:15-7:3).

- order to provide sufficient wireless coverage in Fairview Township. (*See* N.T.1 at 16:6-11; 45:3-6; N.T.2 at 91:12-15; *see also* 93:11-20).
14. The proposed telecommunications towers are designed to have a breakage point 25 to 30 feet near the top of the tower; thus, if the tower were to topple, the tower would collapse upon itself. (N.T.2 128:15-24).
 15. A significant gap in wireless coverage is an area where a wireless provider is not able to service customers reliably in a particular geographic area due to either (1) inadequate signal or (2) inadequate capacity. (N.T.2 at 63:25-64:2). If either of these elements is lacking, a gap in coverage will exist. (N.T.2 at 64:3-10).
 16. Richard Conroy has a Bachelor's degree in electrical engineering from the New Jersey Institute of Technology and has 30 years of experience designing wireless telecommunications systems throughout the United States. (N.T.2 at 58:20-23).
 17. The primary issue in Blue Wireless' lack of coverage is due to Blue Wireless' frequency of operation, or the radio-frequency by which Blue Wireless' radio signals are propagated. (N.T.2 at 64:3-6; 64:11-13).
 18. Wireless carriers obtain licenses from the Federal Communications Commission ("FCC") to operate their network, and FCC licenses provide for different bands of spectrum and frequencies. (N.T.2 at 65:20-23).
 19. Blue Wireless's network operates on one frequency known as the 1900 megahertz frequency band. (N.T.2 at 65:24-66:2; 67:1-2). This 1900 megahertz is a higher than average frequency band of other cellular service providers. (N.T.2 at 64:20-66:2).
 20. Blue Wireless's network operates on five megahertz of bandwidth, which refers to capacity, or how many users their frequency band can support. (N.T.2 at 67:1-6; 68:18-19).
 21. Higher frequency bands, such as Blue Wireless' 1900 megahertz frequency, covers less distance than lower frequencies since this higher frequency signal will become attenuated as the signal travels through the air and diffracted as the signal travels through objects like trees, buildings and terrains. (N.T.2 at 66:8-13).
 22. Due to the Blue Wireless' higher frequency band and Blue Wireless' lack of wireless facilities in Fairview Township, a shortage of in-building coverage exists in Fairview Township regarding the ability of remote users to access Blue Wireless' cellular network. (*See* Exhibit I-15A; N.T.2 at 76:19-24; 77:19-78:5; 83:20-21).
 23. Blue Wireless' coverage gap in Fairview Township encompasses Lake Erie to the north, Manchester Road to the east, Interstate I-90 to the south and Fairplain Road to the west. (N.T.2 at 77:19-78:5).
 24. Blue Wireless' gap in wireless service consists of approximately 19.46 square miles and affects approximately 8,671 people who live within this coverage gap. (N.T.2 at 77:19-78:5; 83:20-21; 98:9-18).
 25. The count of population within the coverage gap area is based on U.S. Census data for the calendar year 2010. (Exhibit I-15, pg. 8; N.T.2 64:23-65:5; 105:20-106:10). U.S. Census data is an acceptable methodology for radiofrequency engineers to utilize in performing radio-frequency analyses. (N.T.2 120:4-16).
 26. Telecommunications towers placed at both Water Street and Dutch Road Properties are needed to fill Blue Wireless' gap in coverage since neither tower alone will effectively provide in-building coverage. Specifically, even if one tower could support the coverage,

one tower will not be able to support the capacity since, as more users access a single tower’s signal, too many users accessing that resources will exceed the tower’s capacity, thereby resulting in a coverage gap. (N.T.2 at 79:8-17). Thus, one tower standing alone is insufficient to provide seamless in-building coverage. (N.T.2 at 81:25-82:6; Exhibit I-15B; Exhibit I-15C).

27. The existence of both proposed telecommunications towers at the Water Street and Dutch Road Properties operating in unison will together provide approximately 12.6 square miles of coverage and serve approximately 7,638 people within the coverage gap. (N.T.2 at 83:6-12).
28. The two proposed telecommunications towers together will substantially remedy Blue Wireless’ gap in service and provide in-building LTE coverage to populated areas of Fairview Township. (N.T.2 at 83:21-84:2; 98:23-99:5; *compare* Exhibit I-15D with Exhibits I-15A-C, E-J).
29. “Search rings” are developed by radio-frequency engineers when a new tower site is required indicating a geographic area in which potential sites may be located in order to produce the maximum amount of coverage in an inadequately serviced area. (N.T.2 at 85:11-87:6).
30. Intervener Up State examined four existing cell towers in Fairview Township to determine whether collocation on a variation of these existing towers would adequately fill Blue Wireless’ gap in coverage. (*See* N.T.2 84:3-98:1; Exhibits I-15E-J).
31. These existing towers include: (1) “Crown Tower” located at 6250 West Ridge Road; (2) “SBA Tower” located at 7230 Canal Road; (3) “Verizon Tower” located at 7985 West Ridge Road; and (4) “ATC Tower” located at 4701 Franklin Road. (See Exhibit I-15, at pg. 10).
32. These four existing towers are located too far outside of the search rings and therefore do not provide efficient coverage to both the area as well as the population present in Fairview Township. (N.T.2 at 99:10-16; 99:19-20).
33. Blue Wireless has a significant gap in service in the vicinity of each of the sites caused by a lack of reliable in-building residential coverage based on advanced computer propagation modeling. (N.T.2 at 64:17-20; Exhibit I-15, at pg. 12-13).
34. Don Carpenter provided credible testimony in that he has been working in the site development field for over 20 years and has a Bachelor of Arts in English as well as an Associate’s degree in Applied Civil Engineering. (N.T.2 at 122:17-24).
35. Mr. Carpenter has been working for Intervener Up State since 2013 and has located approximately 100 sites for the construction and operation of other telecommunications facilities. (N.T.2 at 123:4-9).
36. James Cardman, the Fairview Township Planning and Zoning Administrator, has served in this role for 30 years. (N.T.2 at 204:7-12).

A. Findings of Fact with Respect to the Dutch Road Property (ERI-664)

37. The Dutch Road Property is zoned in the A-1 Rural District, which does not permit utility, communication, electric or gas company operations as of right. (Exhibit I-1).
38. Fairview Evergreen Nurseries, Inc. owns the real property located at Dutch Road in Fairview, Pennsylvania; Tax ID No. (21) 42-59-51. (Exhibit I-1).
39. Fairview Evergreen purchased the Dutch Road Property on March 11, 2013, by deed

- for \$12,000.00. (*See* Exhibit T-2).
40. When Fairview Evergreen acquired the Dutch Road Property, the Dutch Road Property’s condition was roughly similar to what it is now or completely similar to what it is now. (N.T.2 at 46:7-10). Specifically, the existing conditions including the “swale” and similar features unique to the Dutch Road Property are similar to what it was when Fairview Evergreen acquired the Dutch Road Property in 2013. (N.T.2 at 47:4-10). Similarly, the condition of the portion of the property where the proposed cell tower will be placed is the same as it was in 2013. (N.T.2 at 47:11-16).
 41. On May 2, 2017, Intervener Up State Tower Co., LLC entered into a “Land Lease Agreement” with Fairview Evergreen wherein Fairview Evergreen agreed to lease a portion of the Dutch Road Property to Intervener Up State for the purpose of constructing and operating a wireless telecommunications tower thereon.
 42. The construction, operation and maintenance of Intervener Up State’s wireless telecommunications tower at the Dutch Road Property will be controlled by regulations adopted and enforced by the Federal Communications Commission. *See* 47 U.S.C. § 301, *et seq.*
 43. The industrially zoned properties within the search ring near the Dutch Road Property meeting the setback distances required to construct a 160 foot structure already have existing primary uses. (*See* N.T.2 at 133:11-22; 134:19-24).
 44. Intervener Up State is requesting the following variances from the Fairview Township Zoning Ordinance as to the Dutch Road Property:
 - a. A use variance to § 709 to allow for the construction of a wireless telecommunications tower in the A-1 Rural District;
 - b. A variance as to the height restriction set forth in § 709(D)(6) to allow for the construction of a 160 foot wireless telecommunications tower in A-1 Rural District;
 - c. A dimensional variance from § 709(D)(5) to allow for a rear yard setback of 13.5 feet; and
 - d. A dimensional variance from § 709(D)(4) to allow for a side yard setback of 14.6 feet.
 45. The property located immediately adjacent to the south of the Dutch Road Property is zoned in the I-1 Light Industrial District. (Exhibit T-4; N.T.2 at 137:2-5).
 46. The shape of the Dutch Road Property is irregular in that the Dutch Road Property is a “pie-wedge shape” and consists of approximately ten acres. (N.T.1 at 98:11-15; Exhibit I-13; Exhibit T-2). Approximately 27 feet of the Dutch Road Property’s eastern boundary borders Dutch Road. (N.T.1 at 98:2-5). The western boundary of the Dutch Road Property is approximately 300 feet. (*See* Exhibit I-13).
 47. Fairview Evergreen owns property immediately north of the Dutch Road Property whereupon Fairview Evergreen operates a tree farm growing ornamental trees and other plants. (N.T.1 at 99:1-13; *see also* Exhibit I-13).
 48. The Dutch Road Property has unique physical circumstances in that the Dutch Road Property is uneven and has a “swale” or a dip/valley on the southern portion. (N.T.1 at 98:21-24; 99:19-100:13). This swale slopes downward from the northern property line and slopes up to the southern border of the Dutch Road Property. (N.T.1 at 100:3-6).
 49. The southern portion of the Dutch Road Property is not being utilized since the

- topography does not allow for cultivation of ornamental plants or farm crops. (N.T.1 at 98:16-20; 103:18-25).
50. Dutch Road lies to the east of the Dutch Road Property. (*See* Exhibit I-13).
 51. A railroad runs along the southern border of the Dutch Road Property. (N.T.1 at 100:16-24; 101:7-13; N.T.2 at 137:15-17; Exhibit I-13; Exhibit I-19).
 52. Electric power lines exist overhead on the southern portion of the Dutch Road Property. (N.T.1 at 100:25-101:4; N.T.1 at 137:13-15; Exhibit I-18; Exhibit I-19).
 53. Tow Road exists to the south of the railroad tracks. (N.T.1 at 101:14-18).
 54. A power grid/large transformer station exists to the south of the Dutch Road Property. (N.T.1 at 101:22-24; N.T.2 at 138:5-8; 140:5-8).
 55. A “chipper tree remover company” also exists to the south of the south of the Dutch Road Property. (N.T.1 at 101:19-22).
 56. Chiver’s Construction operates a construction business to the south of the Dutch Road Property across Tow Road. (N.T.1 at 101:17-24; N.T.2 at 140:4-5).
 57. An electrical company owns land to the south of the property. (N.T.2 at 140:5-8).
 58. Fairview Evergreen owns property immediately west of the Dutch Road Property extending west to Eaton Road. (N.T.1 at 101:25-102:6).
 59. A residential neighborhood exists on the east side of Dutch Road and to the north of the Dutch Road Property. (N.T.1 at 102:19-103:17).
 60. Fairview Evergreen purchased the Dutch Road Property to protect the southern border of property already owned by Fairview Evergreen and acquired the Dutch Road Property since its price was reasonable. (N.T.1 at 103:25-104:14).
 61. The Dutch Road Property cannot be cultivated to grow ornamental plants, farm crops, or any other type of plants. (N.T.1 at 100:3-13).
 62. The previous owner of the Dutch Road Property dumped non-organic materials onto said Property including expended diesel containers and used tires. (N.T.1 at 104:3-10).
 63. The proposed telecommunications tower site will occupy a 50 foot by 50 foot area in the northwest portion of the Dutch Road Property. (Exhibit I-1; Exhibit I-13).
 64. The proposed telecommunications tower site will be located on the Dutch Road Property with an approximate 2,380 foot front yard setback, 13.5 foot rear yard setback, and side yard setbacks of 264.9 feet and 14.6 feet. (Exhibit I-1).
 65. The properties in the industrial zone near the Dutch Road Property have existing primary uses and will not meet the required setback distances under the Fairview Township Zoning Ordinance. (N.T.2 at 133:11-20; 134:25-135:12). While one vacant lot without a primary use existed, that property owner was not interested in signing a lease nor was the property large enough to comply with applicable setback requirements. (N.T.2 at 135:10-12; 136:2-7).
 66. The Walnut Creek drainageway as well as a wrecking yard occupy much of the nearby area in the I-3 industrially zoned district, rendering much of the nearby real estate unsuitable. (N.T.2 at 133:22-134:2). Properties located near the Dutch Road Property will not comply with use and setback requirements of the Fairview Township Zoning Ordinance. (N.T.2 at 134:19-135:12).
 67. Intervener Up State previously filed a variance application to construct a telecommunications tower at a property zoned in the industrial district which had an

existing self-storage facility operating thereon. (N.T.2 at 129: 9-21). This property was located along the railroad tracks to the east of the Dutch Road Property. (N.T.2 at 130:6-15). However, Intervener Up State's variance application was denied since the property already had an existing use, the self-storage facility. (N.T.2 at 129:22-130:5).

B. Findings of Fact with Respect to the Water Street Property (ERI-675)

68. Fairview Evergreen also owns the real property located at 7475 West Ridge Road in Fairview, Pennsylvania 16415; Tax ID No. (21) 81-26-24 ("Water Street Property"). (Exhibit I-2).
69. The Water Street Property is zoned in the R-1 Village District, which does not permit utility, communication, electric or gas company operations as of right. (Exhibit I-2).
70. On May 2, 2017, Intervener Up State entered into another "Land Lease Agreement" with Fairview Evergreen wherein Fairview Evergreen agreed to lease a portion of Water Street Property to Intervener Up State for the purpose of constructing and operating a wireless telecommunications tower thereon. (Exhibit C-5).
71. The construction, operation and maintenance of Intervener Up State's wireless telecommunications tower at the Water Street Property will be controlled by regulations adopted and enforced by the Federal Communications Commission. *See* 47 U.S.C. § 301, *et seq.*
72. Fairview Evergreen entered into a lease with Intervener Up State for the subdivision of its property and allowed for the construction of a telecommunications tower thereon in order to obtain additional revenue for Fairview Evergreen. (N.T.2 at 42:17-43:1).
73. Two residential subdivisions exist near the Water Street Property, one of which, the Pine Grove subdivision, contains 25 lots of primarily two-story dwellings. (N.T.2 at 226:19-22; 228:21-25).
74. The two-story homes in the area are approximately 26 feet tall and the ranch-style homes are approximately 18 feet in height. (N.T.2 at 237:12-21; 238:24-239:11).
75. The proposed telecommunications tower will stand approximately 8 times higher than the ranch homes and more than 5 times higher than the two-story homes in the area. (N.T.2 at 239:7-11).
76. The proposed telecommunications tower for the Water Street Property would be located less than 200 feet from the nearest home in the area. (N.T.2 at 227:15-18). A wooded area exists between the proposed telecommunications tower at the Water Street Property and the nearest home. (N.T.2 at 227:19-228:1).
77. A local Presbyterian Church is the highest structure in the immediate area with a steeple approximately 50 foot in height; all other structures in the immediate area are one or two stories in height. (N.T.2 at 229:16-230:1).
78. Under the Fairview Township Zoning Ordinance § 201(A), no use may be operated in a district unless it is specifically included as a use by right for that district, and each parcel shall be limited to one principal or permitted use per lot. (Exhibit T-3).
79. Fairview Evergreen agreed to subdivide the Water Street Property to provide a ten acre parcel around the proposed cell tower site to ensure only one use would be made on this subdivided parcel. (N.T.1 at 112:4-16; N.T.2 at 26:20-22).
80. If the Water Street Property, which is zoned in the R-1 district, is subdivided, the residual subdivided property will remain zoned in the R-1 district; therefore, Intervener Up State

will need to obtain a variance to construct a telecommunications tower on the residual, subdivided property. (N.T.2 at 220:16-23; 221:3-222:8; 236:17-237:11).

81. Intervener Up State is requesting the following variances from the Fairview Township Zoning Ordinance as to the Dutch Road Property:
 - a. A use variance from § 700 to allow for the construction of a wireless telecommunications tower in the R-1 Village District;
 - b. A variance as to the height restriction set forth in § 700(C)(6) to allow for the construction of a 160 foot wireless telecommunications tower in A-1 Rural District;
 - c. Three dimensional variances from § 700(C) to allow for setbacks of 200 feet from the east, north, and south property lines.
82. The Water Street Property is currently being used for Fairview Evergreen’s wholesale growing business operations. (N.T.1 at 113:6-8; N.T.2 at 40:24-25).
83. Fairview Evergreen has been conducting wholesale growing business operations at the Water Street Property in excess of 20 years. (N.T.2 at 41:3-18).
84. The Water Street Property contains many structures located thereon in furtherance of Fairview Evergreen’s business operations, including: a parking lot for employees, a van garage containing a shop, a loading dock, a scale house used to weigh trucks, a paved driveway, a barn, offices, a woodshop, an old barracks building, a cold storage area, an integrated pest management building, storage facilities, a grain storage bin, a fenced in pen, and poly houses. (N.T.1 at 110:10-24; 119:3-9; 119:14-120:2; 121:13-17; 124:3-125:3).
85. Fairview Evergreen also stores and uses digging tractors, used to cultivate the soil, on the Water Street Property. (N.T.1 at 125:4-11).
86. Fairview Evergreen has fields on the Water Street Property growing “seedling growing material” as well as field corn, sweet corn, wheat, and oats. (N.T.1 at 110:25-111:1-12; 112:22-23; 125:12-15).
87. The ground upon which the location of the proposed telecommunications facility at the Water Street Property will be placed is currently being used to grow corn by Fairview Evergreen. (N.T.2 at 26:2-19; Exhibit C-4).
88. Fairview Evergreen’s agricultural operations are permitted uses under the Fairview Township Zoning Ordinance. (N.T.2 at 182:2-13).
89. Other businesses exist in the immediate area of the Water Street Property, including a Country Fair gas station, dentist’s office, and antique business. (N.T.1 at 113:11-23).
90. Other potential sites within the search ring near the Water Street Property generated by Blue Wireless are not industrially zoned. (N.T.2 at 141:25-142:1).
91. The Verizon and ATC towers are within view from the Water Street Property. (N.T.2 at 145:15-22; 153:14-17; Exhibit I-24; Exhibit I-25).
92. The Water Street Property is “quasi-industrial” in that Fairview Evergreen conducts warehousing and shipping operations thereon. (N.T.2 at 142:2-14).

III. CONCLUSIONS OF LAW

A. Standard of Review

This Trial Court’s standard of review in the instant case is specified in the Pennsylvania Municipalities Planning Code (“MPC”), which states: “[I]f additional evidence is taken by the court . . . , the court shall make its own findings of fact based on the record below as supplemented by the additional evidence, if any.” 53 P.S. § 11005-A. Where a trial court

hears additional evidence on the merits, the trial court must determine the case *de novo* and issue “its own findings of fact based on the record made before the board as supplemented by the additional evidence.” *Mitchell v. Zoning Hearing Bd. of the Borough of Mount Penn.*, 838 A.2d 819, 825 (Pa.Cmwth. 2003); *see also Boss v. Zoning Hearing Bd. of Borough of Bethel Park*, 443 A.2d 871, 873 (Pa.Cmwth. 1982) (“Where the court below takes additional evidence in a zoning appeal, it must decide the case on the merits.”).

B. Law and Analysis

Under the Pennsylvania Municipalities Planning Code, a variance may be granted under local law if all of the following findings are made where relevant in a given case:

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

53 P.S. § 10910.2(a); *see also Southeastern Chester Cty. Refuse Auth. v. Zoning Hearing Bd. of London Grove Twp.*, 898 A.2d 680, 688 (Pa. Cmwth. 2006).

The Fairview Township Zoning Ordinance provides similar requirements:

The Zoning Hearing Board may adapt or vary the strict application of any requirements of this Ordinance in the case of irregular, narrow, shallow or steep lots, or other physical conditions whereby such strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved but in no other case.

Fairview Township Zoning Ordinance (“FTZO”) § 1103(D). Section 1103(D) of the Fairview Township Zoning Ordinance further states:

1. No such variance in the strict application of any provision of this Ordinance shall be granted by the Zoning Hearing Board unless it finds the conditions stated in Section 1103 D above are such that the strict application of this Ordinance would deprive the applicant of the reasonable use of land or buildings.
2. The granting of any variance shall be in harmony with the general purpose and intent of this Ordinance and the Comprehensive Plan, and shall not be injurious to the neighborhood or otherwise detrimental to the public welfare and shall be the minimum necessary to afford relief.
3. The board must determine that any unnecessary hardship has not been created by the appellant.

FTZO § 1103(D)(1)-(3). “The overriding standard for a variance is unnecessary hardship.” *Doris Terry Revocable Living Trust v. Zoning Board of Adjustment of City of Pittsburgh*, 873 A.2d 57, 63 (Pa. Cmwlth. 2005). The party seeking a variance bears the burden of proving (1) unnecessary hardship will result if the variance is denied, and (2) the proposed use will not be contrary to the public interest. *Valley View Civic Ass’n v. Zoning Bd. of Adjustment*, 462 A.2d 637, 640 (Pa. 1983). The hardship must be shown to be unique or peculiar to the property as distinguished from a hardship arising from the impact of zoning regulations on an entire district. *Id.* at 556. In evaluating hardship, the use of adjacent and surrounding land is unquestionably relevant. *Id.*

Indeed, the hardship must be an unnecessary one and not simply a “mere” hardship. *Larsen v. Zoning Bd. of Adjustment of City of Pittsburgh*, 672 A.2d 286, 290 (Pa. 1996). Personal or economic hardship does not warrant the granting of a variance. *Rinck v. Zoning Bd. of Adjustment*, 339 A.2d 190, 192 (Pa. Cmwlth. 1975). The Pennsylvania Commonwealth Court has stated where the asserted hardship amounts to a landowner’s desire to increase profitability or maximize development potential, the unnecessary hardship criterion required to obtain a variance is not satisfied. *Society Hill Civic Ass’n. v. Philadelphia Zoning Bd. of Adjustment*, 42 A.3d 1178, 1187 (Pa. Cmwlth. 2012). Furthermore, showing a lot can be used in a more profitable fashion is insufficient; the land must have no feasible, permitted use before a use variance is granted. *Township of East Caln v. Zoning Hearing Bd. of East Caln Tp.*, 915 A.2d 1249, 1253-54 (Pa. Cmwlth. 2007). However, “testimony indicating a property could be used for alternative permitted uses should not be taken out of context, and if the testimony as a whole demonstrates that the uses are not feasible, the property owner should not be required to bear the burden of converting the property to those uses.” *Zoning Hearing Bd. of Sadsbury Twp. v. Bd. of Sup’rs of Sadsbury Twp.*, 804 A.2d 1274, 1279 (Pa.Cmwlth. 2002) (citing *Halberstadt v. Borough of Nazareth*, 687 A.2d 371, 373 (Pa. 1997)).

A dimensional variance involves a request to adjust zoning regulations to use property in a manner consistent with regulations, as opposed to a use variance, which involves a request to use property in a manner that is wholly outside zoning regulations. *Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh*, 721 A.2d 43, 47 (Pa. 1998). In determining whether unnecessary hardship has been established to “justify the grant of a dimensional variance,

courts may consider multiple factors, including the economic detriment to the applicant if the variance was denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood.” *Id.* at 50. Significantly, the quantum of evidence required to establish an unnecessary hardship is lesser when a dimensional variance, rather than a use variance, is sought. *Id.* at 47-48.

Moreover, the Fairview Township Zoning Ordinance addresses height restrictions for structures located in Fairview Township. Specifically, Fairview Township Zoning Ordinance § 700(C)(6) provides for a maximum building height in the R-1 Zoning District of 40 feet. (FTZO § 700(C)(6)). Similarly, Fairview Township Zoning Ordinance § 709(D)(6) provides a “Maximum building height shall be three stories or 40 feet except for agricultural wind turbines which shall not exceed 120 feet” in the A-1 Zoning District. (FTZO § 709(D)(6)). Pursuant to Fairview Township Zoning Ordinance § 706(D)(7), 707(D)(7), and 708(C)(6) structures may be constructed in excess of 100 feet, provided:

- a. The structures must be in operation and not vacated for more than 6 months;
- b. The applicant must supply Fairview Township with a bond or suitable form of financial surety for the removal of such structure; and
- c. The minimum setback to all property boundaries shall be the height of the structure, plus 30 percent.

(FTZO § 706(D)(7), 707(D)(7), & 708(C)(6)).

1. Dutch Road Property

As noted above, for Intervener Up State to obtain relief in the form of use and dimensional variances, Intervener Up State must establish five (5) elements where relevant: “(1) there are unique physical circumstances or conditions; (2) causing unnecessary hardship in the form of an unreasonable inhibition of usefulness of the property; (3) the hardship is not self-inflicted; (4) the grant of the variance will not adversely impact public health, safety, and welfare; and (5) the variance sought is the minimum that will afford relief.” *Twp. of E. Caln v. Zoning Hearing Bd. of E. Caln Twp.*, 915 A.2d 1249, 1252 (Pa.CmwltH. 2007) (citing 53 P.S. § 10910.2).

The first element is whether unique physical circumstances or conditions attend the Dutch Road Property. In the instant case, unique physical conditions exist at the Dutch Road Property since the topography of the Dutch Road Property is uneven and has a “swale” or a dip/valley on the southern portion. Specifically, this swale slopes downward from the northern property line and slopes up toward the southern border of the Dutch Road Property. Also, the Dutch Road Property is irregularly shaped since the Dutch Road Property has a “pie-wedge shape” where the eastern boundary is approximately 27 feet and the western property is approximately 300 feet. Thus, this first requirement is met since unique physical circumstances or conditions exist at the Dutch Road Property.

The second element is whether said unique physical circumstances or conditions are causing an unnecessary hardship in the form of an unreasonable inhibition of usefulness of the Dutch Road Property. In the instant case, horticulture is a permitted accessory use within

A-1 zoned district.⁴ However, as a result of the unique physical conditions attendant to the Dutch Road Property as noted above, the Dutch Road Property is rendered unusable for horticulture since the ground cannot be cultivated with farm or ornamental crops. Specifically, the Dutch Road Property cannot be cultivated to grow ornamental plants, farm crops, or any other type of plants. The only useful purpose the Dutch Road Property serves to Fairview Evergreen is to protect the southern border of Fairview Evergreen's tree farm to the north of the Dutch Road Property. Thus, this second requirement is satisfied since said unique physical conditions create unnecessary hardship in the form of an unreasonable inhibition of usefulness of the property.

The third element is whether the unnecessary hardship is self-created by the applicant. In the instant case, Fairview Evergreen acquired the Dutch Road Property on March 11, 2013. When Fairview Evergreen acquired the Dutch Road Property, the Dutch Road Property's condition was "roughly similar to what it is now or completely similar to what it is now." Specifically, the existing conditions, including "the swale and things of that nature" unique to the Dutch Road Property, is similar to the condition of the property when Fairview Evergreen acquired the Dutch Road Property in 2013. Similarly, the "end where the proposed cell tower location is . . . the condition is the same as it was in 2013." Although Fairview Evergreen was aware of the unique physical conditions of the property when Fairview Evergreen purchased the Dutch Road Property, "the mere fact that an applicant for a variance purchased the property with knowledge of the hardship does not alone preclude him from being granted the variance." *Marlowe v. Zoning Hearing Bd. of Haverford Twp.*, 415 A.2d 946, 950 (Pa.Cmwlth. 1980). Thus, the foregoing establishes the third element is met in that the hardship is not self-inflicted.

The fourth element is whether the grant of the variance will adversely impact public health, safety, and welfare. Hanging power lines exist overhead when viewing the Dutch Road Property at an eastern and southwestern direction. In addition, commercial equipment and buildings exist along the southern border of the Dutch Road Property. Indeed, the property immediately to the south of the Dutch Road Property is zoned in the I-1 Light Industrial District. To the south of the Dutch Road Property is a construction company, a "chipper tree remover company," and a large power grid. These features demonstrate the character of the neighborhood to the Dutch Road Property is industrial in nature. Thus, this variance will not alter the essential character of the neighborhood or district in which the Dutch Road Property is located.

Moreover, the variance, if granted, will not substantially or permanently impair the appropriate use or development of adjacent property. Specifically, the property existing immediately to the west and north of the Dutch Road Property is also owned by Fairview Evergreen. Moreover, the property immediately to the south of the Dutch Road Property is zoned in the I-1 Light Industrial district, which permits construction of telecommunications towers. The construction of a telecommunications tower on the Dutch Road Property will not impair the use or development of Fairview Evergreen's own property or the industrially zoned property to the south.

⁴ Horticulture is defined in the Fairview Zoning Ordinance as: "Any form of growing, cultivation of or raising any fruits, vegetables, flowers and ornamental plants including nurseries, hay and grain crops." (FTZO § 401; see also § 709(B)(7)-(8)).

Also, the variance, if granted, will not be detrimental to the public welfare. “The concept of ‘public welfare’ is a broad one, which in an application for a variance may include traffic effects, impact on the character of the neighborhood, impact on property values, the effect on surrounding zoning, and other variables.” *Zoning Bd. of Adjustment of Hanover Twp., Northampton Cty. v. Koehler*, 278 A.2d 375, 378 (Pa.Cmwlth. 1971). In the instant case, the proposed telecommunications tower will not produce noise or light, nor will the existence of the proposed telecommunications tower increase local traffic in the area. In light of the foregoing, the fourth element is satisfied since the grant of the variance will not adversely impact public health, safety, and welfare with regard to the Dutch Road Property.

The fifth element is whether the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue. The Pennsylvania Commonwealth Court has concluded this minimization requirement of the MPC clearly applies in dimensional variance requests; however, the applicability of this requirement to use variance requests is often not relevant or tenuous. *See South of South St. Neighborhood Ass’n v. Philadelphia Zoning Bd. of Adjustment*, 54 A.3d 115, 124 (Pa.Cmwlth. 2012), *appeal dismissed*, 97 A.3d 1200 (Pa. 2014) (“The MPC specifically provides that adjudicators and reviewing courts consider the specific variance requirements identified in Section 910.2(a) of the MPC when they are *relevant*.”); *see also Appeal of Redeemed Christian Church of God, Living Spring Miracle Ctr., Inc.*, 930 C.D. 2015, 2016 WL 7449224, at *7, n.7 (Pa.Cmwlth. Dec. 28, 2016).⁵

In the instant case, other industrially zoned properties located near the Dutch Road Property have existing primary uses and do not meet the setback distances required to construct a 160 foot structure. Moreover, as noted above, the unique physical circumstances attendant to the Dutch Road Property, including the “swale” and shape of the property, serve as an obstacle with respect to placement of the proposed telecommunications facility on the Dutch Road Property. The properties immediately to the north and west, the boundaries from which Intervener Up State is requesting dimensional variances, are both owned by Fairview Evergreen. Absent these three parcels of land being legally distinct properties, Intervener Up State’s need to request these two dimensional variances would be obviated. Under these circumstances, these variances sought are the minimum that will afford relief and will represent the least modification possible of the Fairview Township Zoning Ordinance. Thus, Intervener Up State has established this fifth requirement under the MPC.

Based on the foregoing reasons, this Trial Court concludes Intervener Up State has satisfied its burden of establishing undue hardship under the MPC and Fairview Township Zoning Ordinance with respect to its variance requests as to the Dutch Road Property. Accordingly, Intervener Up State is entitled to the variance relief requested as to the Dutch Road Property.

2. Water Street Property

As indicated above, for Intervener Up State to obtain relief in the form of use and dimensional variances, Intervener Up State must establish five (5) elements where relevant: “(1) there are unique physical circumstances or conditions; (2) causing unnecessary hardship in the form of an unreasonable inhibition of usefulness of the property; (3) the hardship is

⁵ See 210 Pa. Code § 69.414 (unreported Pennsylvania Commonwealth Court decisions may be cited for persuasive value).

not self-inflicted; (4) the grant of the variance will not adversely impact public health, safety, and welfare; and (5) the variance sought is the minimum that will afford relief.” *Twp. of E. Caln*, 915 A.2d at 1252.

The first element is whether unique physical circumstances or conditions attend the Water Street Property. In the instant case, the asserted hardship results from Fairview Evergreen’s desire to put this piece of property to a profitable use for Fairview Evergreen and to maximize the development potential of the Water Street Property. Indeed, the purpose of entering into a lease with Intervener Up State for the subdivision of its property and allowing for the construction of a telecommunications tower thereon is for Fairview Evergreen to earn additional revenue. However, the Commonwealth Court has concluded where an asserted hardship amounts to a landowner’s desire to increase profitability or maximize development potential, the unnecessary hardship criterion required in obtaining a variance is not satisfied. *Society Hill Civic Ass’n. v. Philadelphia Zoning Bd. of Adjustment*, 42 A.3d 1178, 1187 (Pa. Cmwlth. 2012). Unlike the Dutch Road Property, no evidence was presented to support a finding that unique physical circumstances or conditions attend the Water Street Property. As such, this first element is not satisfied.

The second element is whether unique physical circumstances or conditions are causing an unnecessary hardship in the form of an unreasonable inhibition of usefulness of the Water Street Property. In the instant case, as noted above, no unique physical circumstances or conditions attend the Water Street Property. Moreover, Fairview Evergreen is presently making reasonable use of the Water Street Property and has been doing so in excess of 20 years. Specifically, Fairview Evergreen has been conducting wholesale growing business operations at the Water Street Property. For example, Fairview has been annually growing corn on the location of the proposed telecommunications facility at the Water Street Property. Clearly, the “physical circumstances or conditions” of the Water Street Property have not prevented Fairview Evergreen from making reasonable use thereof. As such, authorization of a variance is therefore not necessary to enable the reasonable use of the property. Thus, this second element is not satisfied.

The third element is whether the unnecessary hardship is self-created by the applicant. The law is well established in that the “law does not permit a developer to subdivide its land and then make a subsequent claim for a variance because a remnant of that land does not conform with a zoning ordinance” and the “opportunity for greater profit from more lots in a subdivision is not a ground for the grant of a variance.” *Carman v. Zoning Board of Adjustment*, 638 A.2d 365 (Pa. Cmwlth. 1994) (reversing grant of a variance to a developer who subdivided land, thereby creating a residual lot that did not conform to the applicable zoning ordinance, and who thereafter sought a variance in light of this nonconformity); *Lebeduik v. Bethlehem Twp. Zoning Hearing Bd.*, 596 A.2d 302 (Pa.Cmwlth. 1991) (concluding landowners who divided parcel into two lots, retaining one which was undersized, were properly denied variance to construct home on undersized lot on ground that nonconformity was self-created); *see also Appeal of Grace Bldg. Co., Inc.*, 392 A.2d 888, 890 (Pa.Cmwlth. 1978); *Ephross v. Solebury Twp. Zoning Hearing Bd.*, 359 A.2d 182, 184 (Pa.Cmwlth. 1976).

In the instant case, Fairview Evergreen entered into a Land Lease Agreement for the Water Street Property with Intervener Up State. Fairview Evergreen agreed to subdivide the

Water Street Property to provide a ten acre parcel around the Intervener Up State's proposed cell tower site to ensure only one use would be made on this subdivided parcel. Intervener Up State now seeks relief in the form of a use variance and three dimensional variances so Intervener Up State may construct a 160 foot tower thereon. However, "[w]hen a landowner divides a parcel into two lots, and one of the lots is undersized, any resulting hardship is self-inflicted." *Lebeduik*, 596 A.2d at 306. In the instant case, any alleged unnecessary hardship has been "self-inflicted" or created by Intervener Up State since Intervener Up State agreed to subdivide a portion of the Water Street Property to an area less than adequate to comply with the setback requirements of the Fairview Township Zoning Ordinance. As such, Intervener Up State cannot satisfy this third requirement under the MPC. *See* 53 P.S. § 10910.2(a)(3).

The fourth element is whether the grant of the variance will adversely impact public health, safety, and welfare. In the instant case, Intervener Up State is seeking a variance to construct a 160 foot telecommunications tower in this district that has a height restriction of 40 feet. (*See* FTZO § 700(C)(6)). The Verizon and ATC cellular towers are within view from the Water Street Property. While the character of the neighborhood surrounding the Water Street Property consists of residential dwellings, the neighborhood also consists of other commercial structures. Moreover, the steeple of the Presbyterian Church is another tall structure in the immediate area which is at least 50 feet in height. In addition, the Water Street Property is "quasi-industrial" in that Fairview Evergreen conducts warehousing and shipping operations thereon, which already contains many structures in furtherance of Fairview Evergreen's business operations. Moreover, as noted above, the proposed telecommunications tower will not produce noise or light, nor will the existence of the proposed telecommunications tower increase local traffic in the area. Under these circumstances, granting Intervener Up State's variance requests to construct a telecommunications tower will not alter the essential character of the neighborhood or district in which the Water Street Property is located. Thus, this fourth requirement is satisfied.

Fifth is whether the variance sought is the minimum that will afford relief. In the instant case, substantial evidence was presented the proposed height of the tower (120 feet) is the minimum that will afford relief because if the tower height were any lower, the tower would not provide sufficient coverage to fill the coverage gap in Fairview Township. *See Twp. of Derry v. Zoning Hearing Bd. of Palmyra Borough, Lebanon County*, 2016 WL 10705957, at *6 (C.C.P. Lebanon, March 29, 2016), *affirmed*, 663 C.D. 2016, 2017 WL 2791504 (Pa. Cmwlth. June 28, 2017). Thus, Intervener Up State has established this fifth requirement under the MPC.

In sum, Intervener Up State presented substantial evidence to satisfy two of the five elements under the MPC as to the Water Street Property. However, as Intervener Up State was unable to satisfy all of the elements under the MPC, Intervener Up State cannot establish entitlement to relief from the Fairview Township Zoning Ordinance under Pennsylvania and local land use law as to the Water Street Property.

3. Telecommunications Act of 1996

Notwithstanding Intervener Up State's inability to establish three of the five elements under the MPC with respect to the Water Street Property, Pennsylvania and local land use law must be interpreted in light of relevant federal standards for the construction and operation of wireless telecommunications facilities. *See e.g. Cellular Phone Taskforce v. F.C.C.*, 205 F.3d

82, 96 (2d Cir.2000) (“Congress may preempt state and local governments from regulating the operation and construction of a national telecommunications infrastructure, including construction and operation of personal wireless communications facilities.”). Indeed, courts must be mindful that Congress enacted the Telecommunications Act (“TCA”) of 1996 “to provide a pro-competitive, de-regulatory national policy framework designed to rapidly accelerate private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.” *APT Pittsburgh Ltd. P’ship v. Penn Twp. Butler Cty. of Pennsylvania*, 196 F.3d 469, 473 (3d Cir. 1999) (citing H.R. Conf. Rep. No. 104–458 (1996), reprinted in 1996 U.S.C.C.A.N. 10, 1124); *see also Omnipoint Commc’ns Enterprises, L.P. v. Newtown Twp.*, 219 F.3d 240, 242–43 (3d Cir. 2000) (The TCA “was intended to promote competition by limiting the ability of local authorities to regulate and control the expansion of telecommunications technologies”); *Second Generation Properties, L.P. v. Town of Pelham*, 313 F.3d 620, 627 (1st Cir. 2002) (noting that if a local authority’s decision “effectively prohibits the provision of wireless service, § 332(c)(7)(B)(i)(II), then under the Supremacy Clause of the Constitution, local law is pre-empted in order to effectuate the TCA’s national policy goals”).

Under Section 332(C)(7) of the TCA, the authority to regulate land use and zoning traditionally exercised by state and local government is preserved; however, the TCA places substantive limitations on a state or local government’s ability to exercise this authority in relation to personal wireless service facilities:

(7) Preservation of local zoning authority

(A) General authority

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) Limitations

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

47 U.S.C. § 332(c)(7)(A)-(B). The purpose of Section 332(c)(7) is to reduce “the impediments imposed by local governments upon the installation of facilities for wireless communications, such as antenna towers.” *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 115, (2005). This purpose is effectuated through Section 332(c)(7)’s limitations on “the general authority

of state or local governments or instrumentalities thereof to make ‘decisions regarding the placement, construction, and modification of personal wireless service facilities.’” *Liberty Towers, LLC v. Zoning Hearing Bd. of Twp. Lower Makefield, Bucks Cty., Pa.*, 748 F.Supp.2d 437, 444 (E.D. Pa. 2010) (citing 47 U.S.C. § 332(c)(7)(A)).

Particularly relevant to the instant case is the substantive limitation the TCA places on state or local government, or instrumentalities thereof, which “shall not prohibit or have the effect of prohibiting the provision of personal wireless services.” 47 U.S.C. § 332(c)(7)(B)(i)(II). “In accordance with this limitation, local officials must always ensure that neither their general policies, nor their individual opinions, prohibit or have the effect of prohibiting wireless service.” *Schiazza v. Zoning Hearing Bd., Fairview Twp., York Cty., Pennsylvania*, 168 F.Supp.2d 361, 366 (M.D. Pa. 2001) (citing *Cellular Tel. v. Zoning Bd. of Adj. of Ho–Ho–Kus*, 197 F.3d 64, 70 (3d Cir.1999)) (noting that under this Section “the statutory bar against regulatory prohibition is absolute, and does not anticipate any deference to local findings”); see also *City of Arlington, Tex. v. F.C.C.*, 569 U.S. 290 (2013).

The Third Circuit has implemented a two-pronged test to determine whether a state or local government, or instrumentality thereof, has effectively prohibited the provision of personal wireless services thereby violating Section 332(c)(7)(B)(i)(II). Effective prohibition of service is present if the provider establishes: (1) the provider’s “facility will fill an existing significant gap in the ability of remote users to access the national telephone network”; and (2) the “manner in which it proposes to fill the significant gap in service is the least intrusive on the values that the denial sought to serve.” *APT Pittsburgh*, 196 F.3d at 480.

Regarding this first prong, as recently as 2003, the Third Circuit followed the “one provider” rule, which required a showing that a “significant gap” in a wireless provider’s service as a gap in service that was not being serviced by any other providers. See *Omnipoint Commc’ns Enters. L.P.*, 331 F.3d at 398 (3d Cir. 2003). However, in 2009, the FCC rejected this “one provider” interpretation of the “effective prohibition” clause of Section 332(c)(7)(B)(i) and adopted a standard that requires a provider to show a gap in its own service. See *Ruling to Clarify Provisions of 332(C)(7)(b)*, 24 F.C.C.R. 13994 ¶¶ 56–61 (Nov. 18, 2009) (“[A] State or local government that denies an application for personal wireless service facilities siting solely because ‘one or more carriers serve a given geographic market’ has engaged in unlawful regulation that ‘prohibits or ha[s] the effect of prohibiting the provision of personal wireless services,’ within the meaning of Section 332(c)(7)(B)(i)(II).”).

While the FCC’s 2009 Declaratory Ruling has not yet been addressed by the Third Circuit, the Eastern District of Pennsylvania has concluded this FCC’s Ruling is entitled to deference. See *Liberty Towers, LLC v. Zoning Hearing Bd. of Twp. Lower Makefield, Bucks Cty., Pa.*, 748 F.Supp.2d 437, 444 (E.D. Pa. 2010) (concluding that “under well-established principles of administrative law, the FCC’s Declaratory Ruling is entitled to deference from the . . . courts”); see also *Levy v. Sterling Holding Co., LLC*, 544 F.3d 493, 502 (3d Cir. 2008) (“[I]f a court of appeals interprets an ambiguous statute one way, and the agency charged with administering that statute subsequently interprets it another way, even that same court of appeals may not then ignore the agency’s more-recent interpretation.”).

Indeed, in *Liberty Towers*, the U.S. District Court for the Eastern District of Pennsylvania stated: “According to the rule echoed in *Levy*, this Court is required to give deference to the FCC’s interpretation. According to the FCC’s interpretation, a provider must plead

that there is a significant gap in service in any area *for that particular service provider.*” *Liberty Towers*, 748 F.Supp.2d at 444 (emphasis added). As the FCC’s Declaratory Ruling is entitled to deference, this Trial Court hereby adopts the rule as set forth in *Liberty Towers* that a significant gap in service must exist in an area only for that particular service provider.

The first issue is whether Intervener Up State presented substantial evidence showing Intervener Up State’s proposed telecommunications towers at the Dutch Road and Water Street Properties will fill an existing significant gap in the ability of remote users to access Blue Wireless’ cellular network. *See id.* To determine if a significant gap in coverage exists, courts consider the quality of the service in the area and the effect on remote users. *Am. Cellular Network Co. v. Upper Dublin Twp.*, 203 F.Supp.2d 383, 389 (E.D. Pa. 2002). Propagation maps as well as reports from radio-frequency engineers “are suitable to support a claim for a substantial gap in coverage.” *T-Mobile Cent., LLC v. Charter Twp. of W. Bloomfield*, 691 F.3d 794, 807 (6th Cir. 2012).

In the instant case, Blue Wireless has a significant gap in service in the vicinity of each of the Sites caused by a lack of reliable in-building residential coverage based on a review of advanced computer propagation modeling. The primary issue in Blue Wireless’ lack of coverage is due to Blue Wireless’ frequency of operation, or the frequency by which Blue Wireless’ radio signals are propagated. Specifically, Blue Wireless’ network operates at a higher than average frequency band of 1900 megahertz, which is higher than other cellular service providers. Higher frequency bands, such as Blue Wireless’ frequency, propagates over less distance since the signal becomes attenuated as the signal travels through the air and diffracted as the signal travels through objects such as trees, buildings and terrains. Due to the Blue Wireless’ higher frequency band and Blue Wireless’ shortage of wireless facilities in Fairview Township, a lack of in-building coverage exists in Fairview Township regarding the ability of remote users to access Blue Wireless’ cellular network. Propagation maps illustrate Blue Wireless’ coverage gap in Fairview Township, which encompasses Lake Erie to the north, Manchester Road to the east, Interstate I-90 to the south and Fairplain Road to the west. Thus, Blue Wireless has a significant gap in wireless service and the coverage gap consists of approximately 19.46 square miles and affects approximately 8,671 people that live within the coverage gap.

To fill this wireless gap, telecommunications towers placed at both Water Street and Dutch Road Properties are required to fill Blue Wireless’ gap in coverage since neither tower alone will effectively provide in-building coverage in Fairview Township. Specifically, even if one tower could support the coverage, said tower could not support the capacity since, as more users access a single tower’s signal, too many users accessing that resources will exceed the tower’s capacity, thereby resulting in a coverage gap. As illustrated by propagation maps, one tower standing alone is insufficient to provide seamless in-building coverage. The existence of both proposed telecommunications towers at the Water Street and Dutch Road Properties working in unison will together provide approximately 12.6 square miles of coverage and serve approximately 7,638 people within the coverage gap. Given this, the two proposed telecommunication towers together will substantially remedy Blue Wireless’ gap in service and will be successful in meeting Blue Wireless’ intention to provide in-building LTE coverage to populated areas of Fairview Township. Thus, Intervener Up State presented substantial evidence the two proposed telecommunications towers at both the Dutch Road

and Water Street Properties will fill an existing significant gap in the ability of remote users to access Blue Wireless' network.

The second issue is whether Intervener Up State has provided substantial evidence showing the manner in which Blue Wireless proposed to fill this significant gap in service is the least intrusive means of remedying that gap. Regarding this second prong, the applicant must show "a good faith effort has been made to identify and evaluate less intrusive alternatives, e.g., that the provider has considered less sensitive sites, alternative system designs, alternative tower designs, placement of antennae on existing structures, etc." *APT Pittsburgh*, 196 F.3d at 480. However, the applicant does "not bear the burden of proving that every potential alternative, no matter how speculative, is unavailable. The proper inquiry for an effective prohibition claim is whether 'a good faith effort has been made to identify and evaluate less intrusive alternatives.'" *Sprint Spectrum, L.P. v. Zoning Bd. of Adjustment of the Borough of Paramus New Jersey*, 606 Fed.Appx. 669 (3d Cir. 2015) (quoting *APT Pittsburgh*, 196 F.3d at 480) (emphasis in original).

In the instant case, Intervener Up State examined four existing cell towers in Fairview Township to determine whether collocation on a variation of these existing towers would adequately fill Blue Wireless' gap in coverage. Specifically, six propagation maps illustrate potential wireless coverage utilizing a variation of these four existing cell towers in combination with Blue Wireless' existing and approved neighboring towers.⁶ However, these existing towers are located too far outside of the search rings and therefore cannot provide efficient coverage to either the area or the population present in Fairview Township. Thus, Intervener Up State presented substantial evidence Intervener Up State made a good faith effort to place radio equipment on existing structures.

Moreover, Blue Wireless generated two search rings wherein Blue Wireless' propagation equipment could be placed to fill adequately Blue Wireless' coverage gap in wireless service. Site acquisition personnel properly and adequately investigated potential properties within the search rings but could not find acceptable locations. Specifically, Donald Carpenter, a site acquisition and site development agent, investigated other potential sites in the search ring near the Dutch Road Property. Mr. Carpenter thoroughly investigated the industrial zone near the Dutch Road Property. No properties existed without existing primary uses and no properties existed which would meet the setback distances under the Fairview Township Zoning Ordinance. While one vacant lot without a primary use existed, that property owner was not interested in signing a lease. Regardless, that property was not large enough to comply with applicable setback requirements.

Also, the Walnut Creek drainageway as well as a wrecking yard occupy much of the nearby area in the I-3 industrially zoned district, rendering much of this nearby real estate unsuitable. Further, Intervener Up State previously filed a variance application to construct a telecommunications tower at a property zoned in the industrial district which had an existing self-storage facility operating thereon. However, Intervener Up State's variance application

⁶ See N.T.2 84:3-98:1; see also Exhibit I-15E (propagation map illustrating potential coverage from existing Crown tower); Exhibit I-15F (propagation map illustrating potential coverage from existing Crown and SBA towers); Exhibit I-15G (propagation map illustrating potential coverage from existing Crown, SBA, and ATC towers); Exhibit I-15H (propagation map illustrating potential coverage from existing Crown, SBA, ATC, and Verizon towers); Exhibit I-15I (propagation map illustrating potential coverage from proposed tower at Dutch Road Property and existing Verizon tower); Exhibit I-15J (propagation map illustrating potential coverage from proposed tower at Dutch Road Property and existing ATC tower).

was denied since the property already contained that self-storage facility as an existing use. Thus, no properties existed near the Dutch Road Property which would comply with the use and setback requirements of the Fairview Township Zoning Ordinance.

Other properties located near the Water Street Property are not industrially zoned. The existing use on the Water Street Property is “quasi-industrial” in that Fairview Evergreen conducts warehousing and shipping operations thereon. Moreover, the Verizon and ATC towers are within view from the Water Street Property. Less intrusive sites do not exist near the Water Street Property.

Based on the foregoing substantial evidence presented, this Trial Court finds and concludes Intervener Up State made good faith efforts to identify and evaluate less intrusive alternatives for both the Dutch Road and Water Street Properties.

IV. CONCLUSION

Accordingly, in accordance with the TCA, this Trial Court finds and concludes Intervener Up State has established placing these two proposed telecommunications towers at both the Dutch Road and Water Street Properties will fill an existing significant gap in the ability of remote users in Fairview Township to access Blue Wireless’ cellular network. Moreover, the manner in which Blue Wireless proposes to fill this significant gap in service is the least intrusive means of remedying Blue Wireless’ gap in coverage in Fairview Township. As such, a denial of Intervener Up State’s variance requests will effectively prohibit Blue Wireless from providing seamless wireless service in Fairview Township in violation of Section 332(c)(7)(B)(i)(II) of the TCA. Therefore, consistent with the foregoing Findings of Fact and Conclusions of Law, this Trial Court hereby enters the following Order of Court:

ORDER

AND NOW, to-wit, this 11th day of October, 2018, after thorough review of the entire record, including, but not limited to, the testimony and evidence presented at the *de novo* hearing on July 23, 2018, and July 24, 2018; the proposed Findings of Fact and Conclusions of Law submitted by Attorney Conti, Attorney Burroughs, and Attorney Kubinski; as well as “Intervenor’s Reply Conclusions of Law” submitted by Attorney Kubinski; “Appellant Fairview Township’s Response to Up State’s Reply Conclusions of Law” submitted by Attorney Burroughs; and the “Response to Intervenor’s Reply Conclusions of Law” submitted by Attorney Conti; and after an independent review of relevant statutory law and case law; and consistent with the analysis in the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED, ADJUDGED AND DECREED** that Intervener Up State’s requests for variances from the Fairview Township Zoning Ordinance are **GRANTED** to the following extent:

- (1) Intervener Up State is entitled to the following variances with respect to the Dutch Road Property:
 - (a) A use variance to § 709 to allow for the construction of a wireless telecommunications tower in the A-1 Rural District;
 - (b) A variance as to the height restriction set forth in § 709(D)(6) to allow for the construction of a 160 foot wireless telecommunications tower in A-1 Rural District;
 - (c) A dimensional variance from § 709(D)(5) to allow for a rear yard setback of 13.5 feet; and

- (d) A dimensional variance from § 709(D)(4) to allow for a side yard setback of 14.6 feet.
- (2) Intervener Up State is entitled to the following variances with respect to the Water Street Property:
 - (a) A use variance from § 700 to allow for the construction of a wireless telecommunications tower in the R-1 Village District;
 - (b) A variance as to the height restriction set forth in § 700(C)(6) to allow for the construction of a 160 foot wireless telecommunications tower in R-1 Village District; and
 - (c) Three dimensional variances from § 700(C) to allow for setbacks of 200 feet from the east, north, and south property lines.

BY THE COURT

/s/ Stephanie Domitrovich, Judge

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CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania 12699-18 Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of Hilary Jean Entley to Renata Jean Oleksak Bachman Bard Cambra Entley.

The Court has fixed the 28th day of November, 2018 at 3:45 p.m. in Court Room G, Room 222, of the Erie County Court House, 140 West 6th Street, Erie, Pennsylvania 16501 as the time and place for the Hearing on said Petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

Oct. 26

FICTITIOUS NAME NOTICE

Pursuant to Act 295 of December 16, 1982 notice is hereby given of the intention to file with the Secretary of the Commonwealth of Pennsylvania a "Certificate of Carrying On or Conducting Business under an Assumed or Fictitious Name." Said Certificate contains the following information:

FICTITIOUS NAME NOTICE

Notice is hereby given that an Application for Registration of Fictitious Name was filed in the Department of State of the Commonwealth of Pennsylvania on October 5, 2018, for O CHI REFLEXOLOGY at 703 Millcreek Mall, Erie, PA 16565. The name and address of each individual interested in the business is Sheng Li at 213 EF Street, Ontario, CA 91764. An application for registration of a fictitious name has been filed under the Fictitious Names Act.

Oct. 26

INCORPORATION NOTICE

Notice is hereby given that GraKain, Inc., has been incorporated under the provisions of the Pennsylvania Business Corporation Law of 1988. Richard A. Vendetti, Esq. Vendetti & Vendetti 3820 Liberty Street Erie, PA 16509

Oct. 26

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA on or about August 15, 2018 for: VPU INC c/o Corporate Creations Network Inc. The corporation has been incorporated under the provisions of the Pennsylvania Business Corporation Law of 1988, as amended.

Oct. 26

LEGAL NOTICE

Court of Common Pleas
Erie County, Pennsylvania
Civil Action-Law
No. 2018-11761
Notice of Action in
Mortgage Foreclosure

Bayview Loan Servicing, LLC, a Delaware Limited Liability Company, Plaintiff vs. Robert Jones, Jr., Known Heir of Johnnie M. Ward a/k/a Johnnie Mae Ward, Deceased, Trina Jones, Known Heir of Johnnie M. Ward a/k/a Johnnie Mae Ward, Deceased, Albert Jones, Sr., Known Heir of Johnnie M. Ward a/k/a Johnnie Mae Ward, Deceased, and Unknown Heirs, Successors, Assigns and All Persons, Firms or Associations Claiming Right, Title or Interest From or Under Johnnie M. Ward a/k/a Johnnie Mae Ward, Deceased, Defendants

To the Defendants, Robert Jones, Jr., Known Heir of Johnnie M. Ward a/k/a Johnnie Mae Ward, Deceased, Trina Jones, Known Heir of Johnnie M. Ward a/k/a Johnnie Mae Ward, Deceased, Albert Jones, Sr., Known Heir of Johnnie M. Ward a/k/a Johnnie Mae Ward, Deceased, and Unknown Heirs, Successors, Assigns and All Persons, Firms or Associations Claiming Right, Title or Interest From or Under Johnnie M. Ward a/k/a Johnnie Mae Ward, Deceased: TAKE NOTICE THAT THE Plaintiff, Bayview Loan Servicing, LLC, a Delaware Limited Liability Company has filed an action Mortgage Foreclosure, as captioned above. NOTICE: IF YOU WISH TO DEFEND, YOU MUST ENTER A WRITTEN APPEARANCE

PERSONALLY OR BY ATTORNEY AND FILE YOUR DEFENSES OR OBJECTIONS WITH THE COURT. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT FURTHER NOTICE FOR THE RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU. YOU SHOULD TAKE THIS NOTICE 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. Erie County Lawyer Referral & Info. Service, P.O. Box 1792, Erie, PA 16507. Christopher A. DeNardo, Kristen D. Little, Kevin S. Frankel, Samantha Gable, Leslie J. Rase, Alison H. Tulio & Katherine M. Wolf, Attys. for Plaintiff, Shapiro & DeNardo, LLC, 3600 Horizon Dr., Ste. 150, King of Prussia, PA 19406, 610.278.6800.

Oct. 26

**LEGAL NOTICE
IN THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF
PENNSYLVANIA**

CIVIL ACTION NO.
1:18-CV-00062-AJS

UNITED STATES OF AMERICA,
Plaintiff

vs.

JARED W. SCHMIDT, Defendant
MARSHAL'S SALE: By virtue of a Writ of Execution issued out of the United States District Court for the Western District of Pennsylvania and to me directed, I shall expose to public sale the real property located at and being more fully described at Erie County Deed Book 1432

Page 1902.

SAID SALE to be held at the Erie County Courthouse, 140 West Sixth Street, Room 209, Erie, PA 16501 at 10:00 a.m. prevailing standard time, on November 9, 2018.

ALL that certain tract of land, together with the buildings, and improvements erected thereon described as Tax Parcel No. (37) 4-48-11.01 recorded in Erie County, Pennsylvania, commonly known as: 11034 Highland Avenue, North East, PA 16428.

IDENTIFIED as Tax/Parcel #: (37) 4-48-11.01 in the Deed Registry Office of Erie County, Pennsylvania. HAVING erected a dwelling thereon known as 11034 HIGHLAND AVENUE, NORTHEAST, PA 16428. BEING the same premises conveyed to Jared W. Schmidt, dated July 18, 2007, and recorded on July 19, 2007 in the office of the Recorder of Deeds in and for Erie County, Pennsylvania. Seized and taken in execution as the property of Jared W. Schmidt at the suit of the United States of America, acting through the Under Secretary of Rural Development on behalf of Rural Housing Service, United States Department of Agriculture, to be sold on Writ of Execution as Civil Action No. 1:18-cv-00062.

TERMS OF SALE: Successful bidder will pay ten percent (10%) by certified check or money order upon the property being struck down to such bidder, and the remainder of the bid within thirty (30) days from the date of the sale and in the event the bidder cannot pay the remainder, the property will be resold and all monies paid in at the original sale will be applied to any deficiency in the price at which the property is resold. The successful bidder must send payment of the balance of the bid directly to the U.S. Marshal's Office c/o Sheila Blessing, 700 Grant Street, Suite 2360, Pittsburgh, PA 15219. Bidder must have deposit funds immediately available and on his person in order to bid, bidder will not be permitted to leave the sale and return with deposit funds. Notice is hereby given that a Schedule of Distribution will be filed by me on the thirtieth (30th) day after the date of sale, and that distribution

will be made in accordance with the Schedule unless exemptions are filed thereto within ten (10) days thereafter. Purchaser must furnish State Realty Transfer Tax Stamps, and stamps required by the local taxing authority. Marshal's costs, fees and commissions are to be borne by seller. Michael Baughman, Acting United States Marshal. For additional information, please contact Cathy Diederich at 314-457-5514 or the USDA foreclosure website at www.resales.usda.gov.

Oct. 12, 19, 26 and Nov. 2



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SHERIFF SALES

Notice is hereby given that by virtue of sundry Writs of Execution, issued out of the Courts of Common Pleas of Erie County, Pennsylvania, and to me directed, the following described property will be sold at the Erie County Courthouse, Erie, Pennsylvania on

**NOVEMBER 16, 2018
AT 10 A.M.**

All parties in interest and claimants are further notified that a schedule of distribution will be on file in the Sheriff's Office no later than 30 days after the date of sale of any property sold hereunder, and distribution of the proceeds made 10 days after said filing, unless exceptions are filed with the Sheriff's Office prior thereto.

All bidders are notified prior to bidding that they MUST possess a cashier's or certified check in the amount of their highest bid or have a letter from their lending institution guaranteeing that funds in the amount of the bid are immediately available. If the money is not paid immediately after the property is struck off, it will be put up again and sold, and the purchaser held responsible for any loss, and in no case will a deed be delivered until money is paid.

John T. Loomis
Sheriff of Erie County

Oct. 26 and Nov. 2, 9

SALE NO. 1

**Ex. #11779 of 2018
WALTER R. BENDER, JR.,
trading as Bender Investments,
Plaintiff**

v.

**DARYL W. HOSEY and
OCCUPANT(S), Defendants
DESCRIPTION**

By virtue of a Writ of Execution filed at No. 2018-11779, Walter R. Bender, Jr. vs. Daryl W. Hosey, owners of property situate in the Township of Fairview, Erie County, Pennsylvania being: 960 Sirak Drive, Fairview, Pennsylvania. 100' X 207.04' X 100' X 207.04' Assessment Map Number: (21) 11-9-3.01 Assessed Value Figure: \$121,800.00

Improvement Thereon: Residence Eugene C. Sundberg, Jr., Esq. Marsh Spaeder Baur Spaeder & Schaaf, LLP 300 State Street, Suite 300 Erie, Pennsylvania 16507 (814) 456-5301

Oct. 26 and Nov. 2, 9

SALE NO. 2

**Ex. #11765 of 2018
NORTHWEST BANK f/k/a
NORTHWEST SAVINGS
BANK, Plaintiff**

v.

**WALTER O. WALKER, JR. and
AMY L. WALKER, Defendants
DESCRIPTION**

By virtue of a Writ of Execution filed at No. 2018-11765, Northwest Bank vs. Walter O. Walker, Jr. and Amy L. Walker, owners of property situate in the Borough of Lake City, Erie County, Pennsylvania being: 1018 Lake Street, Lake City, Pennsylvania.

Approx. 1.524 acres
Assessment Map Number: (28) 4-5-5 and (28) 4-5-6
Assessed Value Figure: \$160,500.00
Improvement Thereon: Residence Kurt L. Sundberg, Esq. Marsh Spaeder Baur Spaeder & Schaaf, LLP 300 State Street, Suite 300 Erie, Pennsylvania 16507 (814) 456-5301

Oct. 26 and Nov. 2, 9

SALE NO. 3

**Ex. #13079 of 2014
DS&K INVESTMENTS, LLC,
Plaintiff**

v.

**ANDREA E. BUBNA, Defendant
DESCRIPTION**

By virtue of Writ of Execution filed at No. 13079-2014, DS&K Investments, LLC v. Andrea E. Bubna, owner of the following properties identified below:

1) Situate in the Borough of Girard, County of Erie, and Commonwealth of Pennsylvania at 217 Penn Avenue, Girard, Pennsylvania 16417: Assessment Map No.: (23) 12-34-16 Assessed Value Figure: \$71,450.00

Improvement Thereon: Residential House Michael S. Jan Janin, Esquire Pa. I.D. No. 38880 The Quinn Law Firm 2222 West Grandview Boulevard Erie, PA 16506 (814) 833-2222, ext. 1045

Oct. 26 and Nov. 2, 9

SALE NO. 4

**Ex. #11540 of 2018
PAT LYON and MARY LYON,
Plaintiffs**

v.

**JAMES WINSCHEL and
BENJAMIN BERLIN and
WINSCHEL AND BERLIN
BUILDERS, LLC, Defendants
DESCRIPTION**

By virtue of a Writ of Execution filed at No. 2018-11540, Pat Lyon and Mary Lyon vs. James Winschel, Benjamin Berlin and Winschel and Berlin Builders, Inc., owners of property situate in the City of Erie, Erie County, Pennsylvania being: 1766 East Grandview Boulevard, Erie, Pennsylvania. Approx. 0.1286 Acre Assessment Map Number: (18) 5226-100 Assessed Value Figure: \$50,540.00 Improvement Thereon: Residence Norman A. Stark, Esq. Marsh Spaeder Baur Spaeder & Schaaf, LLP 300 State Street, Suite 300 Erie, Pennsylvania 16507 (814) 456-5301

Oct. 26 and Nov. 2, 9

SALE NO. 5

**Ex. #11541 of 2018
PAT LYON and MARY LYON,
Plaintiffs**

v.

**JAMES WINSCHEL and
BENJAMIN BERLIN and
WINSCHEL AND BERLIN
BUILDERS, LLC, Defendants
DESCRIPTION**

By virtue of a Writ of Execution filed at No. 2018-11541, Pat Lyon and Mary Lyon vs. James Winschel, Benjamin Berlin and Winschel and Berlin Builders, Inc., owners of property situate in the City of Erie, Erie County, Pennsylvania

being: 802 West 8th Street, Erie, Pennsylvania.
 Approx. 0781 Acre
 Assessment Map Number: (17) 4025-100
 Assessed Value Figure: \$50,000.00
 Improvement Thereon: Residence
 Norman A. Stark, Esq.
 Marsh Spaeder Baur Spaeder & Schaaf, LLP
 300 State Street, Suite 300
 Erie, Pennsylvania 16507
 (814) 456-5301

Oct. 26 and Nov. 2, 9

SALE NO. 6

Ex. #11996 of 2014
Beneficial Opportunity Fund, LLC, Plaintiff

v.

Richard J. Bohrer, Defendant
DESCRIPTION

By Virtue of Writ of Execution filed to No. 11996-14, Beneficial Opportunity Fund, LLC vs. Richard J. Bohrer, as Sole Owner, owner(s) of property situated in Fifth Ward, City of Erie, Erie County, Pennsylvania being 314 East 32nd Street, Erie, PA 16504
 0.2178 Acres
 Assessment Map number: 18050080010700
 Assessed figure: 71,900.00
 Improvement thereon: Cape Style, Single Family, Residential Dwelling
 Stephen M. Hladik, Esquire
 289 Wissahickon Avenue
 North Wales, PA 19454
 (215) 855-9521

Oct. 26 and Nov. 2, 9

SALE NO. 7

Ex. #10796 of 2018
BAYVIEW LOAN SERVICING, LLC, Plaintiff

v.

The Unknown Heirs of LAMAR ANDERSON, Deceased, MICHAEL ANDERSON Solely in His Capacity as Heir of LAMAR ANDERSON, Deceased, Defendant(s)
DESCRIPTION

The land hereinafter referred to is situated in the City of Erie, County of Erie, State of PA, and is described as follows:
 Beginning at a point in the East

line of Camphausen Avenue three hundred forty (340) feet North of the North line of the Buffalo Road; thence Northwardly along the East line of Camphausen Avenue eighty (80) feet to a point; thence Eastwardly parallel with the Buffalo Road one hundred fifteen and one-fourth (115-1/4) feet to a point; thence Southwardly parallel with the East line of Camphausen Avenue eighty (80) feet to a point; thence Westwardly parallel with the Buffalo Road one hundred fifteen and one-fourth (115-1/4) feet to the East line of Camphausen Avenue and the place of beginning, being Lots Numbered 9 and 10 of the Camphausen Subdivision according to plan of the same as recorded in Erie County, Pennsylvania Map Book 1 Page 351 and more.

APN: 15021010021600
 PROPERTY ADDRESS: 1917 Camphausen Avenue, Erie, PA 16510
 KML Law Group, P.C.
 Attorney for Plaintiff
 Suite 5000 - BNY Independence Center, 701 Market Street
 Philadelphia, PA 19106
 (215) 627-1322

Oct. 26 and Nov. 2, 9

SALE NO. 8

Ex. #10325 of 2018
CITIZENS BANK, N.A., Plaintiff

v.

EILEEN A. COREY AKA EILEEN COREY, HAROLD E. COREY II AKA HAROLD COREY, Defendant(s)
DESCRIPTION

ALL THAT CERTAIN piece or parcel of land situate in Tract 196, Harborcreek Township, Erie County, Pennsylvania, bounded and described as follows, to-wit:
 BEGINNING at a point on the centerline of Davison Road (as a 50' right-of-way), said point being the southwest corner of land conveyed to James P. Sheridan, et ux by deed recorded in Erie County Deed Book 1626 at page 310 and as shown by a plan of the same as recorded in Erie County Map Book 29 at page 133;
 THENCE along the south line of the same N. 45 degrees 00 minutes

25 seconds E., passing over an iron survey point at 25.21 feet, a total distance of 398.48 feet to an iron survey point;
 THENCE S. 33 degrees 31 minutes 15 seconds E., 303.58 feet to an iron survey point;
 THENCE S. 45 degrees 00 minutes 25 seconds W., passing over an iron point at 274.29 feet, a total distance of 299.50 feet to a point on the centerline of Davison Road;
 THENCE along said centerline N. 52 degrees 23 minutes 10 seconds W., 300 feet to the place of beginning.

Being Lot No. 2 of Survey for Harold Corey, prepared by James No. Helffrich, Registered Surveyor, recorded in Erie County Map Book 30, at page 188.
 PARCEL No.: 27032125001004
 PROPERTY ADDRESS: 1865 Davison Road, Harborcreek, PA 16421
 KML Law Group, P.C.
 Attorney for Plaintiff
 Suite 5000 - BNY Independence Center, 701 Market Street
 Philadelphia, PA 19106
 (215) 627-1322

Oct. 26 and Nov. 2, 9

SALE NO. 9

Ex. #11752 of 2017
BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, Plaintiff

v.

DONALD A. MCCALMON, SHERRILYN L. MCCALMON, Defendant(s)
DESCRIPTION

ALL THAT CERTAIN PARCEL OF LAND IN BOROUGH OF ALBION, ERIE COUNTY, COMMONWEALTH OF PA, AS MORE FULLY DESCRIBED IN BOOK 1019 PAGE 682 ID#1-4-18-13, BEING KNOWN AND DESIGNATED AS A METES AND BOUNDS PROPERTY 59N MAIN ST.
 BEING THE SAME FEE SIMPLE PROPERTY CONVEYED BY DEED FROM JOSEPH R CURRY, JR AND KATHLEEN A CURRY HUSBAND AND WIFE TO

DONALD A MCCALMON AND SHERRILYN L MCCALMON HUSBAND AND WIFE, DATED 03/28/1970 RECORDED ON 03/31/1970 IN BOOK 1019, PAGE 682 IN ERIE COUNTY RECORDS, COMMONWEALTH OF PA.
 PARCEL No.: 01-004-0180-01300
 PROPERTY ADDRESS: 59 North Main Street, Albion, PA 16401
 KML Law Group, P.C.
 Attorney for Plaintiff
 Suite 5000 - BNY Independence Center, 701 Market Street Philadelphia, PA 19106-1532
 (215) 627-1322
 Oct. 26 and Nov. 2, 9

SALE NO. 10
Ex. #12631 of 2017
MIDFIRST BANK, Plaintiff
 v.

KRIS L. KOSSBIEL AND THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT, Defendants

DESCRIPTION

By virtue of a Writ of Execution No. 12631-17, MIDFIRST BANK, Plaintiff vs. KRIS L. KOSSBIEL AND THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT, Defendants
 Real Estate: 1052 WEST 31ST STREET, ERIE, PA 16508
 Municipality: City of Erie
 Erie County, Pennsylvania
 Dimensions: 29.5 x 135
 See Deed Book 1499 / 0403
 Tax I.D. (19) 6038-232
 Assessment: \$16,200 (Land)
 \$69,470 (Bldg)
 Improvement thereon: a residential dwelling house as identified above
 Leon P. Haller, Esquire
 Purcell, Krug & Haller
 1719 North Front Street
 Harrisburg, PA 17104
 (717) 234-4178

Oct. 26 and Nov. 2, 9

SALE NO. 11
Ex. #10983 of 2018
PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff
 v.
THOMAS L. LOOMIS II, Defendants

DESCRIPTION

By virtue of a Writ of Execution No. 2018-10983, PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff vs. THOMAS L. LOOMIS II, Defendants
 Real Estate: 503 EAST 2ND STREET, ERIE, PA 16507
 Municipality: City of Erie
 Erie County, Pennsylvania
 Dimensions: 40 x 80
 See Deed Book 1243, page 1143
 Tax I.D. (14) 1018-212
 Assessment: \$6,600 (Land)
 \$28,100 (Bldg)
 Improvement thereon: a residential dwelling house as identified above
 Leon P. Haller, Esquire
 Purcell, Krug & Haller
 1719 North Front Street
 Harrisburg, PA 17104
 (717) 234-4178

Oct. 26 and Nov. 2, 9

SALE NO. 12
Ex. #11363 of 2018
Wells Fargo Bank, N.A., Plaintiff
 v.

Deltheia N. Durah, Defendant

DESCRIPTION

By virtue of a Writ of Execution file to No. 2018-11363, Wells Fargo Bank, N.A. vs. Deltheia N. Durah, owner(s) of property situated in the City of Erie, County of Erie, Commonwealth of Pennsylvania being 2112 McClelland Avenue, Erie, PA 16510
 1176 SQFT
 Assessment Map Number: 18051034020300
 Assessed Value figure: \$66,410.00
 Improvement thereon: Single Family Dwelling
 Kimberly J. Hong, Esquire
 Manley Deas Kochalski LLC
 P.O. Box 165028
 Columbus, OH 43216-5028
 614-220-5611

Oct. 26 and Nov. 2, 9

SALE NO. 13
Ex. #11155 of 2018
Wells Fargo Bank, NA, Plaintiff
 v.

Dung D. Pham, Defendant

DESCRIPTION

By virtue of a Writ of Execution file to No. 2018-11155, Wells Fargo

Bank, NA vs. Dung D. Pham, owner(s) of property situated in the Township of Fairview, County of Erie, Commonwealth of Pennsylvania being 7725 West Ridge Road, Fairview, PA 16415
 3.91000
 Assessment Map Number: 21080019000400
 Assessed Value figure: \$164,000.00
 Improvement thereon: Single Family Dwelling
 Kimberly J. Hong, Esquire
 Manley Deas Kochalski LLC
 P.O. Box 165028
 Columbus, OH 43216-5028
 614-220-5611
 Oct. 26 and Nov. 2, 9

SALE NO. 14
Ex. #12836 of 2016
The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2005-10CB, Mortgage Pass Through Certificates, Series 2005-10CB, Plaintiff
 v.

Emily Johnson and Unknown Heirs, Successors, Assigns and all Persons, Firms, or Associations Claiming Right, Title or Interest from or under Timothy E. Miller, Deceased and Unknown Heirs, Successors, Assigns and all Persons, Firms, or Associations Claiming Right, Title or Interest from or under Jonathan Miller, Deceased, Defendants

DESCRIPTION

By virtue of a Writ of Execution filed to No. 12836-16, The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2005-10CB, Mortgage Pass Through Certificates, Series 2005-10CB, Plaintiff, v. Emily Johnson and Unknown Heirs, Successors, Assigns and all Persons, Firms, or Associations Claiming Right, Title or Interest from or under Timothy E. Miller, Deceased and Unknown Heirs, Successors, Assigns and all Persons, Firms, or Associations Claiming Right, Title or Interest from or under Jonathan Miller,

Deceased, Defendants
 By virtue of a Writ of Execution filed to No. 12836-16, The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2005-10CB, Mortgage Pass Through Certificates, Series 2005-10CB, Plaintiff, v. Emily Johnson and Unknown Heirs, Successors, Assigns and all Persons, Firms, or Associations Claiming Right, Title or Interest from or under Timothy E. Miller, Deceased and Unknown Heirs, Successors, Assigns and all Persons, Firms, or Associations Claiming Right, Title or Interest from or under Jonathan Miller,

Deceased, owner(s) of property situated in Borough of North East, Erie County, Pennsylvania being 26 Park Street, North East, PA 16428
 0.0611 Acres
 Assessment Map number: 35002016001900
 Assessed Value figure: 96,400.00
 Improvement thereon: Single Family
 Robert W. Williams
 Mattleman, Weinroth & Miller, P.C.
 401 Route 70 East, Suite 100
 Cherry Hill, NJ 08034
 (856) 429-5507

Oct. 26 and Nov. 2, 9

SALE NO. 16

Ex. #14183 of 2011
Wilmington Savings Fund
Society, FSB D/B/A Christiana
Trust Not in its Individual
Capacity but Solely as Trustee for
Winsted Funding Finance Trust
2015-1, Plaintiff

v.

Vincent L. Proctor A/K/A Vincent
L. Proctor, II and Melinda D.
Proctor, Defendants
DESCRIPTION

By virtue of a Writ of Execution filed to No. 14183-11, Wilmington Savings Fund Society, FSB D/B/A Christiana Trust Not in its Individual Capacity but Solely as Trustee for Winsted Funding Finance Trust 2015-1 v. Vincent L. Proctor A/K/A Vincent L. Proctor, II and Melinda D. Proctor
 Vincent L. Proctor A/K/A Vincent L. Proctor, II, owner of property situated in the City of Erie, Erie County, Pennsylvania being 933 West 31st Street, Erie, Pennsylvania 16508.
 Tax I.D. No. 19 06.0 040.0 116.00
 Assessment: \$75,300.00
 Improvements: Residential Dwelling
 McCabe, Weisberg & Conway, LLC
 123 South Broad Street, Suite 1400
 Philadelphia, PA 19109
 215-790-1010

Oct. 26 and Nov. 2, 9

SALE NO. 17

Ex. #13002 of 2017
PNC BANK, NATIONAL
ASSOCIATION, successor in

interest to NATIONAL CITY
BANK OF PENNSYLVANIA,
Plaintiff

v.

JOHN P. MUROSKY, SUSAN
ZEIBER, and THE UNITED
STATES OF AMERICA,
Defendants

DESCRIPTION

By virtue of a Writ of Execution filed to No. 13002-2017, PNC Bank, National Association, successor in interest to National City Bank of Pennsylvania, Plaintiff vs. John P. Murosky, Susan Zeiber, and The United States of America, Defendants, owner(s) of property situated in the Township of Lawrence Park, Erie County, Pennsylvania being 2300 Lakeside Drive, Erie, PA 16511
 60 x 160.7; 2610 SF; 0.2886 acres
 Assessment Map number: 29001001004103
 Assessed Value figure: \$289,400.00
 Improvement thereon: 1 story dwelling
 Justin M. Tuskan, Esquire
 Metz Lewis Brodman Must
 O'Keefe LLC
 535 Smithfield Street, Suite 800
 Pittsburgh, PA 15222
 412.918.1100

Oct. 26 and Nov. 2, 9

SALE NO. 18

Ex. #11105 of 2018
U.S. Bank National Association,
as indenture trustee, for the CIM
Trust 2016-1, Mortgage-Backed
Notes, Series 2016-1, Plaintiff

v.

Anita E. Bayle and Timothy R.
Bayle, Defendants
DESCRIPTION

By virtue of a Writ of Execution filed to No. 2018-11105, U.S. Bank National Association, as indenture trustee, for the CIM Trust 2016-1, Mortgage-Backed Notes, Series 2016-1 vs. Anita E. Bayle and Timothy R. Bayle, owners of property situated in Amity Township, Erie County, Pennsylvania being 8163 Welch Road, Union City, PA 16438
 1659 Square Feet / 6.4200 Acres
 Assessment Map number: 02007016100300

Assessed Value figure: \$77,470.00
 Improvement thereon: Residential Dwelling
 Roger Fay, Esquire
 1 E. Stow Road
 Marlton, NJ 08053
 (856) 482-1400

Oct. 26 and Nov. 2, 9

SALE NO. 19

Ex. #13394 of 2017
U.S. Bank National Association,
as trustee for the holders of the
First Franklin Mortgage Loan
Trust 2006-FF10 Mortgage
Pass-Through Certificates, Series
2006-FF10, Plaintiff

v.

Debra L. Murphy, Defendant
DESCRIPTION

By virtue of a Writ of Execution filed to No. 2017-13394, U.S. Bank National Association, as trustee for the holders of the First Franklin Mortgage Loan Trust 2006-FF10 Mortgage Pass-Through Certificates, Series 2006-FF10 vs. Debra L. Murphy, owners of property situated in Millcreek Township, Erie County, Pennsylvania being 1620 Clifford Drive, Erie, PA 16506
 1,020 Square Feet, 0.4821 Acres
 Assessment Map number: 33023127001600
 Assessed Value figure: \$95,800.00
 Improvement thereon: Residential Dwelling
 Roger Fay, Esquire
 1 E. Stow Road
 Marlton, NJ 08053
 (856) 482-1400

Oct. 26 and Nov. 2, 9

SALE NO. 20

Ex. #10233 of 2018
Nationstar Mortgage LLC d/b/a
Mr. Cooper, Plaintiff

v.

Justin Pfadt, known heir of
Thomas Pfadt a/k/a Thomas J.
Pfadt, Deceased and Unknown
heirs, successors, assigns and all
persons, firms, or associations
claiming right, title or interest
from or under Thomas J. Pfadt,
Deceased, Defendant

DESCRIPTION

By virtue of a Writ of Execution

filed to No. 2018-10233, Nationstar Mortgage LLC d/b/a Mr. Cooper vs. Justin Pfadt, known heir of Thomas Pfadt a/k/a Thomas J. Pfadt, Deceased and Unknown heirs, successors, assigns and all persons, firms, or associations claiming right, title or interest from or under Thomas J. Pfadt, Deceased, owners of property situated in Millcreek Township, Erie County, Pennsylvania being 4821 Summer Street, Erie, PA 16509
 840 Square Feet, 0.2313 Acres
 Assessment Map number: 33098421001400
 Assessed Value figure: \$92,650.00
 Improvement thereon: Residential Dwelling
 Roger Fay, Esquire
 1 E. Stow Road
 Marlton, NJ 08053
 (856) 482-1400

Oct. 26 and Nov. 2, 9

SALE NO. 21

Ex. #11631 of 2018

Ditech Financial LLC, Plaintiff

v.

Larry G. Bruce, Defendant(s)

DESCRIPTION

By virtue of a Writ of Execution filed to No. 11631-18, Ditech Financial LLC vs. Larry G. Bruce Amount Due: \$78,310.51
 Larry G. Bruce, owner(s) of property situated in HARBORCREEK TOWNSHIP, Erie County, Pennsylvania being 2697 Sterling Avenue, Erie, PA 16510
 Dimensions: 150.7 X 127.3
 Assessment Map number: 27-052-160.0-016.01
 Assessed Value: \$73,500.00
 Improvement thereon: residential Phelan Hallinan Diamond & Jones, LLP One Penn Center at Suburban Station, Suite 1400
 1617 John F. Kennedy Boulevard Philadelphia, PA 19103-1814
 (215) 563-7000

Oct. 26 and Nov. 2, 9

SALE NO. 22

Ex. #10714 of 2013

Bank of America, N.A., as Successor by Merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans

Servicing, LP, Plaintiff

v.

Jason R. Lloyd, Defendant(s)

DESCRIPTION

By virtue of a Writ of Execution filed to No. 10714-13, Bank of America, N.A., as Successor by Merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP vs. Jason R. Lloyd Amount Due: \$136,514.03
 Jason R. Lloyd, owner(s) of property situated in WATERFORD BOROUGH, Erie County, Pennsylvania being 509 Cherry Street, Waterford, PA 16441-7815
 Dimensions: 77.5 X 82.5
 Acreage: 0.1486
 Assessment Map number: 46006016001500
 Assessed Value: \$97,440.00
 Improvement thereon: residential Phelan Hallinan Diamond & Jones, LLP One Penn Center at Suburban Station, Suite 1400
 1617 John F. Kennedy Boulevard Philadelphia, PA 19103-1814
 (215) 563-7000

Oct. 26 and Nov. 2, 9

SALE NO. 23

Ex. #11227 of 2018

Nationstar Mortgage LLC d/b/a Champion Mortgage Company, Plaintiff

v.

Michael Vargo, in His Capacity as Heir of Robert J. Vargo, Deceased, Brenda Klett, in Her Capacity as Heir of Robert J. Vargo, Deceased, Andrew Vargo a/k/a Andrew Anthony Vargo, in His Capacity as Heir of Robert J. Vargo, Deceased, Matthew Vargo, in His Capacity as Heir of Robert J. Vargo, Deceased, John Vargo, in His Capacity as Heir of Robert J. Vargo, Deceased, Unknown Heirs, Successors, Assigns, and All Persons, Firms, or Associations Claiming Right, Title or Interest From or Under Robert J. Vargo, Deceased, The United States of America C/O The Western District of PA, owner(s) of property situated in HARBORCREEK TOWNSHIP, Erie County, Pennsylvania being 2610 Parker Avenue, Erie, PA 16510-2038

**Dimensions: 60 X 125
 Assessment Map number: 27-052-161.0-002.00
 Assessed Value: \$84,700.00
 Improvement thereon: residential Phelan Hallinan Diamond & Jones, LLP One Penn Center at Suburban Station, Suite 1400
 1617 John F. Kennedy Boulevard Philadelphia, PA 19103-1814
 (215) 563-7000**

Oct. 26 and Nov. 2, 9

DESCRIPTION

By virtue of a Writ of Execution filed to No. 2018-11227, Nationstar Mortgage LLC d/b/a Champion Mortgage Company vs. Michael

Vargo, in His Capacity as Heir of Robert J. Vargo, Deceased, Brenda Klett, in Her Capacity as Heir of Robert J. Vargo, Deceased, Andrew Vargo a/k/a Andrew Anthony Vargo, in His Capacity as Heir of Robert J. Vargo, Deceased, Matthew Vargo, in His Capacity as Heir of Robert J. Vargo, Deceased, John Vargo, in His Capacity as Heir of Robert J. Vargo, Deceased, Unknown Heirs, Successors, Assigns, and All Persons, Firms, or Associations Claiming Right, Title or Interest From or Under Robert J. Vargo, Deceased, The United States of America C/O The United States Attorney for The Western District of PA

Amount Due: \$65,197.85
 Michael Vargo, in His Capacity as Heir of Robert J. Vargo, Deceased, Brenda Klett, in Her Capacity as Heir of Robert J. Vargo, Deceased, Andrew Vargo a/k/a Andrew Anthony Vargo, in His Capacity as Heir of Robert J. Vargo, Deceased, Matthew Vargo, in His Capacity as Heir of Robert J. Vargo, Deceased, John Vargo, in His Capacity as Heir of Robert J. Vargo, Deceased, Unknown Heirs, Successors, Assigns, and All Persons, Firms, or Associations Claiming Right, Title or Interest From or Under Robert J. Vargo, Deceased, The United States of America C/O The Western District of PA, owner(s) of property situated in HARBORCREEK TOWNSHIP, Erie County, Pennsylvania being 2610 Parker Avenue, Erie, PA 16510-2038
 Dimensions: 60 X 125
 Assessment Map number: 27-052-161.0-002.00
 Assessed Value: \$84,700.00
 Improvement thereon: residential Phelan Hallinan Diamond & Jones, LLP One Penn Center at Suburban Station, Suite 1400
 1617 John F. Kennedy Boulevard Philadelphia, PA 19103-1814
 (215) 563-7000

SALE NO. 25
Ex. #11178 of 2017
PENNYMAC LOAN SERVICES,
LLC, Plaintiff

v.
TERRY L. BARRETT, JR.,
ERICA L. KOVACH, Defendants
DESCRIPTION

ALL THAT CERTAIN PIECE OF PARCEL OF LAND SITUATE IN THE CITY OF ERIE, COUNTY OF ERIE AND COMMONWEALTH OF PENNSYLVANIA. BEING KNOWN AS: 1642 E 42ND STREET, ERIE, PA 16510 PARCEL # (18) 5252-203
 Improvements: Residential Dwelling.
 POWERS KIRN & ASSOCIATES, LLC
 Amanda L. Rauer, Esquire
 Id. No. 307028
 Attorneys for Plaintiff
 Eight Neshaminy Interplex
 Suite 215
 Trevoise, PA 19053
 (215) 942-2090

Oct. 26 and Nov. 2, 9

SALE NO. 26
Ex. #10184 of 2016
PENNYMAC LOAN SERVICES,
LLC, Plaintiff

v.
MATHEW P. TURNER,
Defendant
DESCRIPTION

ALL THAT CERTAIN PIECE OR PARCEL OF LAND SITUATE IN THE CITY OF ERIE, COUNTY OF ERIE AND COMMONWEALTH OF PENNSYLVANIA. BEING KNOWN AS: 1561 W 40TH STREET, ERIE, PA 16509 PARCEL # 190-610-680-21200
 Improvements: Residential Dwelling.
 POWERS KIRN & ASSOCIATES, LLC
 Amanda L. Rauer, Esquire
 Id. No. 307028
 Attorneys for Plaintiff
 Eight Neshaminy Interplex
 Suite 215
 Trevoise, PA 19053
 (215) 942-2090

Oct. 26 and Nov. 2, 9

SALE NO. 27
Ex. #10200 of 2018
Carrington Mortgage Services,
LLC, Plaintiff

v.
Jeffrey S. Maloney and Catherine E. Walsh, Defendants
DESCRIPTION

By virtue of a Writ of Execution filed to No. 2018-10200, Carrington Mortgage Services, LLC vs. Jeffrey S. Maloney and Catherine E. Walsh, owner(s) of property situated in Borough of Edinboro, Erie County, Pennsylvania being 102 Gibson Lane, Edinboro, PA 16412
 0.3567
 Assessment Map number: (11) 14-48-21
 Assessed Value figure: \$79,260.00
 Improvement thereon: a residential dwelling
 Daniel T. Lutz, Esquire
 Shapiro & DeNardo, LLC
 Attorney for Movant/Applicant
 3600 Horizon Drive, Suite 150
 King of Prussia, PA 19406
 (610) 278-6800

Oct. 26 and Nov. 2, 9

SALE NO. 28
Ex. #11831 of 2018
Nationstar Mortgage LLC d/b/a
Mr. Cooper, Plaintiff

v.
Raymond S. Zapolski and Susan M. Zapolski, Defendants
DESCRIPTION

By virtue of a Writ of Execution filed to No. 2018-11831, Nationstar Mortgage LLC d/b/a Mr. Cooper vs. Raymond S. Zapolski and Susan M. Zapolski, owner(s) of property situated in City of Erie, Erie County, Pennsylvania being 1215 West 24th Street, Erie, PA 16502
 0.0826
 Assessment Map number: 19062002020400
 Assessed Value figure: \$60,800.00
 Improvement thereon: a residential dwelling
 Daniel T. Lutz, Esquire
 Shapiro & DeNardo, LLC
 Attorney for Movant/Applicant
 3600 Horizon Drive, Suite 150
 King of Prussia, PA 19406
 (610) 278-6800

Oct. 26 and Nov. 2, 9

SALE NO. 29
Ex. #11682 of 2018
Velocity Commercial Capital,
LLC, Plaintiff

v.
Beach Investors, LLC, by Sally C. Barbour, Managing Member, Defendant
DESCRIPTION

By virtue of Writ of Execution No. 11682-2018, Velocity Commercial Capital, LLC v. Beach Investors, LLC, by Sally C. Barbour, Managing Member, 208 Freepport Road, Township of North East, PA 16428, Tax Parcel No. (37) 6-6-35. Improvements thereon consisting of a Residential Dwelling, sold to satisfy judgment in the amount of \$166,728.23.
 Edward J. McKee, Esquire
 Stern & Eisenberg, PC
 1581 Main Street, Suite 200
 The Shops at Valley Square
 Warrington, PA 18976
 (215) 572-8111

Oct. 26 and Nov. 2, 9

SALE NO. 30
Ex. #10336 of 2018
PNC BANK, NATIONAL
ASSOCIATION, Plaintiff

v.
DANIEL E. MITCHELL
AND ANNE B. MITCHELL,
Defendants
DESCRIPTION

By virtue of a Writ of Execution filed to No. 10336-2018, PNC BANK, NATIONAL ASSOCIATION vs. DANIEL E. MITCHELL AND ANNE B. MITCHELL, owner(s) of property situated in TOWNSHIP OF MILLCREEK, Erie County, Pennsylvania being 5856 Forest Crossing, Erie, PA 16506
 0.2663 acre
 Assessment Map number: 33174565112800
 Assessed Value figure: \$320,460.00
 Improvement thereon: single family dwelling
 Michael C. Mazack, Esquire
 Kevin J. Cummings, Esquire
 Tucker Arensberg, P.C.
 1500 One PPG Place
 Pittsburgh, PA 15222
 (412) 566-1212

Oct. 26 and Nov. 2, 9

SALE NO. 31

Ex. #12884 of 2017

Pennsylvania Housing Finance Agency, Plaintiff

v.

David Miller, Steven Miller and All Other Heirs of Janet Miller, Deceased, Known or Unknown, Defendants

DESCRIPTION

By virtue of a Writ of Execution filed to No. 12884-17, Pennsylvania Housing Finance Agency vs. David Miller, Steven Miller and All Other Heirs of Janet Miller, Deceased, Known or Unknown, owner(s) of property situated in City of Erie, Erie County, Pennsylvania being. Dimensions: Square feet - 1,714 Acreage - .0930 Assessment Map Number: 19-060-010.0-122.00 Assessed Value figure: 77,950.00 Improvement thereon: Single Family Dwelling Lois M. Vitti, Esquire Attorney for Plaintiff 333 Allegheny Avenue, Suite 303 Oakmont, PA 15139 (412) 281-1725

Oct. 26 and Nov. 2, 9

SALE NO. 32

Ex. #10403 of 2018

Pennsylvania Housing Finance Agency, Plaintiff

v.

Robert J. Trojanowski and Bridget C. Trojanowski, Defendants

DESCRIPTION

By virtue of a Writ of Execution filed to No. 10403-18, Pennsylvania Housing Finance Agency vs. Robert J. Trojanowski and Bridget C. Trojanowski, owners of property situated in Township of Greene, Erie County, Pennsylvania being: Dimensions: Square feet - 1344 Acreage - 1.1479 Assessment Map Number: 25-010-029.0-055.00 and 25-010-029.0-056.01 Assess Value figure: \$108,900.00 Improvement thereon: Single Family Dwelling Lois M. Vitti, Esquire Attorney for Plaintiff 333 Allegheny Avenue, Suite 303

Oakmont, PA 15139 (412) 281-1725

Oct. 26 and Nov. 2, 9

Erie County Bar Association

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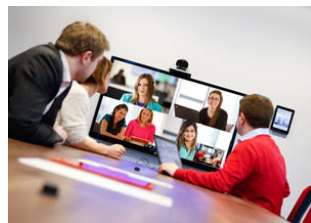
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NOTICE BY
KENNETH J. GAMBLE**

Clerk of Records

**Register of Wills and Ex-Officio Clerk of
the Orphans' Court Division, of the**

Court of Common Pleas of Erie County, Pennsylvania

The following Executors, Administrators, Guardians and Trustees have filed their Accounts in the Office of the Clerk of Records, Register of Wills and Orphans' Court Division and the same will be presented to the Orphans' Court of Erie County at the Court House, City of Erie, on **Wednesday, October 10, 2018** and confirmed Nisi.

November 21, 2018 is the last day on which Objections may be filed to any of these accounts.

Accounts in proper form and to which no Objections are filed will be audited and confirmed absolutely. A time will be fixed for auditing and taking of testimony where necessary in all other accounts.

<u>2018</u>	<u>ESTATE</u>	<u>ACCOUNTANT</u>	<u>ATTORNEY</u>
347.	Job D. Knighton	Lynda Lord, Administratrix.....	Adam G. Anderson, Esq.
348.	Nancy F. Collier	Grant R. Twiss, Executor	Darlene M. Vlahos, Esq.
349.	Ruth E. Gingenbach	Craig Zraggen, Executor	Gary H. Nash, Esq.
	a/k/a Ruth Ellen Gingenbach		
350.	John J. Euliano, Sr.	Douglas J. Euliano,	John A. Lauer, Esq.
	a/k/a Dr. John J. Euliano, Sr.	Successor Trustee	

KENNETH J. GAMBLE
Clerk of Records
Register of Wills &
Orphans' Court Division

Oct. 19, 26

ESTATE NOTICES

Notice is hereby given that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same and all persons indebted to said estates are requested to make payment without delay to the executors or their attorneys named below.

FIRST PUBLICATION

BRIDGER, MARY ANN, deceased

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executor: William A. Bridger, 3223 West 25th Street, Erie, Pennsylvania 16506
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

COUGHLIN, DANIEL T., SR., a/k/a DANIEL T. COUGHLIN, a/k/a DANIEL COUGHLIN, a/k/a DANIEL THOMAS COUGHLIN, deceased

Late of the Township of Millcreek, Commonwealth of Pennsylvania
Executor: Margaret Huggins, c/o Vendetti & Vendetti, 3820 Liberty Street, Erie, Pennsylvania 16509
Attorney: James J. Bruno, Esquire, Vendetti & Vendetti, 3820 Liberty Street, Erie, PA 16509

DOBRUK, DARLENE SYLVIA, deceased

Late of the Township of Greene, Erie County, Pennsylvania
Administratrix: Christine Dobruk, c/o Nathaniel K. Conti, Esq., 234 West 6th Street, Erie, PA 16507
Attorney: Nathaniel K. Conti, Esq., Bernard Stuczynski Barnett & Lager, PLLC, 234 West 6th Street, Erie, PA 16507

HASENHUETTL, HELEN M., deceased

Late of the Township of Fairview, County of Erie, and Commonwealth of Pennsylvania
Executor: Helen M. Velez, c/o 300 State Street, Suite 300, Erie, PA 16507
Attorney: Thomas V. Myers, Esquire, Marsh Spaeder Baur Spaeder & Schaaf, LLP, 300 State Street, Suite 300, Erie, PA 16507

LIGHT, ROBERT W., deceased

Late of the Township of Greene, Erie County, Pennsylvania
Executrix: Judy Light, c/o Nathaniel K. Conti, Esq., 234 West 6th Street, Erie, PA 16507
Attorney: Nathaniel K. Conti, Esq., Bernard Stuczynski Barnett & Lager, PLLC, 234 West 6th Street, Erie, PA 16507

MANKOWSKI, CHARLOTTE T., deceased

Late of Erie County, Erie, PA
Executor: David R. Mankowski, c/o 33 East Main Street, North East, Pennsylvania 16428
Attorney: Robert J. Jeffery, Esq., Knox, McLaughlin, Gornall & Sennett, P.C., 33 East Main Street, North East, Pennsylvania 16428

PESKORSKI, FRANCIS EUGENE, a/k/a FRANCIS E. PESKORSKI, deceased

Late of the City of Erie, County of Erie, State of Pennsylvania
Executor: Scott A. Peskorski, 3355 Bridgeport Drive, North Olmsted, OH 44070
Attorney: James R. Steadman, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

SALVIA, ANNA C., deceased

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executrix: Lucia T. Salvia, 5060 Wolf Run Drive, Erie, PA 16505
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

SUROVIEC, EDWARD J., deceased

Late of Waterford Borough, Erie County, Pennsylvania
Executrix: Sandra J. Turi, 209 Youkers Road, Butler, PA 16001
Attorney: James F. Nowalk, Esquire, The Manor, Suite 203, 4701 Baptist Road, Pittsburgh, PA 15227

WHITING, THOMAS A., a/k/a THOMAS ALLEN WHITING, deceased

Late of Summit Township, County of Erie and Commonwealth of Pennsylvania
Executrix: Beverly A. Whiting, c/o Eugene C. Sundberg Jr., Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: Eugene C. Sundberg Jr., Esq., MARSH, SPAEDER, BAUR, SPAEDER & SCHAAF, LLP, Suite 300, 300 State Street, Erie, PA 16507

WISENSKI, HELEN R., a/k/a HELEN ROSE WISINSKI, deceased

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executor: Joseph Wisinski, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Colleen R. Stumpf, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

SECOND PUBLICATION

ANDRASY, KATHRYN ANN, a/k/a KATHRYN A. ANDRASY, deceased

Late of the Township of Girard, County of Erie, State of Pennsylvania
Executor: Norman D. Andrasy, 7679 Meadville Road, Girard, PA 16417
Attorney: James R. Steadman, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

BINALI, ELDAR, a/k/a ELDAR S. BINALI, a/k/a ELDAR BINALI UGLY, a/k/a ELDAR S. BINALI UGLY,
deceased

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania

Administratrix: Yulduz Bashatova, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

EMBLER, BEVERLY A.,
deceased

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania

Administrator C.T.A.: Douglas B. Embler, c/o Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508
Attorney: Darlene M. Vlahos, Esq., Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508

GINGRICH, ROBERT L.,
deceased

Late of Millcreek Township, Erie County, Commonwealth of Pennsylvania

Executrix: Barbara E. Moore, c/o Jerome C. Wegley, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Jerome C. Wegley, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

HILL, GARY R.,
deceased

Late of Township of Millcreek
Executrix: Beverly A. Jenks, 4450 Carlton Dr., Fairview, PA 16415
Attorney: Michael A. Fetzner, Esquire, Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

KONNERTH, OSCAR F.,
deceased

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania

Co-Executors: Stephen M. Konnerth and Kathleen A. Dunlap, c/o Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508
Attorney: Darlene M. Vlahos, Esq., Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508

KOPPELMAN, JOAN V.,
deceased

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania

Executor: Richard S. Koppelman, c/o John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507
Attorney: John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507

ROGOWSKI, MOLLY I.,
deceased

Late of 6351 West Lake Road, Fairview, PA 16505

Personal Representative: Eugene Dobrzynski, 5507 River Run Drive, Fairview, PA 16415
Attorney: Al Lubiejewski, Esquire, 402 West 6th Street, Erie, Pennsylvania 16507

THIRD PUBLICATION

ARMOR, DAVID H., a/k/a DAVID HOWELL ARMOR,
deceased

Late of the Township of Lawrence Park, County of Erie and Commonwealth of Pennsylvania
Executrix: Kelly B. Armor
Attorney: James H. Richardson, Esquire, ELDERKIN LAW FIRM, 150 East 8th Street, Erie, PA 16501

BAKER, RAYMOND L.,
deceased

Late of Waterford, County of Erie, Commonwealth of Pennsylvania
Executrix: Jodi L. Baker, 270 Merchant Avenue, Apt. R, Mt. Joy, PA 17552
Attorney: None

BALZER, WILLIAM CARL, a/k/a WILLIAM C. BALZER, a/k/a WILLIAM BALZER,
deceased

Late of the Township of North East, County of Erie and Commonwealth of Pennsylvania
Executor: Karl W. Balzer, c/o 3210 West 32nd Street, Erie, Pennsylvania 16506-2702
Attorney: Peter W. Bailey, Esquire, 3210 West 32nd Street, Erie, Pennsylvania 16506-2702

HARRIS, ROBERT LEE, a/k/a ROBERT L. HARRIS,
deceased

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executor: Philip O. Harris, c/o Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508
Attorney: Darlene M. Vlahos, Esq., Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508

JOINT, RITAMAE, a/k/a RITA M. JOINT, a/k/a RITA JOINT, a/k/a RITA THAYER JOINT,
deceased

Late of City of Erie, Erie County, Commonwealth of Pennsylvania
Executrix: Patricia Joint-Lipchik, c/o Frances A. McCormick, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Frances A. McCormick, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**LEMOCK, EDWARD J.,
deceased**

Late of Waterford Township,
County of Erie, Commonwealth
of Pennsylvania
Executor: Bonita M. Skrzypczyk,
c/o Quinn, Buseck, Leemhuis,
Toohey & Kroto, Inc., 2222 West
Grandview Blvd., Erie, PA 16506-
4508
Attorney: Colleen R. Stumpf,
Esquire, Quinn, Buseck,
Leemhuis, Toohey & Kroto, Inc.,
2222 West Grandview Blvd., Erie,
PA 16506-4508

**SHINGLEDECKER, JESSIE I.,
a/k/a JESSIE SHINGLEDECKER,
deceased**

Late of the Township of
Fairview, County of Erie, State of
Pennsylvania
Executor: Mark A. Webster,
3236 West 13th Street, Erie,
Pennsylvania 16505
Attorney: Grant M. Yochim, Esq.,
24 Main St. E., P.O. Box 87,
Girard, PA 16417

**SMRCKA, ARNOLD J.,
deceased**

Late of Amity Township, Erie
County, Commonwealth of
Pennsylvania
Executrix: Janet E. Picciano, c/o
Jerome C. Wegley, Esq., 120 West
Tenth Street, Erie, PA 16501
Attorney: Jerome C. Wegley,
Esq., Knox McLaughlin Gornall
& Sennett, P.C., 120 West Tenth
Street, Erie, PA 16501

**STAFFORD, ELIZABETH ANN,
deceased**

Late of the City of Erie, County of
Erie, Pennsylvania
Administratrix: Collette A.
Thomas, c/o 150 East 8th Street,
Erie, PA 16501
Attorney: Gregory L. Heidt,
Esquire, 150 East 8th Street, Erie,
PA 16501

**STELLMACH, KAREN A., a/k/a
KAREN STELLMACH,
deceased**

Late of the Township of Elk
Creek, County of Erie, State of
Pennsylvania
Executrix: Bonnie L. Peyton,
9630 East Peach Street, Girard,
Pennsylvania 16417
Attorney: Grant M. Yochim, Esq.,
24 Main St. E., P.O. Box 87,
Girard, PA 16417

**TEED, JERALD L., a/k/a
JERALD TEED,
deceased**

Late of the Township of Wayne,
County of Erie, Commonwealth
of Pennsylvania
Co-Executrices: Carla Pifer and
Karen Richard, c/o Paul J. Carney,
Jr., Esq., 224 Maple Avenue,
Corry, PA 16407
Attorney: Paul J. Carney, Jr.,
Esq., 224 Maple Avenue, Corry,
PA 16407

**THOMAS, ANN M., a/k/a ANN N.
THOMAS,
deceased**

Late of North East Township,
County of Erie, Pennsylvania
Executor: John B. Thomas, c/o
Tammi L. Elkin, Esquire, 143 East
Main St., North East, PA 16428
Attorney: Tammi L. Elkin,
Esquire, 143 East Main St., North
East, PA 16428

CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

LEIGH ANN ORTON.....814-347-5724
Orton & Orton
68 E. Main St.
North East, PA 16428.....*lorton@ortonandorton.com*

G. CHRISTOPHER ORTON.....814-347-5724
Orton & Orton
68 E. Main St.
North East, PA 16428..... *corton@ortonandorton.com*

STEPHEN E. SEBALD.....814-833-1987
Sebald & Hackwelder(f) 814-616-4095
2503 West 26th Street
Erie, PA 16506*lgm@sebaldhackwelder.com*

ERIC V. HACKWELDER.....814-833-1987
Sebald & Hackwelder(f) 814-616-4095
2503 West 26th Street
Erie, PA 16506 *evh@sebaldhackwelder.com*

ATTENTION ALL ATTORNEYS

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