

IN RE: APPEAL FROM  
REFUSAL OF BOARD OF  
SUPERVISORS OF UPPER  
YODER TOWNSHIP TO  
APPROVE PLAN OF LOTS  
LAID OUT FOR HARRY  
E. BERKLEY ESTATE

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IN THE COURT OF QUARTER SESSIONS  
OF CAMBRIA COUNTY, PENNSYLVANIA

No. 1 September Sessions, 1950

OPINION and DECREE

APPEARANCES:

FOR PETITIONERS: Harkins & Wharton, Esqs.

FOR BOARD OF SUPERVISORS: Frank P. Barnhart, Esq.

BEFORE: McKenrick, J. and Griffith, J.

OPINION, GRIFFITH, J.:

This is an appeal by property owners from the refusal of the Board of Supervisors of Upper Yoder Township to approve a Plan of Lots laid out in 1941 for the Harry E. Berkley Estate, and recorded in the office of the Recorder of Deeds in 1949. The Plan was submitted to the Township Supervisors at a meeting held May 15th, 1950, at which time the Supervisors refused to approve; and subsequently an appeal was taken to the Court of Quarter Sessions.

After refusing their approval, the Supervisors adopted rules and regulations containing certain requirements with which the Berkley Plan did not conform, although they had approved similar plans several times in the past.

The Act of 1933, P.L. 103, as last amended by the Act of 1947, P.L. 1481; 53 P.S. 19093-1140, provides that:

"Such plan shall be prepared in duplicate in accordance with such rules and regulations as may be prescribed by the Supervisors, and shall show the profiles of such roads, the course, structure, and capacity of any drainage facilities, and the method of drainage of the adjacent or

contiguous territory, and also any other  
further details that may be required under the  
rules and regulations adopted by the Township  
Supervisors."

Without here deciding whether the regulations adopted by the Supervisors subsequent to their refusal to approve the Berkley Plan are applicable, it is clear that the statutory requirements set forth by the words italicized above were applicable and have not been complied with. Chryst Petition, 69 D. & C. 527. The Plan submitted is plat only and fails to show the profiles of the roads or give any information in respect to the drainage.

The hearing before the court is de novo, but the Court, as well as the Supervisors, is bound to observe the statutory requirements. The testimony shows that the Supervisors on three occasions in the past failed to require compliance with the statute by approving plans submitted to them in plat form only. Consequently it is not difficult to understand the petitioners' feeling that discrimination has been practiced against them. But even a history of repeated failure to comply with the law may not be invoked as an estoppel to compel its continued violation.

The petitioners may, however, within 60 days, submit in duplicate to the Board of Supervisors amended plans showing the profiles of the roads and the information on drainage required by Section 1140 of the Act of Assembly above referred to. The Supervisors will then have before them plans in the form required by the Act of Assembly which they can intelligently approve or disapprove.

We therefore enter the following

DECREE

AND NOW, AUGUST 11, 1952, at 3:30 P.M., D.S.T., after argument and upon due consideration, the foregoing appeal is dismissed, at the cost of the petitioners, unless the petitioners, within 60 days from the date of this decree, file amended plans with the Supervisors of Upper Yoder Township, in which case the <sup>Appeal</sup> Bill will be retained to abide the event.

BY THE COURT:

Griffith J.

CONCURRED IN BY:

McKenney J.

EXCEPTION

To all of which counsel for petitioners except, and pray that an exception be noted and bill sealed; all of which is, the day and year aforesaid, accordingly done.

GEORGE W. GRIFFITH, J. (SEAL)

NO. 1 Sept. Sessions, 1950

IN THE COURT OF QUARTER  
SESSIONS OF CAMBRIA COUNTY,  
PENNSYLVANIA.

IN RE: APPEAL FROM REFUSAL  
  
OF BOARD OF SUPERVISORS OF  
UPPER YODER TOWNSHIP TO  
APPROVE PLAN OF LOTS LAID  
OUT FOR HARRY E. BERKLEY  
ESTATE.

OPINION and DECREE

*W. L. L. L.*  
*8/17/52*

ELSIE PORADA  
OFFICIAL STENOGRAPHER FOR THE  
FORTY-SEVENTH JUDICIAL  
DISTRICT

IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY, PENNSYLVANIA.

RE: APPEAL FROM REFUSAL OF BOARD OF  
SUPERVISORS OF UPPER YODER TOWNSHIP,  
CAMBRIA COUNTY, PENNSYLVANIA, TO APPROVE  
A PLAN OF LOTS LAID OUT FOR HARRY E.  
BERKLEY ESTATE, AND RELATING TO LOTS OF  
LAND SITUATE IN UPPER YODER TOWNSHIP,  
CAMBRIA COUNTY, PENNSYLVANIA.

No. \_\_\_\_\_  
Sessions, 1950.

APPEAL FROM REFUSAL OF SUPERVISORS TO APPROVE PLAN OF LOTS

TO THE HONORABLE, THE JUDGES OF THE ABOVE NAMED COURT:

The petition of the undersigned respectfully represents:

1.. All of the undersigned are citizens of the United States of America and residents of Cambria County, Pennsylvania. All of the undersigned are owners of lots of land, or interests in lots of land, which are marked, shown and designated upon a plan of lots laid out for the Harry E. Berkley Estate, in Upper Yoder Township, Cambria County, Pennsylvania, by the Fetterman Engineering Company under date of April 21, 1941, which said plan was approved by the City Planning Commission of the City of Johnstown, Cambria County, Pennsylvania, on the 2nd day of May, 1941.

2.. Petitioners have been advised by counsel, believe, and therefore aver, that said plan of lots was recorded in the Office of the Recorder of Deeds, in and for Cambria County, Pennsylvania, on the 16th day of March, 1949, in Plat Book Vol. 4, at page 68. The said plan of lots shows the location of various lots bearing lot numbers, and also the location of certain streets which are shown upon the plan.

3.. Your petitioners have been advised, believe, and therefore aver that the original tracing of said plan was submitted for the Board of Supervisors approval as to the layout of roads and streets, on the 15th day of May, 1950, accompanied by a letter addressed to Mr. Curt Barnhart, Secretary of Upper Yoder Township Supervisors, by S. E. Dickey & Company, Upper Yoder Township Engineers. A copy of said letter is attached hereto and made a part of this petition.

4.. While your petitioners have been unable to obtain any written evidence of the action of the Board of Supervisors taken relative to the approval of said plan at a meeting of said Board held on the 15th day of May, 1950, your petitioners have been advised, believe and therefore aver that the Board of Supervisors of Upper Yoder Township, Cambria County, Pennsylvania, have refused to approve the plan submitted to them, which plan was submitted for the approval of said Board in accordance with the provisions of the Act of Assembly in such case made and provided; they have been informed, believe and therefore aver that the said Township Supervisors have refused to approve said plan thus submitted to them, and that said action refusing to approve said plan was taken on or after May 15th, 1950.

5.. Your petitioners have been advised by counsel, believe, and therefore aver, that the Supervisors of Upper Yoder Township, Cambria County, Pennsylvania, had the right to approve said plan under the provisions of the Act of July 10, 1947, P. L. 1481, Section 17, which is herein quoted as follows:

"The supervisors of any township may accept in the name of the township, any land dedicated by deed to the township to be used, in any manner, for road purposes. No person shall construct, open, or dedicate any road, or any drainage facilities in connection therewith, for public use or travel in any township, without first submitting plans thereof to the township supervisors for their approval. Such plans shall be prepared in duplicate in accordance with such rules and regulations as may be prescribed by the supervisors, and shall show the profiles of such roads, the course, structure, and capacity of any drainage facilities, and the method of drainage of the adjacent or contiguous territory, and also any other further details that may be required under the rules or regulations adopted by the township supervisors. Before acting upon any such plans, the supervisors may, in their discretion, arrange for a public hearing, after giving such notice as they may deem desirable in each case. The township supervisors are authorized to alter such plans, and to specify any changes or modifications of any kind, which they, in their discretion, may deem necessary with respect thereto, and may make their approval of such plans subject to any such alterations, changes or modifications. Any plans when so approved shall be signed in duplicate on behalf of the township by the supervisors and an approved duplicate copy shall be filed with the secretary

of the township, who shall make the same available to public inspection. No road, or drainage facilities in connection therewith, shall be opened, constructed, or dedicated for public use or travel, except in strict accordance with plans so approved by the supervisors, or with further plans subsequently approved by them in the same manner, and until such plan and the approval thereof has been recorded as hereinafter provided."

6.. Said Act of 1947, P. L. 1481, was adopted to reenact, amend and revise the Act approved the 1st day of May, 1933, P. L. 103, as amended.

7.. Yourpetitioners, being owners of lots of land, or of interests in lots of land marked, known and designated on said plan of lots hereinabove mentioned, are persons aggrieved by the failure and refusal of the Board of Supervisors of Upper Yoder Township, Cambria County, Pennsylvania, to approve said plan of lots, and they file this Appeal from the refusal of the Township Supervisors to approve said plan submitted to them in accordance with the provisions of the Act of Assembly in such case made and provided, to your Honorable Court, praying your Honorable Court to hear the matter denovo and after hearing, to enter a Decree as may appear just in the premises.

8.. Your petitioners believe and therefore aver that the refusal of the Board of Supervisors of Upper Yoder Township, Cambria County, Pennsylvania, to approve said plan has detrimentally affected the land, and interests of land owned by your petitioners because, as stated in the above noted section of an Act of Assembly, no road or drainage facilities in connection therewith shall be opened, constructed, or dedicated for public use or travel, except in strict accordance with plans approved by the supervisors, or with further plans subsequently approved by them, and until such plan and the approval thereof has been recorded. Later in said Act of Assembly it is provided that approval is to be recorded in the Office of the Recorder of Deeds in the County.

Petitioners are advised by counsel, believe, and therefore aver, that the same Act of Assembly further provides that whenever plans of dedicated roads, streets, lanes or alleys, located in second class townships have been

adopted, approved and recorded, the Board of Supervisors of any such township, may, with the consent of the Court of Quarter Sessions, upon petition filed, accept any roads, streets, lanes or alleys as public roads as shown in said plans as dedicated to such use.

9.. Petitioners believe and therefore aver that the approval of said plan of lots by the Supervisors of Upper Yoder Township, Cambria County, Pennsylvania, would not injure or damage any person, firm or corporation.

10.. Petitioners herein showing that the plan of lots had been submitted for the approval of the Board of Supervisors of Upper Yoder Township, Cambria County, Pennsylvania; that the refusal to approve the same is detrimental to petitioners, persons who are aggrieved by such refusal; and further showing that the approval of said plan of lots would not injure or harm any person, firm or corporation; therefore appeal by this petition to your Honorable Court, praying that the Court shall hear the matter denovo, and after hearing may enter such Decree as may appear just in the premises; and also, praying your Honorable Court to designate the manner in which the notices of the hearing of any such appeal shall be given to all parties interested.

And they will ever pray, etc.

J. M. Brude.

Virginia H. Grade

Wm. H. Leber.

Bernardine A. Leber

William B. Cowie

Gladis M. Cowie

Paul J. Biroscak

Theresa J. Biroscak

Lewis Moran

Stella Moran.

William R. Beane

Emma J. Beane

William D. Altenhigh

Wayne R. Miller

Esther S. Miller

Ruth E. Henze



Emil Henry Jr	Lloyd A. Bentley
Donald P. Barkley	E. Colin Hughes
Carl L. Replegle	Charles R. Hartnett
Heber Replegle	Calvin Lee Young
Hilda K. Hughes	Lessa Mae Young
Charles C. Moyer	James F. Seber
Orney B. Moyer	Betty K. Seber
Anna Robel	Clifford S. Fisher
Edna M. Robel	Mary M. Fisher
Paul E. Robel	C. J. Walker
Olga B. Kattunbaugh	Mildred Wacker
Dorothy F. Gillin	Harold Hindley
Kenneth A. Gillin	Mrs Irisella Hindley
Dorothy F. Kerrigan	Maurice B. Johnston
Jane Minemyle	Oscar Hampton
Bessie Miesher	Mark S. Stutzman
Curtis Miesher	Meriam H. Stutzman
Albert W. Horvick	Mrs Oscar Hampton

State of Pennsylvania :  
County of Cambria : SS:

Personally appeared before me, the undersigned authority, LEWIS MORAN, who being by me first duly sworn according to law, deposes and says that the facts set forth in the foregoing petition are true and correct to the best of his knowledge, information and belief; he further avers that this appeal is not taken for the purpose of delay, but because he believes that an injustice has been done by the failure and refusal of the Supervisors of Upper Yoder Township, Cambria County, Pennsylvania, to approve the Plan of Lots referred to in the foregoing petition.

Lewis Moran

Sworn and subscribed to before me this  
13th day of June, 1950.

Ruth H. Reed  
Notary Public

My Commission Expires: Feb. 1, 1953

D E C R E E

AND NOW, to wit, this 15th day of June, A. D. 1950, upon motion of Harkins and Wharton, Attorneys for Petitioners, the foregoing Petition for Appeal and this Order are directed to be filed in the Office of the Clerk of Courts in and for Cambria County, Pennsylvania, and the petitioners shall give notice of the hearing of the appeal to all parties interested by mailing ~~by registered mail~~ a written notice setting forth the time and place of hearing, which notices shall be mailed at least ten (10) days before the date of hearing.

BY THE COURT:

McKenzie  
Judge

COPY

May 15, 1950

Mr. Curt Barnhart, Secretary  
Upper Yoder Twp. Supervisors  
216 Dibert Street  
Johnstown, Pennsylvania

Dear Mr. Barnhart:

Harry E. Berkley Estate  
Plan of Lots

In re the above subject we are submitting the original tracing for the Board of Supervisors' approval, as to the layout of lots and streets.

We have checked this plan as per layout and we approve it as such. The drainage question and the acceptances of the streets is a matter to be brought up at some future time, as there is some question as to the responsibility of drainage through the golf course.

It is our understanding that the approval of this plan does not obligate the board of Supervisors in any way, as to responsibility in the streets or in the drainage. This matter should be taken up with the township's Solicitor for his legal ruling.

Yours very truly

S. E. Dickey & Company  
Upper Yoder Twp. Engineers

By /s/ T. L. Locher  
T. L. Locher Vice-Pres.

TLL:mbv

No. 1 Sept Sessions, 1950..

IN THE COURT OF QUARTER SESSIONS  
OF CAMBRIA COUNTY, PENNSYLVANIA.

RE: APPEAL FROM REFUSAL OF  
BOARD OF SUPERVISORS OF UPPER  
YODER TOWNSHIP, CAMBRIA COUNTY,  
PENNSYLVANIA, TO APPROVE A PLAN  
OF LOTS LAID OUT FOR HARRY E.  
BERKLEY ESTATE, AND RELATING TO  
LOTS OF LAND SITUATE IN UPPER  
YODER TOWNSHIP, CAMBRIA COUNTY,  
PENNSYLVANIA.

APPEAL FROM REFUSAL OF SUPER-  
VISORS TO APPROVE PLAN OF LOTS.

*Filed 6/15/50  
Jewell*

LAW OFFICES

**HARKINS AND WHARTON**

1101-1105 FIRST NATIONAL BANK BUILDING

JOHNSTOWN, PA.

IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY, PA.

RE: APPEAL FROM REFUSAL OF BOARD OF §  
SUPERVISORS OF UPPER YODER TOWNSHIP, :  
CAMBRIA COUNTY, PENNSYLVANIA, TO APPROVE :  
A PLAN OF LOTS LAID OUT FOR HARRY E. : No. 1 September  
BERKLEY ESTATE, AND RELATING TO LOTS OF :  
LAND SITUATE IN UPPER YODER TOWNSHIP, : Sessions, 1950.  
CAMBRIA COUNTY, PENNSYLVANIA. §

ANSWER TO APPEAL FROM REFUSAL OF SUPERVISORS  
TO APPROVE PLAN OF LOTS

TO THE HONORABLE, THE JUDGES OF THE ABOVE NAMED COURT:

Answering the appeal from refusal of the Supervisors to approve Plan of Lots, the respondents, the Supervisors of Upper Yoder Township, respectfully say:

1. Admitted. It is averred that the Harry E. Berkley Estate was without authority in laying out said Plan of Lots. Prior to the said Plan dated April 21, 1941, the said Harry E. Berkley had laid out a Plan of Lots, being Plan of Lots laid out by Harry E. Berkley situate in Upper Yoder Township, Cambria County, Pennsylvania, September 27, 1922, by Fetterman Engineering Company, covering the same ground in which the streets and alleys thereon were differently located than were the streets and alleys of the said Plan of April 21, 1941. That after September 27, 1922, and before April 21, 1941, many lots on the Plan of September 27, 1922 had been sold either by said Harry E. Berkley, or by the Harry E. Berkley Estate, and the purchasers of said lots, or their successors in title, had acquired property rights in the said streets and alleys on said Plan of 1922, which entitled them to have the streets and alleys so dedicated remain open forever; and the laying out of said Plan of April 21, 1941 was in violation of the rights of the owners of lots on the Plan of September 27, 1922, and illegal. Further

answering the petitioners, the Supervisors have no authority under the law to approve the Plan of April 21, 1941, and it would be unlawful for them to do so.

2. Answering paragraph 2 of the Petition, the respondents are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 2 of the Petition, and all means of proof thereof are in the exclusive control of the petitioners, and the said averments are, therefore, denied. Defendant demands proof thereof at the trial of the case. Further answering the respondents say that there was no authority under the law for making and recording said Plan as so averred in paragraph 2 of the Petition; and if made and recorded, it was illegally so done.

3. It is denied that the original tracing of said Plan was submitted to the Board of Supervisors for their approval. It is admitted that S. E. Dickey & Company did present to the Supervisors a letter dated May 15, 1950, with a certain tracing, being the said Plan of 1941 as made by the Fetterman Engineering Company. The said S. E. Dickey & Company were then and still are employed as the engineers of the Supervisors of Upper Yoder Township, and could have no authority to submit the said Plan to the Supervisors for their approval. The said S. E. Dickey & Company evidently misconceived their duties and authority as employees in the premises.

4. It is denied that the Board of Supervisors of Upper Yoder Township have refused to approve the Plan allegedly submitted to them, and it is denied that the said Plan was submitted for the approval of the Board in accordance with the provisions of any Act of Assembly. The petitioners never legally submitted any Plan to the Board of Supervisors.

5. It is denied that the Supervisors of Upper Yoder Township had the right to approve the Plan referred to in the Petition under the provisions of the Act of July 10, 1947, P.L. 1481, Sec. 17. It is averred that the approval by the Supervisors of a Plan submitted to them would have been illegal and without any authority under the law. The Plan allegedly submitted was in violation of the provisions of the said Act of 1947.

6. Admitted.

7. It is denied that the petitioners are aggrieved by the alleged failure and refusal of the Board of Supervisors to approve the said Plan of Lots. The petitioners have no rights in this appeal from the alleged refusal of the Supervisors to approve said Plans. The Court has no jurisdiction to hear the matters here involved de novo and to enter a Decree as prayed for.

8. It is denied that the alleged refusal to approve the Plan mentioned in the Petition has detrimentally effected the land and interests of land owned by your petitioners "because, as stated in the above noted section of an Act of Assembly, no road or drainage facilities in connection therewith shall be opened, constructed, or dedicated for public use or travel, except in strict accordance with plans approved by the supervisors, or with further plans subsequently approved by them, and until such plan and the approval thereof has been recorded." It is averred that there is no Plan properly before the Supervisors, and that the Supervisors cannot legally approve the Plan allegedly submitted to them by the petitioners. The Board of Supervisors may not, without the consent of the Court of Quarter Sessions, accept any road, streets, lanes or alleys as public roads as shown in the Plan referred to in the petition.



9. It is denied that the approval of the Plan of Lots submitted by the petitioners to the Supervisors would not endanger or damage any person, firm or corporation; on the other hand, it is averred that any approval of the said Plan of Lots as submitted by the Petitioners would injure and damage persons, firms and corporations, and would be illegal.

10. It is denied that the said Plan of Lots has been submitted for the approval of the Board of Supervisors. It is denied that any alleged refusal on the part of the Supervisors to approve the same is detrimental to the petitioners and that said petitioners are aggrieved by such refusal. It is denied that the approval of said Plan of Lots would not injure any person, firm or corporation; and it is averred that such approval would injure and harm any person, firm or corporation. It is averred that the petitioners have no right of appeal by this Petition to the Court praying that the Court shall hear the matter de novo and after hearing to enter such Decree as may appear just in the premises.

11. The Plans submitted to the Supervisors and referred to in this appeal are only small, flat plans and do not comply with the Act in any respect. For the Supervisors to refuse to approve the said Plans would have been proper. The developers had no right under the law, and subjected themselves to criminal prosecution, if they constructed, opened or dedicated the said roads for public use or travel without having secured the approval of the Supervisors; and the Supervisors, under Section 1142 of said Act, have no responsibility of any kind with respect to these roads when the Plans are not submitted. The property owners and developers should submit proper, legal plans to the Supervisors, and meet the necessary requirements, if they desire that the roads be opened and dedicated to public use and travel.

12. The Court is wholly without jurisdiction in the premises.

WHEREFORE the petition should be dismissed at the cost of the petitioners.

r. Blair Hunt  
\* D. H. Wenner  
\* Curt Barnhart  
SUPERVISORS OF UPPER YODER TOWNSHIP

\*\*\*\*\*

COMMONWEALTH OF PENNSYLVANIA    §  
   §    SS:  
COUNTY OF CAMBRIA               §

Personally appeared before me, a Notary Public in and for said State and County, CURT BARNHART, who being duly sworn according to law deposes and says that he is Secretary of the Supervisors of Upper Yoder Township, and that the matters and facts set forth in the foregoing Answer are true and correct.

\* Curt Barnhart

Sworn and subscribed before me  
this 3rd day of July, 1950.

Elaine Porada  
NOTARY PUBLIC  
My Commission Expires Feb. 1, 1958

IN THE COURT OF QUARTER  
SESSIONS OF CAMBRIA COUNTY, PA.  
No. 1 September Sessions,  
1950

IN RE: APPEAL FROM REFUSAL  
OF BOARD OF SUPERVISORS OF  
UPPER YODER TOWNSHIP, CAMBRIA  
COUNTY, PENNSYLVANIA, TO  
APPROVE A PLAN OF LOTS LAID  
OUT FOR HARRY E. BERKLEY  
ESTATE, AND RELATING TO LOTS  
OF LAND SITUATE IN UPPER  
YODER TOWNSHIP, CAMBRIA  
COUNTY, PENNSYLVANIA.

ANSWER TO APPEAL FROM REFUSAL  
OF SUPERVISORS TO APPROVE  
PLAN OF LOTS

*Filed*  
*7-3-50*

LAW OFFICES OF  
FRANK P. BARNHART  
JOHNSTOWN, PENNA

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IN RE: APPEAL FROM  
REFUSAL OF BOARD OF  
SUPERVISORS OF UPPER  
YODER TOWNSHIP TO  
APPROVE PLAN OF LOTS  
LAID OUT FOR HARRY  
E. BERKLEY ESTATE

§ IN THE COURT OF QUARTER SESSIONS  
: OF CAMBRIA COUNTY, PENNSYLVANIA  
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§ NO. 1 SEPTEMBER SESSIONS, 1950

ORDER AND DECREE SUSTAINING APPEAL  
AND PLACING COSTS UPON APPELLANTS

AND NOW, January 5 1953, at 2:30 o'clock, P.M.,  
counsel for the Board of Supervisors of Upper Yoder Township  
having appeared in open Court and stated that the Appellants  
have subsequent to the Decree of August 11, 1952, filed  
with Supervisors, an amended Plan, complying with the Act  
of 1933 P. L. 103, as amended by the Act of 1947 P. L. 1481;  
55 P. S., 19093-1140, the Appeal is sustained and the costs  
placed upon the Appellants.

BY THE COURT:

McKenney  
D. Griffith  
J,

IN THE COURT OF QUARTER  
SESSIONS OF CAMBRIA COUNTY,  
PENNSYLVANIA,  
NO. 1 September Sessions, 1950

IN RE: APPEAL FROM REFUSAL OF  
BOARD OF SUPERVISORS OF UPPER  
YODER TOWNSHIP TO APPROVE PLAN  
OF LOTS LAID OUT FOR HARRY E.  
BERKELY ESTATE

*Filed*  
*1-8-53*

ORDER AND DECREE SUSTAINING  
APPEAL AND PLACING COSTS  
UPON APPELLANTS

Curt Barnhart submitted the following Resolution and moved its adoption. The motion was seconded by and passed unanimously:

*Appellants #4*

RESOLUTION NO.

A. RESOLUTION OF THE TOWNSHIP OF UPPER YODER, CAMERIA COUNTY, PENNSYLVANIA, PROHIBITING THE OPENING, CONSTRUCTION OR DEDICATION FOR PUBLIC USE OR TRAVEL OF ANY ROAD, STREET, LANE OR ALLEY, OR ANY DRAINAGE FACILITIES IN CONNECTION THEREWITH, EXCEPT IN ACCORDANCE WITH PLANS SUBMITTED AND APPROVED BY THE TOWNSHIP SUPERVISORS; PRESCRIBING THE METHOD OF PREPARING AND SUBMITTING SUCH PLANS AND THE KIND AND CHARACTER OF IMPROVEMENTS TO BE MADE

The Township Supervisors of the Township of Upper Yoder do enact and ordain:

Section 1. That no person, partnership, association or corporation shall construct, open or dedicate any road, street, lane or alley, or any drainage facilities in connection therewith, for public use or travel in the Township of Upper Yoder, without first submitting plans therefor to the Township Supervisors for their approval, and no road, street, lane or alley, or drainage facilities in connection therewith, shall be opened, laid or constructed except in strict accordance with plans approved by the Township Supervisors.

Section 2. Such plans shall show the profiles of such roads, streets, lanes or alleys, the course, structure and capacity of any drainage facilities, the method of drainage of the adjacent or contiguous territory and drainage profile of the streets and plan showing drainage of the whole property. All roads and streets shall be of a width of not less than thirty-three feet, the cartway shall be not less than eighteen (18) feet, and all roads and streets connecting with existing streets so as to form a continuation or extension thereof, shall be not less in width than such existing roads and streets. All roads and streets where possible shall connect with existing roads and streets, or proposed roads

and streets, so as to form as near as possible through road and streets, and a harmonious and systematic development of the Township. The names of the roads and streets shall not conflict with the names of existing roads and streets, and all roads and streets shall be designated by the names of existing roads and streets with which they connect as extensions thereof.

Section 3. All such plans shall be filed with the Township Secretary at least ten days prior to regular meeting of the Township Supervisors, at which it is desired to seek approval thereof. Before acting upon any such plans, the Township Supervisors may, in their discretion, arrange for a public hearing, after giving such notice as they may deem desirable in each case.

Section 4. The Township Supervisors reserve the right to alter such plans, and to specify any changes or modifications of any kind which they may deem necessary with respect thereto, and to make their approval of such plans subject to any such alterations, changes or modifications.

Section 5. Any and all plans when so approved shall be signed by the Supervisors, and shall be filed in the office of the Secretary of the Township, where the same shall be available to public inspection.

Section 6. The action of the Township Supervisors in approving any such plans, and such plans, shall be recorded by the person applying for such approval.

Section 7. All roads and streets shown on the said plan shall be improved in accordance with the plans and specifications prescribed by the Township Supervisors.

Section 8. All sewers, sewer laterals, and sewer connections shall be laid on all improved streets before paving where connection with the Township sewers is practicable, and shall be required by the Township Supervisors, and all gas and water mains and all service connections shall be laid before the paving of the streets

where water and gas is available, and all other mains, pipes and conduits and the like shall be installed before paving of the cartway where it is proposed to install any such service mains in the streets.

Section 9. All applications for the approval of such plans shall be in writing on a blank form to be furnished for that purpose by the Township Supervisors, and signed by the owners of the property, which must be filed with the Secretary of the Township, setting forth in detail the character of the improvements to be made on the property shown on the said plan, in accordance with the provisions of this Resolution, and in such application the applicant shall agree to open, lay out and improve the roads, streets, lanes or alleys, and to construct all of the improvements, including sewers where practicable, and drainage facilities upon the property, shown on the plan, within the time or times therein specified, and agree to enter into a contract in writing prepared by the Township Solicitor, to install, erect and construct the said improvements.

Section 10. No action by the Township Supervisors shall be construed to require the Township to accept dedication of any road, street, lane or alley.

Enacted and Ordained this 26th day of August, 1950.

THE TOWNSHIP OF UPPER YODER

BY \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
TOWNSHIP SUPERVISORS OF THE  
TOWNSHIP OF UPPER YODER

ATTEST:

\_\_\_\_\_  
Township Secretary



APPLICATION FOR APPROVAL OF PLANS

TO THE TOWNSHIP SUPERVISORS OF THE TOWNSHIP OF UPPER YODER:

The undersigned applicant hereby applies for the approval of plans for certain roads, streets, lanes or alleys, and drainage facilities, and hereby sets forth:

1. Attached to this application and made a part hereof is a copy of plan made up in accordance with a Resolution of the Township of Upper Yoder adopted August 26, 1950.
2. Applicant hereby sets forth in detail the character of the improvements to be made on the property shown on said plan as follows:
3. Applicant agrees to open, lay out, and improve roads, streets, lanes or alleys, to construct all of the improvements, including drainage facilities upon the property shown on said plan, within one year from the date of the approval of this application.
4. Applicant agrees to enter into a contract in writing prepared by the Township Solicitor to install, erect and construct the aforesaid improvements.
5. Applicant agrees in all respects to comply with the terms of the aforesaid Resolution.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

C O N T R A C T

AGREEMENT made this                      day of                      A.D.,  
195 , between the TOWNSHIP OF UPPER YODER, (hereinafter called  
Township) and  
hereinafter called the Owner,

W I T N E S S E T H:

WHEREAS the owner has filed application with the Township  
of Upper Yoder for the approval of a certain plan for the  
development of certain land situate in the Township of Upper  
Yoder. A true and correct copy of said plan, consisting of  
sheets, is attached to and made a part of said application and is  
marked "Exhibit A" thereto; and

WHEREAS the Township regularly adopted a Resolution August  
26, 1950, effective August 26, 1950, requiring the Owner to  
enter into a contract with Township and making other requirements.  
A copy of of said Resolution is attached hereto.

NOW, THEREFORE, Parties agree:

1. All roads and streets shown on the said plan shall be  
improved in accordance with the plans and specifications, pre-  
scribed by the Township Supervisors of the Township of Upper  
Yoder which are attached hereto, made a part hereof and marked  
"EXHIBIT ".

2. All gas and water mains and all service connections  
shall be laid in the bed of said streets, roads, lanes or alleys  
before the paving of said streets, roads, lanes or alleys.

3. All work in connection with said improvements shall be  
subject to inspection from time to time by the Township Engineer,  
or such person as Township shall designate and all said work  
shall be completed to the satisfaction of said Engineer, or other  
person, in accordance with the said plans and specifications.

4. The entire work on said improvements shall be completed not later than 195 ; PROVIDED HOWEVER that by the mutual written contract of the Township and Owner said time of performance may be extended. Work on said improvements shall begin not later than 195 .

5. When all of the terms and conditions of this contract shall be fully performed by the owner, and when the Engineer, or other person shall issue his final certificate that said work has been completed in accordance with the Resolution of the Township, the Township agrees to accept dedication to roads, lanes or alleys, and drainage facilities as shown on said plan.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year aforesaid.

THE TOWNSHIP OF UPPER YODER

BY \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Township Secretary

\_\_\_\_\_  
Township Supervisors

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

**RESOLUTION NO.**

On motion of

, seconded by

be it resolved by the Township Supervisors  
of the Township of Upper Yoder, that

**1. The plan entitled**

situated in the Township of Upper Yoder, shall be approved upon  
performance of the following conditions:

- a. All of the requirements of Resolution No.        of the  
Township of Upper Yoder, adopted August 26, 1950, shall  
be complied with.
- b. The owner shall file an application for approval of  
said plan.
- c. A proper contract, prepared by Township Solicitor,  
shall be executed by the owner and the Township.

**2. The President of the Board of Supervisors, the Secretary  
and the Engineer are authorized to mark all of the sheets of said  
plan approved and to deliver the said plans so marked to the  
Township Solicitor.**

**3. The Township Solicitor is authorized, upon execution of  
aforesaid application, <sup>and</sup> contract to deliver said plan to the  
Township Solicitor for the purpose of recording in the Office for  
the Recording of Deeds in and for Cambria County, Pennsylvania.**

**4. Said application and contract must be fully executed and  
delivered to the Township no later than  
and in the event that said matters are not fully completed before  
said date, then the authority to operate under this Resolution  
shall cease and be null and void.**

**TOWNSHIP OF UPPER YODER**

**BY** \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**Township Secretary**

\_\_\_\_\_  
**SUPERVISORS OF UPPER YODER  
TOWNSHIP**

## ROADWAY SPECIFICATIONS

### UPPER YODER TOWNSHIP

1. There shall be a base course consisting of red dog, slag, limestone or crushed rock, of a thickness not less than six (6) inches, properly rolled. The center of the roadway shall be at least two and one-half (2 1/2) inches higher than the sides.
2. No work shall be considered complete unless hard, compacted shoulders abut against the finished road.
3. No work shall be started until the plans for that work, showing lines, grades, drainage and other details applicable to road work, have been approved by the Supervisors. For that purpose two plans or sets of plans shall be submitted, one being retained by the Township, the other to be returned to the developer with the approval or disapproval of the Township.
4. All work shall be subject to the inspection of the Supervisors or their representatives.

Curt Barnhart offered the following Resolution and moved its adoption. seconded the motion and it was carried unanimously:

RESOLUTION NO.

OUTLINING THE PROCEDURE IN UPPER YODER TOWNSHIP GOVERNING THE SUB-DIVISION OF LAND AND DEDICATING ROADS, STREETS AND DRAINAGE FACILITIES AS PROVIDED BY THE ACT OF 1933, May 1, P.L. 103, ART. 11, SEC. 1140 TO SEC. 1146.

1. Application for Approval of Plans
2. Contract
3. Resolution No.
4. Roadway Specifications, Upper Yoder Township
5. Resolution No.

Enacted and Ordained this 26th day of August, 1950.

THE TOWNSHIP OF UPPER YODER

BY \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

TOWNSHIP SUPERVISORS OF THE  
TOWNSHIP OF UPPER YODER

ATTEST:

\_\_\_\_\_  
Township Secretary

LAW OFFICES OF  
FRANK P. BARNHART  
JOHNSTOWN, PENNA.

August 28, 1950

EDWARD J. HARKINS, ESQ.  
First National Bank Building  
Johnstown, Pennsylvania

Dear Mr. Harkins:

I am enclosing herewith a copy of a Resolution  
entitled "A RESOLUTION OF THE TOWNSHIP OF UPPER YODER,  
CAMBRIA COUNTY, PENNSYLVANIA, PROHIBITING THE OPENING,  
CONSTRUCTION OR DEDICATION FOR PUBLIC USE OR TRAVEL OF  
ANY ROAD, STREET, LANE OR ALLEY, OR ANY DRAINAGE  
FACILITIES IN CONNECTION THEREWITH, EXCEPT IN ACCORDANCE  
WITH PLANS SUBMITTED AND APPROVED BY THE TOWNSHIP  
SUPERVISORS; PRESCRIBING THE METHOD OF PREPARING AND  
SUBMITTING SUCH PLANS AND THE KIND AND CHARACTER OF  
IMPROVEMENTS TO BE MADE," which was passed by the  
Supervisors of Upper Yoder Township on August 26, 1950.

I am also enclosing the following:

1. Form of Application for Approval of Plans;
2. Form of proposed Contract;
3. Form of Resolution which will be presented to the Supervisors for their action on the presentation of the Application for Approval of such Plan as shall be presented;
4. Copy of Roadway Specifications
5. Copy of Resolution entitled "Outlining the Procedure in Upper Yoder Township Governing the Sub-Division of Land and Dedicating Roads, Streets and Drainage Facilities as Provided by the Act of 1933, May 1, P.L. 103, Art. 11, Sec. 1140 to Sec. 1146, which was passed by the Supervisors of said Township on August 26, 1950.

Very truly yours,

FRANK P. BARNHART

FPB:ehp  
Encl. 6

*Appellants' #6*

June 13, 1950

Mr. Frank P. Barnhart  
Swank Building  
Johnstown, Pennsylvania

Dear Sir:

I am enclosing herewith a copy of an appeal from the refusal of the Board of Supervisors of Upper Yoder Township, Cambria County, Pennsylvania to approve a plan of lots laid out for the Harry E. Berkley Estate.

It is our intention to file the appeal on Thursday, June 15, 1950.

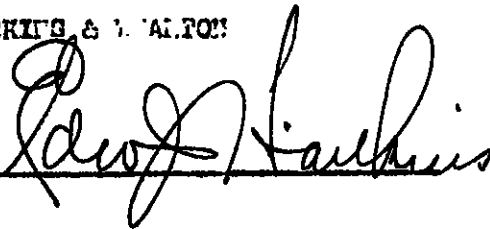
As we understand the Acts of Assembly relative to the approval of lots plan and the acceptance of streets, those acts comprise two separate actions; first, the approval of the plans and the recording thereof and; second, the acceptance of streets, etc., as shown upon the plan. It is our intention to have this matter heard upon appeal, and if the plan is approved by court order to record the same. Subsequently, we contemplate a petition to the Court of Quarter sessions in order to have the streets accepted as public ways. The approval of the Berkley Plan affects a great many owners of lots of land, some of whom have been detrimentally affected by inability to obtain FFA mortgage loans. So far as we can see, the approval of this plan would be of great benefit to the owners of lots of land on the plan and would not injure anyone. Under those circumstances it would seem to us that it would be entirely possible to have these questions relative to the approval of the plan and the acceptance of the streets agreed upon by the parties concerned.

Representing the petitioners, we will be glad to meet with you or with Tillman K. Saylor, who represents the Berkleys, at any time convenient for all of us to discuss this matter with the hope that both questions herewith above mentioned may be settled by agreement rather than by court action.

Very truly yours,

HARRIS & ALTON

BY



EJH:dm



*Appellus Ex #2*

LAW OFFICES OF  
FRANK P. BARNHART  
JOHNSTOWN, PENNA.

August 14, 1950

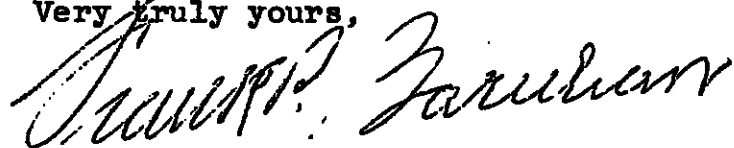
HARKINS & WHARTON  
Attorneys at Law  
First National Bank Bldg.  
Johnstown, Pennsylvania

ATTENTION: EDWARD J. HARKINS, ESQ.

Dear Mr. Harkins:

Your letter of August 7, 1950 has been turned over to me by the Supervisors of Upper Yoder Township for attention. As you know, this letter came on the eve of the Civil Court commencing August 14. Due to the preparation for Court and the trial of cases in said Term of Court, it is physically impossible to give it immediate attention. However, in the very near future, at the earliest possible moment, I shall submit to you the procedure that we think should be followed in the matter. Meanwhile, I would like to have you consider whether or not the parties you represent are the proper persons, and whether or not the Harry E. Berkley Estate, who made the Plan of Lots should not make the application for approval.

Very truly yours,



FRANK P. BARNHART

FPB:ehp

*OK*

*Appendix #4*

October 4, 1950.

TO THE SUPERVISORS OF UPPER YODER TOWNSHIP:

We the undersigned, owners of homes or lots on South Clearfield Street, Upper Yoder Township, Cambria County, Penna., hereby petition the Supervisors of Upper Yoder Township in accordance with Section 1135, Laws Relating to Second Class Townships, to grade and cover the said South Clearfield Street with a suitable material to make this said street usable for traffic.

There are at present nine homes erected on the said South Clearfield Street and four other homes in various stages of construction. All utilities, water, gas and electric have been placed on the street for a distance of approximately twelve hundred feet.

<i>A. A. Walker</i>	<i>Larry Young</i>
<i>W. M. Kaltenbach</i>	<i>Louis R. Berkley</i>
<i>John W. Fisher</i>	<i>Joseph Martinez</i>
<i>J. A. Smith</i>	<i>J. A. McHugh</i>
<i>Albert E. Robel</i>	<i>Oscar Hampton</i>
<i>Paul E. Robel</i>	<i>Robert H. Faltz</i>
<i>Mrs. Norbert Hestruitt</i>	<i>Thomas J. Murphy</i>
<i>Charles Hestruitt</i>	<i>E. Colin Hughes</i>
<i>Mrs. Mule Stuchman</i>	<i>Robert J. Hines</i>
<i>Mrs. M. Swopa</i>	<i>Dr. E. R. Skinner</i>
<i>Mrs. R. M. Kilchrist</i>	<i>Mrs. Rosalie Kimmel</i>
<i>Mrs. Emil Henge</i>	
<i>Stephen Bryn</i>	

**UPPER YODER TOWNSHIP**

**BOARD OF SUPERVISORS**

**CAMBRIA COUNTY**

**JOHNSTOWN, PENNA.**

*Read into  
record*

The following paragraph was taken from the minutes of a meeting held April 4, 1949, by the Supervisors of Upper Yoder Township:

" A new petition from the residents and lot owners in the Berkley sub-division, in which they asked that various roads be taken over as Township roads, was presented at this meeting, and ordered turned over to our solicitor for a decision as to the legality."

The following paragraph was taken from the minutes of a meeting held September 6, 1949, by the Supervisors of Upper Yoder Township:

" A written opinion from our solicitor, concerning the legality of the roads as changed from the original plans by the Harry E. Berkley Estate, was read and discussed, and it was finally decided to table the information until such time that the attorneys for the Berkley Estate and Upper Yoder Township can agree."

*Blair Hunt.*  
*Curt Barnhart*

IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY, PENNSYLVANIA.

RE: APPEAL FROM REFUSAL OF BOARD OF  
SUPERVISORS OF UPPER YODER TOWNSHIP,  
CAMBRIA COUNTY, PENNSYLVANIA, TO APPROVE A PLAN OF LOTS LAID OUT FOR HARRY E.  
BERKLEY ESTATE, AND RELATING TO LOTS OF  
LAND SITUATE IN UPPER YODER TOWNSHIP,  
CAMBRIA COUNTY, PENNSYLVANIA. No. 1 September Sessions, 1950.

Counsel for Appellants offer in evidence the following records  
now of record in the office of the Recorder of Deeds, in and for Cambria  
County, Pennsylvania.

We offer in evidence the following maps or plans of lots, all  
of which have been approved since the 25th day of April, 1929, upon which date  
the Act of 1929, P. L. 769, became effective. In some cases, the plans were  
revised plans and we have used the date of the revised plan as the date of the  
plan:

1. P. C. Albert Young's property  
Recorded in Plat Book Vol. 3, page 104.  
Situate in Upper Yoder Township.  
Dated March 3, 1938.  
Approved by the City Planning Commission March 18, 1938.  
Date of Record - 29 March, 1938.
2. Plan of Ernest E. and Mabel G. Hartley, showing revision  
of a portion of John K. Miller Plan.  
Recorded in Plat Book Vol. 3, page 110.  
Situate in Upper Yoder Township.  
Dated September 7, 1938.  
Date of Record - 22 September, 1938.
3. Hickory Lane Plan of Lots of Charles E. Stump and Viola D.  
Stump  
Recorded in Plat Book Vol. 3, page 132.  
Situate in Upper Yoder Township.  
Dated February 28, 1940.  
Approved by the City Planning Commission May 21, 1940.  
Date of Record - 27 May, 1940.
4. Plan of Adam Keafer Estate  
Recorded in Plat Book Vol. 3, page 143.  
Situate in Upper Yoder Township.  
Dated November, 1940.  
Date of Record - 27 January, 1941.

5. Homestead Acres Plan - P. C. Albert Young  
Recorded in Plat Book Vol. 3, page 187.  
Situate in Upper Yoder Township.  
Dated June 17, 1941.  
Recorded 22 May, 1942.
6. Plan of Portion of Isaac D. Barnhart Estate  
Recorded in Plat Book Vol. 3, page 190.  
Situate in Upper Yoder Township.  
Dated June 18, 1941.  
Approved by City Planning Commission April 21, 1945,  
Date of Record - 25 April, 1945.
7. Plan of Municipal Golf Course and adjacent land owned  
by the City of Johnstown - revision of previous plans  
Recorded in Plat Book Vol. 3, page 195.  
Situate in Upper Yoder Township.  
Approved by City Planning Commission July 14, 1945.  
Date of Record - 4 September, 1945.
8. Homestead Acres Plan - P. C. Albert Young  
Recorded in Plat Book Vol. 4, page 4.  
Dated November 9, 1943, - revision  
Situate in Upper Yoder Township.  
Approved by the City Planning Commission January 19, 1946.  
Date of Record - 14 May, 1946.
9. Homestead Acres Plan - P. C. Albert Young  
Recorded in Plat Book Vol. 4, page 5.  
Situate in Upper Yoder Township.  
Dated June 17, 1941.  
Approved by City Planning Commission January 19, 1946.  
Re-approved by City Planning Commission May 18, 1946.  
Date of Record 23 May, 1946.
10. William B. Haberlein Plan  
Recorded in Plat Book Vol. 4, page 21.  
Situate in Upper Yoder Township.  
Dated May 21, 1941.  
Approved by City Planning Commission August 20, 1941.  
Date of Record - 14 April, 1947.
11. Sub-division for John Baroni  
Recorded in Plat Book Vol. 4, page 37.  
Situate in Upper Yoder Township.  
Dated July 27, 1946.  
Approved by City Planning Commission November 29, 1947.  
Date of Record - 8 December, 1947.
12. William B. Haberlein Plan  
Recorded in Plat Book Vol. 4, page 58.  
Situate in Upper Yoder Township.  
Dated May 21, 1941.  
Revised September 22, 1948 on account of field errors.  
Approved by City Planning Commission August 20, 1941.  
Date of Record - 18 October, 1948.

13. Plan of Lillian Slough Cameron  
Recorded in Plat Book Vol. 4, page 62.  
Situate in Upper Yoder Township.  
Date of Record 27 November, 1948.
14. Plan of Sunset - Krise & Ott  
Recorded in Plat Book Vol. 4, page 63.  
Situate in Upper Yoder Township.  
Dated July 2, 1906.  
Approved by City Planning Commission October 9, 1948.  
Date of Record - 1 December, 1948.
15. Plan of Harry W. Berkley Estate  
Recorded in Plat Book Vol. 4, page 68.  
Situate in Upper Yoder Township.  
Dated April 21, 1941.  
Re-approved by City Planning Commission May 2, 1941.  
Date of Record 16 March, 1949.
16. Beechwood Park Plan of C. C. Molain.  
Recorded in Plat Book Vol. 4, page 69.  
Situate in Upper Yoder Township.  
Dated March 18, 1937.  
Recorded - 1 April, 1949.
17. Plan of Harry E. Berkley Estate  
Recorded in Plat Book Vol. 4, page 96.  
Situate in Upper Yoder Township.  
Dated May 31, 1939.  
Approved by the City Planning Commission - April 17, 1940.  
Date of Record - 13 July, 1950.
18. Plan of Rella Blough  
Recorded in Plat Book Vol. 3, page 81.  
Situate partly in Conemaugh Twp., Somerset County,  
and Upper Yoder Township, Cambria County.  
Dated February 23, 1931.  
Date of Record 12 June, 1931.
19. Homestead Acres Plan - P. C. Albert Young  
Recorded in Plat Book Vol. 3, page 182.  
Situate in Upper Yoder Township.  
Dated June 17, 1941; revised November 9, 1943.  
Date of Record - 31 January, 1944.
20. Southmont Addition No. 1 - A. W. Swarts  
Recorded in Plat Book Vol. 4, page 101.  
Situate in Upper Yoder Township.  
Dated March 20, 1907 - revised September 15, 1950.  
Date of Record - September 18, 1950.
21. Jerry Alwine Plan  
Recorded in Plat Book Vol. 3, page 138.  
Situate in Upper Yoder Township.  
Dated May 6, 1913.  
Approved by City Planning Commission August 23, 1940.  
Date of Record 3 September, 1940.

We offer in evidence the following recorded plans which have been approved by the Board of Supervisors of Upper Yoder Township, Cambria County, Pennsylvania:

1. John K. Miller - Layout of Sub-divisions  
Recorded in Plat Book Vol. 3, page 90.  
Situate in Upper Yoder Township and Borough of Westmont  
Dated July 14, 1934.  
Approved by City Planning Commission August 1, 1934.  
Approved by Upper Yoder Township Supervisors.  
Date of Record - 3 February, 1936.
2. Beechwood Park, Revised Plan No. 1, Cherokee Lane Section.  
Recorded in Plat Book Vol. 3, page 120.  
Situate in Upper Yoder Township.  
Dated May 26, 1938.  
Approved by City Planning Commission August 26, 1938.  
Approved by Upper Yoder Township Supervisors.  
Date of Record - 24 August, 1939.
3. Beechwood Park, Revised Plan of Lots  
Recorded in Plat Book Vol. 3, page 124.  
Situate in Upper Yoder Township.  
Dated October 2, 1939, - revised plan.  
Approved by City Planning Commission December 28, 1939.  
Approved by Upper Yoder Township Supervisors Dec. 28, 1939.  
Date of Record -

We offer in evidence the records of the following deeds, all of which show that C. C. McLain had adopted the plan and sold many lots therefrom prior to the date the plan of lots was approved by the Board of Supervisors of Upper Yoder Township, Cambria County, Pennsylvania:

1. Deed - C. C. McLain et ux. to John S. Murdock et ux., dated 16 April, 1937, and recorded 17 April, 1937, in D. B. Vol. 474, page 82. Conveys Lot No. 7, Beechwood Park Plan of Lots dated March 18, 1937, fronting 60 feet on Lilly Street, and back 130 feet to a path.
2. Deed - C. C. McLain et ux. et al. to Merle A. Davis et ux., dated May 27, 1937, and recorded 28 May, 1937, in D. B. Vol. 471, page 408. Conveys Lot No. 4, Beechwood Park Plan of Lots dated March 18, 1937, fronting 60 feet on Lilly Street and extending back 130 feet to Lots 19 and 20.
3. Deed - C. C. McLain et ux. to Lloyd C. Berkey et ux., dated July 6, 1937, and recorded 9 July, 1937, in D. B. Vol. 476, page 196. Conveys Lot No. 5, house No. 2, Beechwood Park Plan of Lots dated March 18, 1937, fronting 60 feet on Lilly Street and extending back 130 feet to Lots 20 and 21.

4. Deed - C. C. McLain et ux. to Issachar Clark et ux., dated December 13, 1937, and recorded 7 January, 1938, in D.B. Vol. 480, page 362. Conveys Lot No. 1, Beechwood Park Plan of Lots dated March 18, 1937, situate at corner of Miller Court and Lilly Street.

5. Deed - C. C. McLain et ux. to Leroy W. Clark et al., dated January \_\_, 1938, and recorded 18 January, 1938, in D. B. Vol. 477, page 473. Conveys Lot No. 31, Beechwood Park Plan of Lots dated March 18, 1937, situate at corner of Miller Court and Antonia Street.

6. Deed - C. C. McLain et ux. to Harvey Thomas, dated July 10, 1937, and recorded 16 July, 1937, in D. B. Vol. 476, page 231. Conveys Lot No. 3, Beechwood Park Plan of Lots, dated March 18, 1937, fronting 60 feet on Lilly Street and extending back same width 130 feet.

7. Deed - C. C. McLain et ux. et al. to Wilbert P. Wagner et ux., dated July 26, 1937, and recorded July 31, 1937, in D.B. Vol. 476, page 320. Conveys Lot No. 64, Beechwood Park Plan of Lots dated March 18, 1937, corner of Adams Street and Miller Court.

8. Deed - C.C. McLain et ux. to Samuel Moyer Bowman et ux., dated September 9, 1937, and recorded 10 September, 1937, in D. B. Vol. 478, page 174, Beechwood Park Plan of Lots dated March 18, 1937, fronting 60 feet on Lilly Street and extending back same width 130 feet.

9. Deed - C. C. McLain et ux. to Ernest M. Pallas et ux., dated September 18, 1937, and recorded 20 September, 1937, in D. B. Vol. 478, page 217, ~~conveys Lots 8 and 9~~ Beechwood Park Plan of Lots dated March 18, 1937, fronting 120 feet on Lilly Street and extending back same width 130 feet to a path.

10. Deed - C. C. McLain et ux. to William G. McGovern et ux., dated October 8, 1937, and recorded October 9, 1937, in D. B. Vol. 478, page 336. Conveys Lot No. 18, Beechwood Park Plan of Lots dated March 18, 1937, fronting 60 feet on Antonia Street.

11. Deed - C. C. McLain et ux. to W. H. Needy et ux., dated March 7, 1938, and recorded March 7, 1938, in D. B. Vol. 481, page 138. Conveys Lot No. 59, Beechwood Park Plan of Lots dated March 18, 1937, fronting 60 feet on Miller Court.

12. Deed - C.C. McLain et ux. to Charlotta Ann Ward, dated March 12, 1938, and recorded in D.B. Vol. 481, page 196, on March 19, 1938. Conveys Lot No. 58, Beechwood Park Plan of Lots dated March 18, 1937, fronting 60 feet on Miller Court.

13. Deed - C. C. McLain et ux. to Nancy Hartman, dated December 30, 1937, and recorded March 24, 1938, in D.B. Vol. 481, page 218. Conveys Lot No. 55, Beechwood Park Plan of Lots, dated March 18, 1937, fronting 60 feet on Miller Court.

14. Deed - C. C. McLain et ux. to Charles A. Wendell et ux. dated December 30, 1937, and recorded March 24, 1938, in D. B. Vol. 481, page 219. Conveys Lot No. 54, Beechwood Park Plan of Lots dated March 18, 1937, fronting 60 feet on Miller Court.

15. Deed - C. C. McLain et ux. to Adolph Repp, Jr. et ux., dated March 30, 1938, and recorded April 7, 1938, in D.B. Vol. 481, page 296. Conveys Lot No. 20, Beechwood Park Plan of Lots, dated March 18, 1937, fronting 60 feet on Antonia Street.



16. Deed - C.C. McLain et ux. to David F. Similer et ux., dated April 13, 1938, and recorded in D. B. Vol. 481, page 337, on April 18, 1938. Conveys Lot No. 58, Beechwood Park Plan of Lots, dated March 18, 1937, fronting 60 feet on Miller Court.

17. Deed - C. C. McLain et ux. to Willard P. Jacobs et ux., dated May 24, 1938, and recorded May 25, 1938, in D. B. Vol. 482, page 131. Conveys Lot No. 61, Beechwood Park Plan of Lots dated March 18, 1937, fronting 60 feet on Miller Court.

18. Deed - C.C. McLain et ux. to Charles H. Getty et ux., dated May 5, 1938, and recorded May 31, 1938, in D. B. Vol. 482, page 146. Conveys Lot No. 93, Beechwood Park Plan of Lots, dated March 18, 1937, fronting 60 feet on Keppler Drive and extending back same width 120 feet to Lot 95.

19. Deed - C. C. McLain et ux. to James R. Graham et ux., dated June 10, 1938, and recorded June 11, 1938, in D. B. Vol. 482, page 214. Conveys part of Lots 11 and 12 on Beechwood Park Plan of Lots dated March 18, 1937, as shown on Revised Plan No. 1 of Beechwood Park, Cherokee Lane Section dated May 26, 1938, - corner of Cherokee Lane and Woodhaven Drive.

20. Deed - C. C. McLain et ux. to Joe Rayhart et ux., dated June 24, 1938, and recorded June 27, 1938, in D.B. Vol. 482, page 295. Conveys Lot No. 60, Beechwood Park Plan of Lots, dated March 18, 1937, fronting 60 feet on Miller Court.

21. Deed - C.C. McLain et ux. to William Henry Walter et ux., dated July 7, 1938, and recorded July 11, 1938, in D.B. Vol. 482, page 339. Conveys Lot No. 16, Beechwood Park Plan of Lots, dated March 18, 1937, corner of Miller Court and Antonia Street.

22. Deed - C. C. McLain et ux. to Edmund W. Criswell et ux., dated July 20, 1938, and recorded July 23, 1938, in D. B. Vol. 482, page 392. Conveys Lot No. 19 Beechwood Park Plan of Lots dated March 18, 1937, fronting 60 feet on Antonia Street.

23. Deed - C. C. McLain et ux. to Mary M. Boxler, dated July 20, 1938, and recorded July 23, 1938, in D. B. Vol. 482, page 393. Conveys Lot No. 32, Beechwood Park Plan of Lots dated March 18, 1937, fronting 60 feet on Antonia Street.

24. Deed - C.C. McLain et ux. to Lewis H. Link et ux., dated July 28, 1938, and recorded August 1, 1938, in D.B. Vol. 484, page 7. Conveys Lot No. 57, Beechwood Park Plan of Lots, dated March 18, 1937, fronting 60 feet on Miller Court.

25. Deed - C.C. McLain et ux. to James S. Milligan et ux. dated September 2, 1938, and recorded in D. B. Vol. 484, page 204, on September 12, 1938. Conveys Lot No. 99, Beechwood Park Plan of Lots dated March 18, 1937, fronting 60 feet on Keppler Drive.

26. Deed - C.C. McLain et ux. to Harney A. Steele et ux., dated September 12, 1938, and recorded September 17, 1938, in D. B. Vol. 484, page 225. Conveys Lot No. 98, Beechwood Park Plan of Lots dated March 18, 1937, fronting 60 feet on Keppler Drive.

27. Deed - C. C. McLain et ux. to Earl A. Neeb et ux., dated September 2, 1938, and recorded September 22, 1938, in D.B. Vol. 484, page 259. Conveys Lot No. 92, Beechwood Park Plan of Lots dated March 18, 1937, fronting on Keppler Drive.

28. Deed - C. C. McLain et ux. to Wilbur C. Bell et ux., dated August 31, 1938, and recorded September 30, 1938, in D. B. Vol. 484, page 286. Conveys Lot No. 2, Beechwood Park Plan of Lots dated March 18, 1937, fronting 60.06 feet on Lilly Street.

29. Deed - C. C. McLain et ux. to J. Reno Watkins, Jr. et ux., dated October 6, 1938, and recorded October 7, 1938, in D. B. Vol. 484, page 326. Conveys Lots 14 and 15, Beechwood Park Plan of Lots, Revised Plan No. 1, Cherokee Lane Section, dated May 26, 1938, corner of Keppler Drive and Cherokee Lane, also on Lilly Street ( fronting 77.40 feet on Cherokee Lane).

30. Deed - C. C. McLain et ux. to William B. Oaks et ux., dated November 3, 1938, and recorded November 17, 1938, in D. B. Vol. 487, page 72. Conveys Lot No. 100 Beechwood Park Plan of Lots dated March 18, 1937, fronting 60 feet on Keppler Drive.

31. Deed - C. C. McLain et ux. to Leadie H. Slick et ux., dated December 6, 1938, and recorded on December 9, 1938, in D. B. Vol. 487, page 156. Conveys (Pt. of Lots 13, 14, 15, on Beechwood Park Plan of Lots dated March 18, 1937) - Lot No. 13 on Beechwood Park Plan of Lots Revised Plan No. 1, Cherokee Lane Section, dated May 26, 1938, fronting 71.50 feet on Cherokee Lane.

32. Deed - C. C. McLain et ux. to Albert James Stook et ux., dated November 19, 1938, and recorded December 16, 1938, in D. B. Vol. 487, page 183. Conveys Lot No. 25, Beechwood Park Plan of Lots dated March 18, 1937, fronting 60 feet on Antonia Street.

33. Deed - C. C. McLain et ux. to Alfhild Blume, dated December 23, 1938, and recorded December 27, 1938, in D. B. Vol. 487, page 214. Conveys Lot No. 33, Beechwood Park Plan of Lots dated March 18, 1937, fronting 60 feet on Antonia Street.

34. Deed - C. C. McLain et ux. to Lowell C. Moldin et ux., dated February 6, 1939, and recorded February 9, 1939, in D. B. Vol. 487, page 342. Conveys Northerly  $\frac{1}{2}$  of Lots 29 and 30, Beechwood Park Plan of Lots dated March 18, 1937, corner of Keppler Drive and Antonia Street.

35. Deed - C. C. McLain et ux. to Karl F. Stremel, dated March 15, 1939, and recorded March 16, 1939, in D. B. Vol. 488, page 57. Conveys South-erly  $\frac{1}{2}$  Lots 29 and 30, Beechwood Park Plan of Lots, dated March 18, 1937, fronting 101.30 feet on Cherokee Lane.

36. Deed - C. C. McLain et ux. to Andrew B. Crichton, Jr. et ux., dated July 24, 1939, and recorded August 31, 1939, in D. B. Vol. 489, page 339, conveys Lot No. 12, Beechwood Park Plan of Lots, Revised Plan No. 1, Cherokee Lane Section, dated May 26, 1938. Fronting 71.50 feet on Cherokee Lane - (parts of Lots 12 and 13 on Beechwood Park Plan of Lots dated March 18, 1937.)

37. Deed - C. C. McLain et ux. to Robert C. Lengel et ux., dated November 1, 1939, and recorded November 3, 1939, in D. B. Vol. 491, page 238. Conveys Lot No. 79, Beechwood Park Addition, dated October 2, 1939, fronting 70.78 feet on Goucher Street.

38. Deed - C. C. McLain et ux. to Blake W. Olmstead et ux., dated November 9, 1939, and recorded November 13, 1939, in D. B. Vol. 491, page 268. Conveys Lot No. 21, Beechwood Park Addition dated October 2, 1939, corner of Luzerne Street and Goucher Street.

STENOGRAPHER'S CERTIFICATE.

I hereby certify that the proceedings and evidence, pages 1 to 79, inclusive, taken and transcribed by R. Edgar Leahey, deceased, and pages 80 to 86, inclusive, transcribed by me, are correct to the best of my knowledge and belief.

*Ramin J. Leahey*  
Official Stenographer.

CERTIFICATE OF TRIAL JUDGE.

The foregoing record of the proceedings upon the hearing of the above cause is hereby approved and directed to be filed.

*Griffith*

RE: APPEAL FROM REFUSAL OF  
BOARD OF SUPERVISORS OF  
UPPER YODER TOWNSHIP, CAMBRIA  
COUNTY, PENNSYLVANIA, TO AP-  
PROVE A PLAN OF LOTS LAID  
OUT FOR HARRY E. BERKLEY ES-  
TATE, AND RELATING TO LOTS OF  
LAND SITUATE IN UPPER YODER  
TOWNSHIP, CAMBRIA COUNTY,  
PENNSYLVANIA.

IN THE COURT OF QUARTER SESSIONS  
OF CAMBRIA COUNTY, PENNA.

No. 1, September Sessions, 1950.

TESTIMONY.

I N D E X.

<u>APPELLANTS'</u> <u>WITNESSES:</u>	<u>DIRECT</u> <u>EX.</u>	<u>CROSS</u> <u>EX.</u>	<u>REDIRECT</u> <u>EX.</u>	<u>RECROSS</u> <u>EX.</u>
Mark Brown	4			
Warren Hinks	5	8	9	11
Tillman K. Saylor, Esq.	12	18		
A. A. Walker	21	24		
Curtis Barnhart	35	28	50	46
William B. Cowie	39			
Paul E. Robel	43			
Esther Hartnett	45			

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APPELLEES'  
WITNESSES:

Curtis Barnhart	53	60
T. L. Locher	70	77

RE: APPEAL FROM REFUSAL OF  
BOARD OF SUPERVISORS OF  
UPPER YODER TOWNSHIP, CAMBRIA  
COUNTY, PENNSYLVANIA, TO AP-  
PROVE A PLAN OF LOTS LAID  
OUT FOR HARRY E. BERKLEY ES-  
TATE, AND RELATING TO LOTS  
OF LAND SITUATE IN UPPER  
YODER TOWNSHIP, CAMBRIA COUNTY,  
PENNSYLVANIA.

IN THE COURT OF QUARTER SESSIONS  
OF CAMBRIA COUNTY, PENNA.

No. 1, September Sessions, 1950.

TESTIMONY.

Ebensburg, Pa.  
November 20, 1950.

BEFORE THE HONORABLE JOHN H. McCANN, PRESIDENT JUDGE, IVAN  
J. McKENRICK, AND GEORGE W. GRIFFITH, JUDGES, OF THE 47TH JUDICIAL  
DISTRICT.

APPEARANCES:

Harkins & Warton, Esqs., appear for appellants.

Frank P. Barnhart, Esq., appears for Supervisors of Upper Yoder Twn.

BY MR. HARKINS:

This is an appeal by property owners in Upper Yoder Township from the refusal of the Board of Supervisors of Upper Yoder Township, this county, to approve a plan of lots laid out for the Harry E. Berkley Estate. Harry E. Berkley Estate own a large tract of land which is on a street now called Goucher Street, and it is immediately adjacent to the Municipal Golf Course; in fact, the Municipal Golf Course was part of the Berkley farm. On this tract of land Goucher Street would be to the right of the Golf Course going outbound. There is part of the land on the right and part on the left. About 1940 Mr. Fetterman, who was on the Johnstown Planning Commission, recommended a consolidation of both sides of the street, and being on that commission recommended a change in the cross street. There was only one lot on the left of Goucher Street. Before the change was made they bought that lot. Subsequently, practically every lot on this plan was sold to purchasers. Today I believe you will find there are twenty homes built on this plan, the plan in question.

The part I refer to in this matter today lies to the left of

Goucher Street. For a number of years there has been a question about having this plan approved by the Township Commissioners. It was approved by the Johnstown Planning Commission and recorded in March, 1949. These people who bought lots built their houses there and they took the matter up with the Supervisors on a number of occasions, and back in 1949 they received a copy of a resolution in which they were informed that since they had not submitted the plan to the Supervisors before selling the lots, they therefore now refused to approve the plan. There is an Act of Assembly, which will be referred to and called to your attention, passed in 1947, but it is an amendment of the Act of 1939, and goes back historical to 1929; that is, the Supervisors have the right to take title to the land for the streets and alleys, and in this case I offered a deed for all the streets and alleys, if they wanted it, and they won't accept that. "No person shall construct, open, or dedicate any road, or any drainage facilities in connection therewith, for public use or travel in any township, without first submitting plans thereof to the township supervisors for their approval." Then it provides further: "In any case where the township supervisors shall refuse to approve any plans submitted to them in accordance with this subdivision, any person aggrieved by the action of the supervisors may, within thirty days after such action, appeal therefrom by petition to the court of quarter sessions of the county, which court shall hear the matter de novo, and, after hearing, may enter a decree affirming, reversing or modifying the action of the supervisors as may appear just in the premises. The court shall designate the manner in which notices of the hearing of any such appeal shall be given to all parties interested, The decision of the court shall be final." Therefore, this hearing today is not a review of what the supervisors did. It is a brand new hearing to see whether or not this plan shall be approved. There are penalties provided for those who do not

follow the provisions of the Act, but In Cambria County I find no plans except a dozen ever approved by the Supervisors. Section 1145 is as follows: "Effect of Approval of Plans--No approval of plans by a township shall obligate or require any such township to construct, reconstruct, maintain, repair, or grade such roads, until and unless authorized and ordered so to do by the proper court pursuant to the provisions of this subdivision." The difficulty these property owners find themselves in is this: Many years ago when they had the FHA loans a lot of people wanted those loans. We had many of them, and in the days of the FHA you would find there were many plans of lots recorded but not accepted by the municipal authorities. Now you must show the FHA and the VA also an acceptance of those streets, and we are over the barrel until this plan is approved under the Act I have just read. The action of the Supervisors in refusing to approve the plan we contend has been arbitrary. They can and should approve the plan, and after we have the approval we intend to take the next steps provided by the Act as to the streets, etc.

BY MR. BARNHART:

So the court understands our position. We do not desire to obstruct any building of houses or any opening of streets, excepting we want it done in the right way. Our contention is they have not done that. In 1933 land owners and promoters around Philadelphia got into the habit of having whole plans approved and the streets laid out and graded and sometimes macadamized at the expense of the township. This Act of 1933, as I understand it, and that is the position taken by the State Board of Supervisors. They have what is called Pennsylvania State Association of Township Supervisors, and they have had this matter up every year, and what they are trying to do now is to enforce this Act, and people like Berkley Estate, with dozen

and dozens of lots, who propose to have their streets opened at the expense of the township shall be stopped. It wouldn't be fair to the rest of the township, and before they are accepted by the township, we want to see they are accepted under this Act of 1933.

MARK BROWN, called on part of appellant, sworn.

DIRECT EXAMINATION BY MR. HARKINS:

Q. By whom are you employed?

A. By the Recorder of Deeds of Cambria County, Mr. Powell.

Q. In what capacity?

A. Deputy Recorder.

Q. As deputy recorder do you have custody and control of the books and records of the Recorder's Office?

A. Yes.

Q. Among your records do you have Plat Book Records?

A. That is right.

Q. In that connection what papers are filed in your office?

A. Various plans or plots laid out in the county for buildings.

Q. That is, lot plans?

A. Yes.

Q. Do you have before you the official record Plat Book volume 4, page 68?

A. Yes.

Q. Does that purport to be a plan of lots of Harry E. Berkley Estate situate in Upper Yoder Township?

A. That is right.

Q. I notice that is not a tracing or photostatic copy?

A. This is not the original; it is a photograving reproduction.

Q. Made under what order?

A. Under an order of the Cambria County Court of Common



Pleas.

Q. Today is that the official Plat Book Record?

A. It is.

BY MR. HARKINS:

We offer in evidence plaintiff's exhibit No. 1, plan of lots as laid out by Harry E. Berkley Estate, situate in Upper Yoder Township, Cambria County, as recorded in the Recorder's Office for the recording of deeds in and for Cambria County, Pennsylvania, in Plat Book volume 4 at page 68, for the purpose of showing the plan of lots which was submitted to the Board of Supervisors of Upper Yoder Township for approval, and for the purpose of showing the plan of lots which is involved in this appeal.

BY MR. BARNHART:

Objected to for the reason there is nothing in the offer to show that this plan was submitted to the Supervisors.

BY MR. HARKINS:

The offer will be followed to show it was on May 15, 1950.

BY THE COURT:

Objection overruled. Let it be admitted. Exception is noted to appellees.

By Mr. Harkins;

We ask leave to substitute for this original record exhibit No. 1.

WARREN HINKS, called on part of appellant, sworn.

DIRECT EXAMINATION BY MR. HARKINS:

Q. Are you engaged in any business or profession?

A. I am in the private engineering business.

Q. Under what name?

A. Fetterman Engineering Company.

Q. How long have you been in that business?

A. Thirty-eight years.

Q. How long has the Fetterman Engineering Company been operating in the Johnstown area as an engineering firm, if you know?

A. I don't know for sure. It is over fifty years.

Q. Have you personally today the custody and control of the official records of the Fetterman Engineering Company?

A. I have.

Q. When you make a lot plan or lay-out, do you keep a set of notes?

A. Yes.

Q. Do you keep a tracing made from those notes?

A. Yes.

Q. And do you make blueprints from those tracings?

A. Yes.

Q. Will you please examine the record of the plan of lots recorded in Cambria County, Pennsylvania, in the office of the Recorder of Deeds in Plat Book volume 4, at page 68, and compare it with the tracing you have before you and tell us whether or not they are identical plans of lots?

A. They are identical.

Q. Was the plan recorded in the Plat Book made from the tracing you now have?

A. It was made from the tracing, the blueprint.

Q. Is the tracing the original plan of lots?

A. Yes.

Q. Where did you get that tracing?

A. From our files, in Drawer No. D2, No. 204.

Q. Is it customary for engineering firms in this area to retain those?

A. It is.

Q. It is hard to get them out of their hands?

A. Yes.

Q. Did that tracing leave your office within the past year?

A. Yes.

Q. Under what circumstances?

A. Mr. Locher as engineer of the township asked to have a loan of it for some kind of a meeting that was being held on a certain day, and his office is two floors down from mine, and I allowed him to take it.

Q. Were you informed under certain rules before the township supervisors could approve a plan it must be first approved by the engineer?

BY MR. BARNHART:

Objected to as being incompetent, irrelevant and immaterial.

BY THE COURT:

Overrule objection. Exception noted to appellees.

A. I wasn't officially notified of that. I heard it about that time.

Q. Is that usually the case in your profession?

A. I would say that generally has not been true.

Q. In this case was there anybody that put wording on that original tracing which would provide for the approval of the plan.

A. Yes, S. E. Dickey & Company, T.L. Locher, Township Engineer.

Q. Who put that wording on there?

A. Our office didn't put it on. I would say, recognizing the signature (interrupted).

Q. It wasn't done in your office?

A. No.

Q. It wasn't there when you gave the plan out?

A. No.

Q. I notice the original tracing has a date when the City Planning Commission approved this written in ink and the signatures of the president and secretary?

A. That is correct.

Q. And in order to have the township approve the original they would have to sign this tracing?

A. That is correct.

Q. And after signing the tracing we could get blueprints to record in the Recorder's Office?

A. That is correct.

CROSS-EXAMINATION BY MR. BARNHART:

Q. I am not certain as to when you say the date was written on there?

A. May 15, 1950.

Q. And you say you didn't put that on?

A. No, we didn't put it on.

Q. You don't know who did?

A. I do recognize the signature.

Q. That is, it ~~is~~ has endorsed thereon S. E. Dickey & Company, T.L. Locher, Township Engineer, May 15, 1950?

A. That is correct.

Q. Just above there is a place for approval by the supervisors, but that is not signed by any of the supervisors?

A. That is correct.

BY MR. BARNHART:

We move that the testimony as to the approval on May 15, 1950, by S. E. Dickey & Company, T.L. Locher, Township Engineer, be stricken from the record as having no relevancy whatsoever in this proceeding.

BY THE COURT:

Overrule objection for the present. Exception to appellee.

REDIRECT EXAMINATION BY MR. HARKINS:

Q. Your office is a very reputable office in the City of Johnstown and so is the office of S. E. Dickey & Company?

A. Yes.

Q. And that is the reason why they were allowed to take this plan out of the office?

A. Yes.

Q. You would have no objection or gave none to any writing that Mr. Locher or the supervisors put on?

A. No, if they didn't change any of the original tracing they could put on anything necessary for the proper procedure of approval.

BY MR. HARKINS:

We offer in evidence at this time the original tracing of the plan of lots laid out by Harry E. Bekkley Estate situate in Upper Yoder Township under date of April 21, 1941, and ask leave to substitute for this original tracing our exhibit No. 1.

BY MR. BARNHART:

Objected to unless they propose to show that this exhibit was actually presented to the Supervisors of Upper Yoder Township.

BY MR. HARKINS:

We will follow this by proof it was presented at a meeting.

BY MR. HARKINS:

Q. Referring to your tracing, I want you to testify relative to the plan of lots situate on the southwesterly side of what was Atwood Street, now known as Goucher Street, and tell us what you know about any change in any lot plan relative to the lots situate on the southwesterly side of Atwood Street?

BY MR. BARNHART:

Objected to as being irrelevant and immaterial.

GRIFFITH, J.:

Overrule objection. Exception is noted to appellee.

A. Sometime before 1941 we had laid out a plan for Berkleys on the southwesterly side of Atwood Street, which is now Goucher Street, and then for some reason they wanted it changed, and we changed it and made what we think is a much better plan of lots than the other one. Atwood Street or Goucher Street is the main thoroughfare. Everything on the lefthand side is one plan of lots and on the righthand side is another plan of lots, that is, going outbound, that is, going to Westmont. In this case it was owned in great part by the same people, the Berkleys. The part on the righthand side was laid out at one time and the part of the lefthand side was laid out at another time.

Q. Why do you say you laid out a better plan on the portion on the left or southwest than you had previously shown on the same area?

A. When we laid it out in 1941 we made the lots of a size large enough to be accepted by the Federal loaning bodies. That is one reason for this change. Then we had the streets better separated. Atwood or Goucher Street being a main thoroughfare, the ingress to this plan of lots would be from the main thoroughfare, turning to the left to go onto one lay-out and to the right to the other. That is the case in many plans of lots, and we think it is better in general not to have the streets come to the main thoroughfare exactly opposite each other. People generally do not go across the main street from a plan of lots such as this, but they turn out onto the main road usually. If a street happens to be across somebody may come out and turn across quickly instead of turning onto the main road. We have laid out many, many plans where the two sides of the street are not related in any way. We do not have them come into the main thoroughfare opposite each other. We think that is a good

practice. I can name a good many plans of lots in which that has been done. No attention is paid to the making of the side streets come in opposite to each other.

Q. On May 2, 1941, was Mr. Fetterman a member of the City Planning Commission?

A. Yes, he was.

RE-CROSS-EXAMINATION BY MR. BARNHART:

Q. You say that the former plan that you changed and put into the 1941 plan was also made by Fetterman Engineering Company?

A. That is right.

Q. I show you what is marked appellee's exhibit No. 1, and ask you whether that is the plan you refer to?

A. That is right.

Q. And that was made by Fetterman Engineering Company?

A. Yes.

Q. When you made the plan in 1941 you made the change that you have referred to?

A. Yes.

Q. Was there a large number of lot owners on the righthand side of Atwood Street that had been sold?

A. I think that is correct. I am not too certain as to the number.

Q. There were some lots sold?

A. Yes.

Q. Did you get the consent of those lot owners to the change made in the map of 1941?

A. We never do get the consent of those people. That is left up to the people who are doing it.

Q. Was there any consent given?

A. I don't know for sure.

BY MR. BARNHART:

We offer in evidence appellee's exhibit No. 1.

BY MR. HARKINS:

Q. Apparently this survey and blueprint was made on September 27, 1922?

A. That is correct.

Q. On the righthand side of Atwood Street going outbound there are a number of lots?

A. Yes.

Q. Is it true they were separated in smaller lot plans as time went on?

A. Yes, we had a lot plan showing Arch Street, Derby Street, Kress Street, and a part of Warren Street before the rest of this was laid out.

BY MR. HARKINS:

We have no objection.

BY MR. HARKINS: .

Q. Would you prepare for us three copies of this plan Mr. Barnhart just presented?

A. Yes.

Q. And three copies of any smaller lot plans that relate to this whole area here?

A. Yes.

TILLMAN K. SAYLOR, ESQ., called on part of appellant, sworn.

DIRECT EXAMINATION BY MR. HARKINS:

Q. You are a member of the Cambria County bar?

A. Yes.

Q. How many years?

A. Nine.

Q. Were you present in court today and did you hear the testimony of Mark Brown, Deputy Recorder?

A. I was and I did.



Q. Did you hear the testimony of Mr. Hinks?

A. I have heard everybody's testimony.

Q. Are you familiar with the plan of lots of Harry E. Berkley Estate recorded in Plat Book volume 4, at page 68?

A. Yes.

Q. Are you familiar with the tracing presented by Mr. Hinks?

A. I am.

Q. Are you familiar with the tracing of May 22 made by the Fetterman Engineering Company presented by Mr. Barnhart?

A. I am.

Q. Do you know the location of this real estate?

A. I do.

Q. Do you know who were the recent owners of the tract as a tract?

A. May I explain that? The Harry E. Berley Estate, who owns this land and has owned it since 1907 and prior to that was in the Berkley family, were farmers. The barn is still standing near the Golf Course. During the first world war he laid out his first plan of lots, which was a little section of his farm. From time to time he laid out further sections, and he did it in a manner as most people around Johnstown have laid out plans. He no doubt went to an engineer and asked him to lay out ten lots here and a few lots here and a few somewhere else. He had the following plans: One made in September, 1918, one made on September 27, 1922, one made in 1924, one in April, 1926, one in 1939 and this plan in 1941. Prior to 1941 the berkleys owned everything to the south of Atwood Street or Goucher Street with the exception of the land which had been sold to the City of Johnstown for a municipal golf course. I first became familiar with this proposition about 1943, when I was asked by the Harry E. Berkley heirs to make a few deeds and since then I have made quite a number of deeds from this 1941 plan. I examined the record and discovered that deeds out of the Berkleys, and there were

many through the years, first out of Harry Berkley and his wife and later out of the wife and children, were drawn by a justice of the peace from the 8th Ward, and they were very confusing because many of them referred to no plan at all but merely to the berkley plan and there were many plans. I went to Mr. Hinks' office--Mr. Fetterman's office at that time. I talked with Mr. Hinks and asked him to give me a copy of all of the plans laid out for Harry Berkley or his estate; and then I took all of the plans and found a number were amendments to plans of the same section, and in this fashion I put together what I should refer to as the Berkley section in general that we are speaking of. It is made up of land to the north of Atwood Street, most of which was sold prior to 1941 and built upon, and land to the south of Atwood Street, all of which was owned by the Berkleys. When this plan was made out, as I understand it, there was one lot or set of lots on this side of the road which was owned by some one other than the Berkleys, and that was all back in so that no one on this side of the road would have any objection to the change in the plans Mr. Hinks has described. I mean the south side. I can answer another question. If you would superimpose the 1922 plan, which is not shown here, upon this plan (indicating), you would see the 1922 plan covers the three plans which are current plans. The land from Atwood Street to the north was divided in two other Berkley plans--this section here from Atwood Street back to the second alley, and in this section three rows of lots were laid out on other plans, and it is my understanding that the 1922 plan was intended to consolidate up to that date what existed over here to the north of Atwood Street with the new lay-out to the south of Atwood Street. So you will find of record a number of deeds to the north of Atwood Street referring to the 1922 plan which are consistent with the plans of other dates both earlier and later, and you will find of record another deed to the south of Atwood Street from the 1922 plan.

Q. Do you know the number of building lots on the south of Atwood Street?

A. About 150; they run from 200 to 349.

Q. When you checked or talked about the lots south of Atwood Street you were referring to all of the Berkley land shown on the plan to the left of Goucher Street as going out-bound or toward Westmont?

A. Yes.

Q. It has been referred to in this record as the southwest?

A. Yes.

Q. In your profession and in your office have you had much occasion to close mortgage loans?

A. We had a good deal of that work.

Q. Since 1935 have you personal knowledge in your profession of the requirements of the Federal Housing Administration?

A. I have.

Q. In the beginning before the Veterans' Administration laws came along what were the Federal Housing Administration's requirements with reference to lot plans?

BY MR. BARNHART:

Objected to; it has no relevancy to the matters involved.

BY MR. HARKINS:

We allege in our petition for appeal these lot owners are aggrieved and hurt, and they say we are not. I want to show that we are.

BY MR. BARNHART:

However, it is immaterial in this case.

BY THE COURT:

Overrule objection. Exception to appellee.

BY MR. HARKINS:

Q. Mr. Saylor, in your testimony you said many of these

deeds were made by a justice of the peace in Johnstown; is it possible it might have been Warren Krise?

A. It is possible; he was Warren Krise.

Q. What were the regulations of the FHA?

A. At the time in 1922 there was FHA. They came in the late thirties, and they required that there only be a certain size to the lots. A problem presented itself a couple years ago when the owners of various properties in this case wanted something done because the people in Pittsburgh demanded some assurance that some public body was going to keep up the streets, and before you could meet that demand you had to get the supervisors to agree that the plan itself was all right. This is a matter that has been discussed for a couple of years. It is quite old.

Q. Did you take part in the presentation of this plan to the Supervisors of Upper Yoder Township?

A. I think the answer is yes, although I didn't present it for personal reasons, which I would not explain. I asked the Berkleys not to have me act for them before the Supervisors. I would like to state that it was pointed out to me early by Mr. Barnhart that the Berkleys were guilty of a violation of the criminal statutes and if I did know the criminal law. I told Mr. Barnhart I would gladly bring the Berkleys into this court on a plea of guilty in this case and see if the court thought they were the type of people that ought to be fined or imprisoned.

Q. Whatever action you did take with reference to the approval of this plan or submission of it, did you do that as attorney for the Berkley Estate?

A. I did.

Q. Tell the court what you and I did in trying to get this presented to the Supervisors?

A. I understood from the Berkleys copies of this plan had

been shown to the Supervisors without their giving their consent or without their signing the plan approving it, and you called me one day and said there was a new wrinkle, that they wanted the township engineer to approve this. Mr. Hinks is on the tenth floor of our building, we are on the ninth floor and Mr. Locher is on the eighth floor, and I asked Mr. Locher to come up, and I said, you two are the most active engineers in this, could it be you don't approve of this plan? He said, no, sir, I have no objection to the plan. I said, will you please get a copy of the plan from Mr. Hinks and put your name on it and see that the supervisors get an opportunity to approve ~~of~~ the same.

Q. Is it correct you told him he was to get the original tracing?

A. I told him first a copy. Later on I told him to get the original, because that seemed to be the bone of contention.

Q. In making the arrangement to have that plan taken from Mr. Hinks' office by Mr. Locher and submitting it at the meeting, were you doing those things as attorney for the Berkley Estate?

A. I was.

Q. Will you examine this petition or signatures to it, and tell the court whether any of the parties in the Berkley Estate are petitioners?

A. William R. Beem and his wife, Emma J. Beam. She is a Berkley heir. Lloyd A. Berkley. He is a single man; he is one of the heirs. Incidentally, I told the Berkleys to sign this, but not enterprisers who were building up something to sell. These properties were sold for relatively a small amount, and I told the Berkleys it would be better that the people who wanted to build push this proceeding to do something with the streets.

Q. There has been reference made here today about land promoters; are the Berkleys and have they been land promoters?

A. No, sir. Mr. Berkley was a farmer, and most of them have a job in the mill. They were just cutting up their own

farm. The first part sold was to the City of Johnstown.

Q. And then were various lots sold each time?

A. Yes, prior to that. All of the lots to the north of Atwood Street, I believe, have been sold, although one or two may be owned by an individual Berkley heir. I believe the Berkleys own somewhere between forty and fifty lots to the south of Atwood Street.

Q. And the other lots in the plan have all been sold?

A. Yes.

Q. And have they been sold to individuals?

A. Yes.

Q. Have houses been built upon them?

A. This section to the north is completely built up almost. The section to the south, the people started to build right after the war, and you said there were twenty houses started; that would be a correct estimate as far as I can see. There are a lot more people that want to build, but they cannot start until they can finance it.

Q. You know that of your own knowledge?

A. I do. People can borrow from the FHA or VA who cannot otherwise get financing, because under the Government regulation they can borrow a large amount of money and the payments are scattered over a long number of years, and the interest on VA loans is very attractive, and the interest on FHA is attractive compared with the equity that the people have in the property, although there is nothing so attractive by the FHA if you have enough money to make a down payment.

CROSS-EXAMINATION BY MR. BARNHART:

Q. Did I indicate to you that the Supervisors entertained for a moment any criminal prosecution against the Berkleys?

A. You pointed the statute out to me rather directly.

Q. Did I say that the Supervisors contemplated a prosecution?

A. No, you just pointed to the statute. I assumed I was to draw my own inference.

Q. Did you draw the inference we were waiting around to make a criminal prosecution?

A. You recall what I told you. I told you I would be glad to represent them in court in a criminal proceeding at any time, and the discussion dropped there.

Q. I have repeatedly said we entertained no such idea whatsoever, and didn't I tell you all we wanted to have done was the Act complied with so the Supervisors would not be surcharged and so that it wouldn't be unfair to the inhabitants of the township that would have to bear the expense of township improvements?

A. No, I believe you said since this plan should have been approved in 1941 and wasn't it couldn't now be approved. I was that the impression I got from several conversations; that it is now too late to ask the Supervisors to approve the plan. Of course, I disagreed with you as a matter of law.

Q. At any rate that was your understanding?

A. Yes.

Q. You say that the mortgagee would insist before making a loan on any of these lots that they needed a guarantee or some assurance that the streets and alleys in this plot would be approved and taken care of and maintained?

A. That is right.

Q. As I understand it, what they propose to do in this proceeding is to have those streets and alleys in the plot improved and maintained?

BY MR. HARKINS:

Objected to; we don't ask for that. We are not asking for it today. We think it is improper and irrelevant and immaterial.

(Witness continues) The FHA does not have any iron-clad rule that you have to have a concrete road in front of houses in a

suburban area. All they want is some evidence of a highway and whatever is there is going to be maintained by a public body. It may be that the FHA will approve a dirt road. In other sections they may want a road with red dog or black top, and other sections macadam, and possibly in built-up sections of a city maybe a concrete road. In some instances they may want curbs and in some, sidewalks. The only thing that is mandatory is that something in the nature of a road be there and that some public body will care for and keep it that way. It doesn't entail a lot of money.

Q. It might entail a lot of money if concrete construction were required?

A. I don't think you have any concrete construction in the township. I see no reason in the world for a concrete construction here. You only got macadam on the thoroughfare that is state highway.

Q. I am quoting you, in some instances the mortgagee might require a concrete road?

A. Not in these instances.

Q. Do you know what the mortgagee would require in these instances?

A. No. I have talked with Mr. Hesselbarth (?) on this particular subject. He is, I believe, the original director for the FHA in Pittsburgh. He is the man whose name is noted on any document in Johnstown. All he wanted for these people up here was some assurance there would be something there in the way of streets, the minimum requirement, which would be maintained by the township.

Q. It would have to be maintained what the court would consider in case of a mandamus proceeding such a road reasonably passable in that community?

A. This is only a proceeding to see if there is anything ~~wrong~~ basically the matter with this map.



Q. You know, Mr. Saylor, that the owner could present a petition for the opening of a road under the old Act of 1936, that is, for the appointment of viewers?

A. They can't do it unless then have a recorded map to go by.

Q. I haven't made myself clear. I understand it is contended by some at least this is the only procedure that could be had to have these roads or streets improved. Now, there can be a proceeding under the Act of 1936 by the appointment of viewers?

A. I suppose that is correct, yes.

Q. Don't you know that has been many times done in Upper Yoder Township?

A. Yes, but we could have obviated that here. I told you I would have the Berkleys give a deed for the streets to the township. You said you couldn't take a deed for the streets.

Q. You say the Berkleys were in no sense promoters when that map was made in 1941. It was made as the name indicates, for the Harry E. Berkley Estate?

A. That is right.

Q. When did Mr. Berkley die?

A. In 1935.

A. A. WALKER, called on part of appellants, sworn.

DIRECT EXAMINATION BY MR. HARKINS:

Q. Where do you live?

A. 405 South Clearfield Street, Upper Yoder Township.

Q. Is that address Johnstown?

A. Yes.

Q. How long have you lived in the Johnstown area?

A. December 3 of this year it will be 51 years.

Q. Are you the owner of any real estate in this county?

A. The only thing I own is on South Clearfield Street.

Q. Is that on the plan of lots in question in this case?

A. Yes.

Q. What lot do you own?

A. 271 on Clearfield Street.

Q. Did you build a house on it?

A. Yes, we were the first house in the Berkley plan, the first people to move in.

Q. Is your wife's name on the deed?

A. Yes. I have the deed.

Q. Are you one of the petitioners in this case?

A. Yes.

Q. Did your wife sign this petition?

A. Yes.

Q. Is that her signature?

A. Yes.

Q. Do you know how many houses are built on the south side of Atwood Street or Goucher Street?

A. Yes, sir.

Q. On the plan of lots in question in this suit?

A. Yes. On Derby Street there are two houses occupied and one foundation. On South Clearfield Street there are eight houses occupied; one just about completed, and four in different stages of construction. On Girard Street--it was Blair Street. I believe that street was changed whenever the streets were changed due to the duplication. There is on Girard Street one house occupied; three houses in the final stages of construction, and one foundation.

Q. Then according to my count, there would be 21 built, part of them occupied, and the others in various stages of construction?

A. That is right.

Q. As an owner of lot No. 271 have you been detrimentally affected in any way by the failure of the Board of Supervisors

of Upper Yoder Township to approve the plan of lots offered in evidence here today?

A. I have, sir.

Q. Explain to the court how that affected you?

A. I was affected in quite a large number of ways. The mere fact that before I can get anything into this plan of lots, we must have it accepted.

Q. What do you mean?

A. Most young people, young men and young women, that want to have a home, they can't get a home. They work day and night, get up at five o'clock in the morning, and neighbors loan them a light to work at night to build the house. They can't get a loan on there because the plan is not accepted by the Supervisors. Mr. and Mrs. Cowie were held up for a year and a half.

Q. Is Mrs. Cowie, his wife, here?

A. Yes.

Q. Is her husband, in spite of this obstacle, building his own house?

A. Yes. I hear him early in the morning; I see him late at night, as late as ten o'clock at night, working on his home to save money so they would have some covering and a roof over their head.

Q. Was there anything else detrimental to you?

A. Yes, I have a wife and child, and I would like for them to live in a community that is recognized as a community by the people in charge. I don't like to live any place that is not recognized, and very definitely this section is not recognized by the Supervisors of Upper Yoder Township.

Q. You mean you are not recognized that you are building on a street?

A. That is right.

Q. This proceeding was instituted about June 15, 1950. Had there been some negotiations to have this plan accepted prior

to that time?

A. I entered into it sometime about February of that year. I was invited to a meeting with some of the men that formulated a group.

Q. Had there been a previous negotiation with the Board of Supervisors before this case was started?

A. Yes.

Q. Covering a period about how long?

A. I couldn't make a definite statement on that. I entered into it in February. Probably sixty or ninety days prior to the time I started into it.

BY MR. BARNHART:

We move to strike out the testimony of this witness as to alleged hardship suffered as being irrelevant and immaterial.

GRIFFITH, J.:

Overruled for the present. An exception is noted to the appellee.

CROSS-EXAMINATION BY MR. BARNHART:

Q. When you say you are one of the petitioners in this petition you mean the petition in the appeal from the refusal of the Supervisors to approve the plan of lots?

A. That is right.

Q. You don't mean in any sense you are a petitioner to have the plan approved?

A. This is the appeal from the refusal.

Q. Mr. Locher was the one who presented the matter and asked that it be approved?

A. I think it was a very good move.

Q. You understood Mr. Locher presented that plan for approval?

A. Yes, sir, that is from the testimony here in court.

ON FRIDAY, MAY 4, 1951, AT 9:30 O'CLOCK A. M. HEARING  
RESUMED.

BEFORE McKENPICK, J., and GRIFFITH, J.

BY MR. HARKINS:

If your Honors please, counsel for appellant offer in evidence the Beechwood Park revised plan of lots, recorded in Plat Book volume 3, page 124, records of Cambria County, Pennsylvania, which shows a plan of lots situate in Upper Yoder Township; the plan is dated October 2, 1939; it was approved by the City Planning Commission on December 28, 1939, and approved by the Upper Yoder Township Board of Supervisors on December 28, 1939. The purpose of the offer is to show that this Board of Supervisors with reference to the Beechwood Park Revised Plan of Lots now offered in evidence approved that plan of lots; and this offer will be followed by proof that many deeds covering lots on that plan had been made and recorded in this county before they approved the plan of lots. One of the reasons they gave that they could not approve the Berkley plan was that lots had been sold before the plan was approved. It is offered for the purpose of proving that they did approve a plan of lots after many lots had been sold from that plan.

BY MR. BARNHART:

We object for the reason it is incompetent, irrelevant and immaterial. This Beechwood Park plan was not a part or in anywise connected with the Berkley plan, and if the supervisors did approve this plan at one time, it would have no relevancy here. However, I suppose the court had better take it and get the whole picture.

BY MR. HARKINS:

The objection made by counsel for the appellee has been

constantly that the supervisors could not approve the plan because Berkleys have laid out street and sold lots on it before the plan was approved. This offer is made for the purpose of showing this same Board of Supervisors approved this Beechwood Park revised plan of lots after a number of lots had been sold by description referring to that revised plan, and it is offered for the purpose of showing they are acting in an arbitrary manner and beyond their discretion.

BY MR. BARNHART:

I do not admit I took the position I did take. It seems to me that if the supervisors did approve some other plan entirely separate and apart from this plan, it could have no bearing on this particular plan. If they were right in approving those other plans, well and good; but if they were wrong, I cannot understand what bearing that would have here. It has nothing to do with the Berkley plan.

GRIFFITH, J.:

It might ten to show that they were inconsistent in their actions. If it did happen the way Mr. Harkins suggests that they approved another plan after lots were sold, and they gave as a reason for not approving this plan that lots were sold before approval of the plan, it might be material.

BY MR. HARKINS:

We add to our offer the statement that the statement to this plan of lots was the fact that the Berkley Estate by laying out a plan of lots and selling the lots showing streets and so forth without having it first approved by the supervisors was illegal and therefore the board of supervisors had no right to approve the plan, and we refer to the first paragraph of the answer in which it states: "It is averred that Harry E. Berkley Estate was without authority in laying out said Plan of Lots. Prior to the said Plan dated April 21, 1941, the said Harry E.

Berkley had laid out a Plan of Lots, being Plan of Lots laid out by Harry E. Berkley situate in Upper Yoder Township, Cambria County, Pennsylvania, September 27, 1922, by Fetterman Engineering Company, covering the same ground in which the streets and alleys thereon were differently located than were the streets and alleys of the said Plan of April 21, 1941. That after September 27, 1922, and before April 21, 1941, many lots on the plan of September 27, 1922 had been sold either by the said Harry E. Berley, or by the Harry E. Berkley Estate, and the purchasers of said lots, or their successors in title, had acquired property rights in the said streets and alleys on said Plan of 1922, which entitled them to have the streets and alleys so dedicated remain open forever; and the laying out of said Plan of April 21, 1941 was in violation of the rights of the owners of lots on the Plan of September 27, 1922, and illegal. Further answering the petitioners, the Supervisors have no authority under the law to approve the Plan of April 21, 1941, and it would be unlawful for them to do so." That is the reason we are offering this Beechwood Plan of Lots to show they approved that plan after deeds were made for lots in that plan.

BY MR. BARNHART:

This shows we object to the plan of 1941 and among other things say they had the plan of 1922, which is appellee's exhibit No. 1, which plan shows lots had been sold, and therefore the purchasers of those lots acquired rights in those streets and alleys. I can't see any admission here that would permit them to offer this Beechwood plan.

GRIFFITH, J.:

Overrule objection. Let it be admitted. Exception to the appellee.

BY MR. HARKINS:

In connection with that offer we offer in evidence record of deed C. C. McLain to Rober C. Lengel, dated November 1, 1939, and recorded November 3, 1939, in Deed Book volume 491, page 238. That deed conveys lot No. 20 on Beechwood Park Addition laid out by C. C. McLain October 2, 1939, fronting 70.78 feet on Goucher Street. We call attention to the fact that Upper Yoder Township Supervisors approved this plan December 28, 1939. That deed was dated November 1, 1939, recorded November 3, 1939.

BY MR. BARNHART:

Objected to as being incompetent, irrelevant, immaterial and inadmissible.

GRIFFITH, J.:

Overrule objection. Exception to appellees.

BY MR. HARKINS:

We offer in evidence record of deed of C. C. McLain to Blake W. Olmstead and wife, dated November 9, 1939, and recorded November 13, 1939, in Deed Book volume 491, page 268, in the records of Cambria County. That deed conveys not No. 21 on the plan of Beechwood Addition laid out by C. C. McLain, dated October 2, 1939, situate at the corner of Luzerne Street and Goucher Street. We call the court's attention to the fact that the supervisors approved the plan December 28, 1939. That deed was made November 9, 1939 and recorded November 13, 1939.

BY MR. BARNHART:

Same objection.

BY THE COURT:

Same ruling. Exception to appellees.

BY MR. HARKINS:

We offer in evidence at this time the following recorded



plans which have been approved by the Supervisors of Upper Yoder Township, Cambria County, Pennsylvania: The first offer is a plan of John K. Miller Layout of Subdivisions, recorded in Plat Book volume 3, page 90; the land is situate in Upper Yoder Township and Borough of Westmont; the plan is dated July 14, 1934, and was approved by the City Planning Commission August 1, 1934; approved by Upper Yoder Township Supervisors and recorded on the 3rd of February, 1936. This offer is made for the purpose of showing that the supervisors have approved a plan of lots which does not include all of the various details proposed to be included under a resolution of the Township of Upper Yoder which was adopted on August 26, 1950; and to show that having approved this Miller layout of the following plan with no reference to drainage facilities and all of the other matters referred to in this new resolution of August 26, 1950, that the refusal to approve the Berkley plan is an abuse of their discretion.

BY MR. BARNHART:

Same objection.

BRIFFITH, J.:

Same ruling. Exception to appellees.

BY MR. HARKINS:

We offer in evidence the plan of Beechwood Park, Revised Plan No. 1, Cherokee Lane Section, recorded in Plat Book Vol. 3, page 120, situate in Upper Yoder Township; plan dated May 26, 1938, approved by the City Planning Commission August 26, 1938; recorded 24th August, 1939. That plan is offered in evidence for the same reason as the plan included in the preceding offer.

BY MR. BARNHART:

Same objection.

BY THE COURT:

Same ruling. Exception to appellees.

BY MR. HARKINS:

We desire to offer in evidence the records of 21 plans of lots covering property in Upper Yoder Township, Cambria County, Pennsylvania. All these plans have been approved by the City Planning Commission, all having been made after the 25th of April, the date upon which the Act of Assembly in question became effective; and the offers are made for the purpose of showing that in the entire township of Upper Yoder not one of those plans of lots ever had on it the detailed information and material that is now requested before the approval of this Berkley plan which was of record at the same time either before or after many of these 21 plans were recorded, and the failure of the board now to approve the Berkley plan of lots, which is similar in all details with the other 21 plans referred to, shows an abuse of discretion in this case.

GRIFFITH, J.:

Had the supervisors approved those plans?

BY MR. HARKINS:

The supervisors did not approve those plans.

BY MR. BARNHART:

The same objection, and this additional objection, namely, it does not appear that the supervisors approved any of the plans now offered in evidence.

BY MR. HARKINS:

This is entirely proper for the reason I have examined every Plat Book in Cambria County. I have worked on them for over 25 years, and I haven't seen a plan, approved or not approved, in the entire county that has in it what the supervisors of Upper Yoder Township now require.

BY MR. BARNHART:

We have the act of 1933 in question. This section 1140  
27(c)

provides for certain things to be done in order that there be some connection with the surrounding territory--proper drainage, proper curbs, and all that--so the thing doesn't wind up in being a conglomeration of lots up there that would lead to endless trouble not only as to sewage, but to curbs and everything. The act of 1933 wasn't in effect at all when some of the alleged acts were done, but it does seem to me even though the supervisors had not done what those acts require, ever after the time of the 1933 Act, it does close the door from them ever getting on the right track.

BY THE COURT, GRIFFITH, J.:

It wouldn't be controlling, but it might have some weight.

BY MR. HARKINS:

We say their refusal to approve the Berkley plan<sup>and</sup> by passing this resolution after we applied for approval to tie us down to something that was never heard of, never used, and not in these other plans, is an abuse of discretion. I feel if the board of supervisors had acted properly without any abuse of discretion, and without evidence of using this plan and the people involved in it a little differently from anybody else in the district, they would have been right; but we argue in this case this action of this board with reference to the Berkleys has been constantly and continuously oppressive and different treatment accorded to the Berkleys and their plan of lots than any other plan of lots in this county, some of which have been approved by the board and some of which they didn't pay any attention to.

BY MR. BARNHART:

This was the first one ever referred to me, and I am trying

to do it right. It is a discretion logically with the supervisors, and I don't think anybody has a right to set that discretion aside. We only want to comply with the law.

GRIFFITH, J.:

For the present we overrule the objection. An exception is noted to the appellees.

BY MR. HARKINS:

We are calling Mr. Curtis Barnhart as if upon cross-examination.

CURTIS BARNHART, called as if upon cross-examination, sworn.

CROSS-EXAMINATION BY MR. HARKINS:

Q. Where do you live?

A. 130 Berkley Road, Johnstown, Upper Yoder Township.

Q. Are you an official of that township?

A. I am supervisor.

Q. Have you any official position on the board of supervisors?

A. I am secretary.

Q. How long have you been secretary of the board?

A. Fourteen years.

Q. Were you secretary of that board continuously during the past fourteen years?

A. Yes.

Q. Were you a member of that board continuously during the past fourteen years?

A. Yes.

Q. Do you have before you a letter dated May 15, 1950, signed by S. E. Dickey & Company, Upper Yoder Township Engineers?

A. I do.

BY MR. HARKINS:

This is an official communication of the township. I am going to offer this appellant's exhibit No. 2, and ask leave to substitute a copy. I am offering in evidence letter of May 15, 1950, addressed to Mr. Curt Barnhart, Secretary Upper Yoder Township Supervisors, signed by S. E. Dickey & Company, Upper Yoder Township Engineers, by T. L. Locher, Vice President.

BY MR. BARNHART:

Objected to as being incompetent, irrelevant, immaterial and inadmissible.

GRIFFITH, J.:

Objection overruled. Exception to appellees.

BY MR. HARKINS:

I will read it:

"May 15, 1950. Mr. Curt Barnhart, Secretary Upper Yoder Township Supervisors 216 Dibert Street Johnstown, Pennsylvania  
Dear Mr. Barnhart: Harry E. Berley Estate Plan of lots  
In re the above subject we are submitting the original tracing for the Board of Supervisors' approval, as to the layout of lots and streets. We have checked this plan as per layout and we approve it as such. The drainage question and the acceptance of the streets is a matter to be brought up at some future time, as there is some question as to the responsibility of drainage through the golf course. It is our understanding that the approval of this plan does not obligate the board of Supervisors in any way, as to responsibility in the streets or in the drainage. This matter should be taken up with the township's Solicitor for his legal ruling. Yours very truly S. E. Dickey & Company Upper Yoder Twp. Engineers by T. L. Locher Vice President."

Q. Do you recall on the date of that letter there was a regular meeting of the board of supervisors?

A. There was.

Q. Do you recall at the time the letter was presented at that meeting a tracing of this plan that is in controversy in this suit was presented?

A. Yes.

Q. And you had that plan in your possession that night?

A. Yes.

Q. And Mr. Locher as township engineer had sign the township engineer's approval on that tracing?

A. That is right.

Q. You continued to have that tracing in your possession for a considerable length of time?

A. For about one day, and then we turned it over to our solicitor for his approval or disapproval.

Q. Mr. Barnhart, prior to the time when that plan was submitted on May 15, 1950, did your Board of Supervisors to your knowledge have any resolution relative to the plan of lots which would be approved by your board?

A. No.

Q. Do you have with you today a copy of the original of the letter which I addressed to the board of supervisors on August 7, 1950?

A. Yes.

Q. Mr. Barnhart prior to May 15, 1950, to your knowledge did the board of supervisors of Upper Yoder Township have any resolution specifying in any way whatever the type of plan of lots which would be approved by the board or which would not be approved by the board?

BY MR. BARNHART:

Objected to as incompetent, irrelevant and immaterial.

McKENRICK, J.:

Q. Had you formerly put on your books any resolution prescribing the form of plans and the character of highways required for approval or lacking such requirements?

A. We didn't write into our minute books, but we do have the State law books in our possession and we try to live up to them.

BY MR. HARKINS:

We ask that be stricken from the record. It is not responsive.

McKENRICK, J.:

Q. Had the supervisors up to that time prescribed any layout of streets with reference to any law?

A. No.

BY MR. HARKINS:

Q. Did you produce that letter of August 7, 1950?

A. I have it here.

BY MR. HARKINS:

I ask leave to substitute a copy of this letter referred to by the witness, and mark it appellant's exhibit No. 3, which I now offer in evidence.

BY MR. BARNHART:

Objected to as incompetent, irrelevant, immaterial and inadmissible.

GRIFFITH, J.:

Objection overruled. An exception is noted to appellees.

BY MR. HARKINS:

"August 7, 1950 Board of Supervisors of Upper Yoder Township Cambria County, Pennsylvania Gentlemen: We represent a large number of persons who are owners of lots of land or who have interests in lots of land which are marked, shown and designated on a Plan of Lots laid out for the Harry E. Berley Estate, in Upper Yoder Township, Cambria County, Pennsylvania, by the Fetterman Engineering Company under date of April 21, 1941, which said plan was approved by the City Planning Commission of the City of Johnstown, Cambria County, Pennsylvania, on the 2nd day of May, 1941. We have been advised that the original tracing of said plan was submitted to the Board of Supervisors of Upper Yoder Township, Cambria County, Pennsylvania, for approval as to the layout of lots and streets. We are informed that your Board,



or the Secretary thereof, now has the original tracing of said plan. This notice is being given to you by us as attorneys for the owners of lots shown upon said plan, requesting the Board of Supervisors of Upper Yoder Township, Cambria County, Pennsylvania, to approve said plan hereinabove mentioned. We want this notice to be understood as a formal presentation of that plan for approval by the Board of Supervisors of Upper Yoder Township, Cambria County, Pennsylvania. In the event that we receive no word from you, notifying us that the plan has been approved, or notifying us that the plan has not been approved, on or before the 14th day of August, 1950, your failure to so notify us will be considered by us as a refusal on the part of the Board of Supervisors of Upper Yoder Township, Cambria County, Pennsylvania, to approve said plan of lots. Very truly yours, Harkins and Wharton."

BY MR. BARNHART:

The witness wants to supplement his answer as no.

BY MR. HARKINS:

Q. Did you receive that <sup>original</sup> letter, the copy of which is marked appellant's exhibit No. 3?

A. I did.

Q. Did you receive it on the same day it was written, that is, 7th of August, 1950.

A. Yes, on the same day.

BY MR. BARNHART:

I want for him to get an opportunity to answer that question and explain it.

BY MR. HARKINS:

Q. Is there something you want to add or explain with reference to anything I asked you?

A. It is not directly in connection with your question.

BY MR. HARKINS:

I object to anything that is not directly in connection with my question.

BY MR. HARKINS:

Q. As secretary of the board of supervisors of Upper Yoder Township, Cambria County, Pennsylvania, you have charge and custody of the records of that board?

A. I have.

Q. Have you been at all of the meetings of that board since the 7th of August, 1950?

A. Yes.

Q. Have you been at all of the meetings of that board since May 15, 1950?

A. I have.

Q. Prior to the 15th of August, 1950, did the board of supervisors of Upper Yoder Township, Cambria County, Pennsylvania, take official action approving the plan that had been submitted on May 15, 1950?

A. They did not.

Q. Did the board of supervisors of Upper Yoder Township, Cambria County, Pennsylvania, take official action prior to the 15th of August, 1950, whereby they refused to approve that plan up until the time?

A. Yes, but I can't say the date. It is in the minute book.

Q. Was that action taken before August 15, 1950?

A. It was taken three or four times. The Berkley Estate to this day has never asked us to approve a plan.

BY MR. HARKINS:

We ask that answer be stricken from the record. It is not responsive to the question.

GRIFFITH, J.: I believe that is responsive.

BY MR. HARKINS:

Q. Mr. Barnhart; after May 15, 1950, and prior to August 15, 1950, did the board of Supervisors of Upper Yoder Township, Cambria County, Pennsylvania, take any official board action refusing to approve the plan, the tracing of which was submitted to your board on May 15, 1950?

A. Yes, we did.

Q. On what date?

A. June 5, 1950. On the minute book, a letter from S.E. Dickey & company, signed by T. L. Locher concerning the Berkley plan of lots was read and turned over to our solicitor.

BY MR. HARKINS:

We move to strike that out as not being responsive to my question. I asked him if the board did approve it or didn't approve it.

GRIFFITH, J.:

We sustain the motion. An exception is noted to appellee.

BY MR. HARKINS:

Q. Now, Mr. Barnhart, to help you and all of us--do you have any other board action or record of board action between May 15, 1950, and August 15, 1950, relative to the approval or the disapproval of that tracing that had been submitted to you on May 15, 1950?

A. Not until September 11, a letter from Attorney Harkins.

Q. Not until September 11, is that your answer?

A. I believe it is.

Q. In between those two dates there are none?

A. Beg your pardon, on August 7.

Q. Does that have any bearing on the approval or disapproval of the plan submitted?

A. It has. It directs our solicitor to prepare a resolution

and submit it to the supervisors.

BY MR. HARKINS:

We move to strike that out as having no bearing on the matter asked about.

BY MR. HARKINS:

Q. Is this correct: From May 15 to August 15, 1950, the board of supervisors of Upper Yoder Township, Cambria County, Pennsylvania, did not take official action approving the tracing or plan that had been submitted to you on May 15, 1950?

A. That is right, we didn't.

Q. Is it correct that your board did not take any official action between May 15 and August 15, 1950, refusing to approve the plan, <sup>the</sup>~~an~~ tracing of which had been submitted to you on May 15, 1950?

A. It is pretty hard to say yes or no because of this correspondence and minutes. We have discussed it time and again.

Q. I will repeat the last question: Is it correct that your board did not take any official action between May 15 and August 15, 1950, refusing to approve the plan, the tracing of which had been submitted to you on May 15, 1950?

A. I would say they did not.

DIRECT-EXAMINATION BY MR. BARNHART:

Q. Will you state whether or not your board caused me to write a letter to Mr. Harkins under date of August 14, 1950, marked for identification appellees' exhibit No. 2?

A. Yes.

BY MR. BARNHART:

We offer in evidence in connection with the evidence of the witness appellees' exhibit No. 2, identified by the witness.

BY MR. HARKINS:

We have no objection to the offer. It was received by us.

GRIFFITH, J.:

Let it be admitted.

BY MR. BARNHART:

Q. Do you have any record in your minutes prior to August 14, 1950, with reference to this matter mentioned in the letter?

A. That was at a special meeting. It was between August 1 and September 6. We passed it I am sure. This has all been audited by our auditors. I don't have it. I do know it was done.

BY MR. HARKINS:

Q. What was done?

A. The action of the board prior to this letter of August 14 in respect to this letter of August 14 as to the application mentioned in the letter.

BY MR. BARNHART:

Q. Will you state whether or not the board took any action under date of September 6, 1949, relative to this Berkley plot?

BY MR. HARKINS:

Objected to as not relating to the present matter before the court but relating to a matter entirely separate and distinct. I would like to read into the record the following certificate of the witness signed by him and the seal of the township affixed. The following paragraph was taken from the minutes of a meeting held April 4, 1949: "A new petition from the residents and lot owners in the Berkley sub-division, in which they asked that various road be taken over as Township roads, was presented at this meeting, and ordered turned over to our solicitor for a decision as to the legality." We object because the witness now proposes to discuss a matter which is not relevant in this proceeding. This is a proceeding to have a plan of lots approved. The matter to which the witness refers relates to the

acceptance of township roads; therefore, it is incompetent, irrelevant and immaterial.

GRIFFITH, J.:

Overrule objection. An exception is noted to appellant.

A. Yes, the board took this action: "A written opinion from our solicitor, concerning the legality of the roads as changed from the original plans by the Harry E. Berkley Estate, was read and discussed, and it was finally decided to table the information until such time that the attorneys for the Berkley Estate and Upper Yoder Township can agree."

BY MR. BARNHART:

Q. What was the matter up then for consideration that minute refers to?

BY MR. HARKINS:

Objected to as being a matter in writing and the writing is the best evidence, and the additional reason it does not relate to the present application.

GRIFFITH, J.:

Overrule objection. An exception is noted to appellant.

A. It seems this certain portion of ground owned by the Berkley Estate is situate in a spot--(interrupted).

BY MR. HARKINS:

We object to that.

GRIFFITH, J.:

Objection sustained. Exception is noted to appellees.

BY MR. BARNHART:

Q. Just what the meeting pertained to. What happened at the meeting?

A. We discussed the layout of the thing and it didn't meet

with the requirements as printed in our state code.

Q. Do you refer to the Act of 1933?

A. I do.

Q. Is that what that meeting pertained to?

A. That is all; nothing else.

BY MR. HARKINS:

We move to strike out the testimony of the witness and the last two answers, and ask leave to question him about his records.

BY MR. HARKINS:

Q. You have reference to a resolution or some motion of September 6, 1949; is that correct?

A. Yes.

Q. Do you have your book there showing the minutes of the meeting of April 4, 1949?

A. Yes.

Q. Will you read to the court what official action was taken April 4, 1949? What does the book say about it?

A. It says a new petition from the residents and lots owners in the Berkley sub-division, in which they asked that various roads be taken over as Township roads, was presented at this meeting, and ordered turned over to our solicitor for a decision as to the legality.

Q. That other motion that you referred to on September 6 related to the same matter?

A. Yes.

BY MR. HARKINS:

I move to strike it out and add to the objection that it is incompetent, irrelevant and immaterial.

GRIFFITH, J.:

We deny the motion. Exception to appellant.

BY MR. HARKINS:

We desire to offer in evidence at this time the original petition for the purpose of showing that the appeal was filed on the 15th of June, 1950, and for the purpose of showing that the decree relative to the notice of hearing was dated the 15th of June, 1950.

Mr. Barnhart, can it be stipulated that notice of the appeal setting forth the time and place of hearing was properly given and accepted?

BY MR. BARNHART:

Is that necessary?

BY MR. HARKINS:

You were at that meeting.

BY MR. BARNHART:

Yes.

WILLIAM B. COWIE, called on part of appellants, sworn.

DIRECT EXAMINATION BY MR. HARKINS:

Q. Where do you live?

A. 26 Hickory Lane, Upper Yoder Township.

Q. Do you own your own home?

A. I am building my home at the present time.

Q. You and your wife own the lot?

A. Yes.

Q. Are you familiar with the location of the lots and streets and so forth as shown on this Berkley plan of lots recorded in Plat Book volume 4, at page 68?

A. I am.

Q. Does it show Blair Street?

A. It does.

Q. Does it show Clearfield Street?

A. Yes.



Q. Does it show Derby Street?

A. Yes.

Q. Can you tell us of your own knowledge approximately how many homes or houses are built fronting on Blair Street on lots shown on that map, both occupied and under construction?

A. There are two occupied; six in various stages of construction.

Q. Both sides of Blair Street?

A. Yes.

Q. Refer to Clearfield; what is the situation with respect to both sides of Clearfield Street as to the number of residences built or being constructed there?

A. I believe there are none occupied. Two in the course of construction.

Q. Will you state the condition of Derby Street with reference to buildings erected or being constructed thereon?

A. Two are occupied and one under construction at the present time.

Q. Is this land shown by that plan of lots in a built-up section of the Johnstown section of the city area?

BY MR. BARNHART:

In order to avoid loss of time, we did not object originally to each question, but now move that the testimony as to the number of houses erected or in the process of erection be stricken from the record as being incompetent, irrelevant, immaterial and inadmissible.

GRIFFITH, J.:

Motion refused. Exception to appellee.

A. I don't understand the question.

BY MR. HARKINS:

Q. Was this farm land originally?

A. It has been up until the last few years in the past. It

has been developed and it has been built up, as well as the surrounding territory.

Q. Is this land situated near the Municipal Golf Course?

A. It is adjacent to it at one side.

Q. Does Goucher Street extend from the point on this map toward Westmont borough and reaches the borough of Westmont at Menoher Boulevard?

A. Yes.

Q. It is Atwood Street on the map, but it is now Goucher Street?

A. Yes.

Q. Is this land situate in a part of the Johnstown City area which is rapidly building up as a residence district?

A. Yes, it is.

Q. You live on Hickory Lane?

A. Yes.

Q. How far is it situate from the plan of lots you are looking at?

A. One block from the plan.

Q. Is the land within one block of this plan built up?

A. Yes, partly built and partly being built.

Q. Are you familiar with the fact there has been some effort made to have the plan approved by the supervisors?

A. Very familiar.

Q. Are you familiar with the fact that the plan does show the location of certain streets and alleys?

A. Yes.

Q. Are you familiar with the fact an effort has been made to have that plan approved so that later on there may be streets and alleys in that plan?

A. Yes.

Q. Do you and your wife now own any lot on the plan you are

looking at?

A. Yes. Lot No. 261.

Q. Where is it located?

A. On the corner of South Blair and Rodney Streets.

Q. You say you are building a house on Hickory Lane?

A. No, I am building a house on this lot 261.

Q. Have you had any inconvenience by reason of the fact this plan has not been approved by the township of Upper Yoder?

A. Yes.

Q. Just explain that. What happened?

A. The main issue we applied for an FHA loan at two different times, and after spending quite a bit of money on that getting extra plans and meeting other various requirements and waste in months, they finally came back rejected for one reason that was not directly connected here, but it all has a bearing on it; one time they specified the streets should be in the plot; the second time they changed it, that streets should be accepted by the township. That was their answer and that all directly hinges in this case.

Q. Did you apply for an FHA loan to more than one institution?

A. I did.

Q. What were the institutions; what banks or building and loans?

A. Cambrie Building and Loan and from Felix Hesse(?).

Q. Was your application refused in both cases?

A. That is right.

Q. Are you going ahead with your building?

A. Yes.

Q. Are you handicapped by the fact this plan has not been approved?

A. Yes.

Q. Can you get a loan other than from FHA on this lot?

A. I have.

Q. Is the loan you got from other sources as beneficial to you as FHA would have been?

A. No.

Q. Would it be easier for you to build and finance your home if you were permitted to get an FHA loan than the loan you have obtained?

A. Much easier.

Q. Would that make it possible for you to proceed more quickly with the development of your lot?

A. Yes.

BY MR. BARNHART:

I purposely did not offer objection during the examination, but while the witness is on the stand I move to strike out his testimony as being incompetent, irrelevant, immaterial and inadmissible.

McKENRICK, J.:

Q. Are you a party to this appeal?

A. Yes.

McKENRICK, J.:

Likely this is to show he was a person aggrieved?

BY MR. HARKINS:

Yes.

McKENRICK, J.:

Motion denied. Exception to appellee.

PAUL E. ROBEL, called on part of appellants, sworn.

DIRECT EXAMINATION BY MR. HARKINS:

Q. Where do you live?

A. 411 South Clearfield Street.

Q. Are you familiar with the location of the land shown on

plan of lots recorded in Cambria County in Plat Book volume 4,  
at page 68?

A. I am.

Q. Is that the plan in front of you on the witness-stand?

A. Yes, sir.

Q. Is your house within the lines of that plan?

A. Yes.

Q. What lot number do you own?

A. 275 and one-half of 274.

Q. Have you built a house on it?

A. Yes.

Q. Are you familiar with the fact there was an effort made  
to have this plan approved by the supervisors?

A. Yes.

Q. Have you suffered any inconvenience by reason of their  
failure to approve that plan?

A. Yes.

Q. What was that?

A. I built up there thinking that everything would come  
through, and after we built up there I tried to get water in,  
and there were three houses occupied at the time, and we went to  
the water company to try to get a man to put the pipe in, and  
he said they would, and later on Mr. Owens(?) said he talked to  
some official in Upper Yoder Township and they would not put a  
main in up there and wouldn't give us water because the plan  
wasn't accepted.

Q. Wasn't approved?

A. That is right.

Q. Has that caused you any inconvenience?

A. Yes.

Q. Did that attitude of the company and of the supervisors  
impede the building of residences in that plan of lots?

A. Yes.

Q. Is that a desirable place to build a home?

A. I would say it is.

Q. Has this failure to approve this plan kept the people from building homes in that location?

A. Yes, it has.

BY MR. BARNHART:

I have not objected to the questions and answers, but while the witness is on the stand I move to strike his testimony from the record because it is incompetent, irrelevant and immaterial.

GRIFFITH, J.:

Motion denied. Exception to appellee.

ESTHER HARTNETT, called on part of appellants, sworn.

DIRECT EXAMINATION BY MR. HARKINS:

Q. Where do you live?

A. South Clearfield Street.

Q. Are you familiar with the location of the land described in the Berkley plan of lots which is recorded in Plat Book volume 4, at page 68?

A. Yes, sir.

Q. Is your home within the lines of that plan of lots?

A. Yes, lots numbers 301 and 302, Rodney and South Clearfield Streets.

Q. Are you familiar with the fact there has been difficulty relative to the approval of that plan of lots?

A. Yes.

Q. Do you know efforts have been made to have it approved?

A. Yes.

Q. And do you know the supervisors up until right now have not approved that plan?

A. Yes, sir.

Q. Do you know of any inconvenience suffered by owners of lots on that plan because of their failure to approve the plan?

A. Yes. My brother-in-law tried to get a GI loan and was refused.

Q. You and your husband have built a house?

A. Yes.

Q. How many houses on the street?

A. Nine, and two or three going up.

Q. On that one street you are on?

A. Yes.

Q. Is that a desirable residential area?

A. Yes, it is.

Q. Do you know as a fact the building up of that desirable residence area has been impeded by reason of this plan not being approved?

A. Yes.

BY MR. BARNHART:

I have purposely not interrupted the witness, but while the witness is on the stand I move to strike the witness' testimony from the record for the reason it is incompetent, irrelevant and immaterial.

McKENRICK, J.:

Deny the motion. Exception to appellee.

CURTIS BARNHART RECALLED FOR FURTHER CROSS-EXAMINATION.

RE-CROSS-EXAMINATION BY MR. HARKINS:

Q. Do you have your minute book?

A. Yes.

Q. I want you and I to understand one another first. When I ask you if you have taken official action to approve the plan of lots I mean did that motion or resolution come before the

board and they approved the plan. If I ask if you took official action to refuse to approve the plan I mean some one made a motion or resolution and it was voted upon that we will not approve the plan. Do you understand?

A. I understand.

Q. After August 15, 1950, did the board of supervisors of Upper Yoder Township until this date take official action approving the Berkley plan of lots in controversy in this suit?

A. No.

Q. From August 15, 1950, until this date, did the board of supervisors of Upper Yoder Township take official action stating we refuse to approve the plan of lots of the Berkley Estate?

A. We didn't.

Q. Do you have your minute book before you?

A. Yes.

Q. Will you refer to the meeting of August 26, 1950?

A. I have it.

Q. Would you care to read into the record the minutes of that meeting?

A. There is nothing in here concerning the Berkley Estate.

Q. Is there anything with reference to the Berkley plan of lots?

A. No.

Q. Is there anything in the minutes of the meeting of August 26, 1950, of the board of supervisors of Upper Yoder Township which relates to a resolution prohibiting the opening, construction or dedicating of roads, streets or alleys?

A. Yes.

Q. At that meeting there was a resolution passed by the board of supervisors relative to submission of plans for future development?

A. Yes.



Q. I had you copy of resolution and other papers delivered to me by Mr. Barnhart with his letter of August 28, 1950; will you look at it and say if it is a correct copy of the resolution adopted August 26, 1950?

A. It is.

Q. What is the date of this resolution you are speaking about?

A. August 26, 1950.

Q. And that is the day it was passed finally by the board of supervisors?

A. Yes, it was.

BY MR. HARKINS:

I am offering in evidence at this time a package of nine pages, which we will ask counsel to stipulate is a copy of the resolution, and also copies of the various applications relating thereto, which I request be identified as appellants' exhibit No. 4. In connection with the offer I offer appellant's exhibit No. 5, being a letter received from Mr. Barnhart relating to exhibit No. 4.

BY MR. BARNHART:

No objection.

GRIFFITH, J.:

Let it be admitted.

RECESS UNTIL 1:15 O'CLOCK P. M.

AFTERNOON SESSION..

BY MR. HARKINS:

I desire to offer in evidence appellants' exhibit No. 6, a letter I addressed to Mr. Barnhart under date of June 13, 1950. and ask leave to substitute a copy. Mr. Barnhart has the original.

BY MR. BARNHART:

We object to it as being incompetent, irrelevant and immaterial.

McKENRICK, J.:

Objection overruled. Exception to appellee.

CURTIS BARNHART recalled for further cross-examination.

CROSS-EXAMINATION BY MR. HARKINS CONT'D.:

Q. Who are the supervisors of Upper Yoder Township?

A. Blair Hunt, president, Curt Barnhart, secretary and D. H. Weimer.

Q. How long have those three men been members of the board to your knowledge?

A. I would say twelve years. I am not sure, but it is about twelve years.

Q. I show you a revised plan of part of the John K. Miller plan of lots in Upper Yoder Township, Cambria County, Pennsylvania, recorded February 13, 1951, in Plat Book volume 4, at page 117, records of Cambria County, and ask you to state whether or not that plan was approved by the Upper Yoder Township supervisors?

A. Yes, but it was approved for the purpose of abandoning this street. The attorneys advised the buyer of that and the seller they would like to have that on. We had no objection to the abandoning of Dickinson Street.

Q. This plan was approved by action of the supervisors?

A. Yes.

BY MR. HARKINS:

We offer in evidence plat referred to in Plat Book volume 4 at page 117.

BY MR. BARNHART:

Objected to as being incompetent, irrelevant, immaterial and inadmissible.

GRIFFITH, J.:

Overrule objection. Exception is noted to appellee.

DIRECT EXAMINATION BY MR. BARNHART:

Q. Explain what you mean by that statement that you approved <sup>this</sup> for the purpose of abandoning Dickinson Street. What was involved in that?

A. In 1927 John K. Miller laid out his entire farm. In 1933 there was an Act passed regarding approval. Sometime later, in 1937 or 1938, he asked the supervisors to approve the plan. It was laid out in 1927.

BY MR. HARKINS:

We object to this testimony. He was asked about a plan of lots approved in 1947

McKENRICK J.:

We will receive it subject to the objection. An exception is noted to appellants.

(Witness continues). This plan is part of the original big plan. Around that date a young man wanted to buy a section of ground. Two-thirds of it extends in width down over the hill. On the plan it shows Dickinson Street. Mr. Miller wanted to sell this entire plot. No ground was sold around this street, and I believe Tillman Saylor asked the court to abandon that portion of Dickinson Street. I believe the court advised them that they should also have it approved by the supervisors. Since the original plan was approved we approved this. That street was never opened.

Q. When did you approve this revised plan?

A. There is no date on it.

Q. When did you approve it?

A. I don't have the date.

Q. It is entered for record here February 13, 1951?

A. I think it was approved in January; it was around there.

GRIFFITH, J.:

Q. Is it a portion of the plan that was laid out prior to the Act of 1933?

A. The plan was drawn and laid out before 1933, and after 1933 they asked us to approve the plan, which we did. Incidentally, they are building their own streets and drainage and everything at their own expense.

McKENRICK, J.:

Q. The original plan was approved about when?

A. It was after 1933. It was done for the purpose of having the WPA build roads. We desired to put men to work at the time.

BY MR. HARKINS:

We move to strike out that testimony.

McKENRICK, J.:

Motion denied. Exception to appellants.

BY MR. HARKINS:

We have offered in evidence the plan of Beechwood Park, revised in 1939, and recorded in Plat Book volume 3, page 124, and in connection with that we offered in evidence two deeds which relate specifically to that revised plan. We now offer in evidence plan of Beechwood Park, dated March 18, 1937, and state to the court that the land embraced within this plan of March 18, 1937, recorded in Plat Book volume 4, page 69, is the same land as shown in Plat Book volume 3, page 124; so we offer in evidence the plan of 1937 recorded in Plat Book volume 4, at page 69.

BY MR. BARNHART:

Objected to as being incompetent, irrelevant, immaterial and inadmissible.

GRIFFITH, J.:

Overrule objection. Exception to appellee.

BY MR. HARKINS:

In connection with the last mentioned offer, we offer in evidence the record of the following deeds, all of which show that C. C. McLain had adopted this plan recorded in Plat Book volume 4, at page 69. He sold many lots therefrom prior to the date the plan of lots recorded in Plat Book volume 3, at page 124, was approved by the supervisors of Upper Yoder Township, Cambria County, Pennsylvania. There are a total of 36 deeds. I have a list of them; I have compared them, and I will make the offer and ask the reporter to copy them from our typed list.

BY MR. BARNHART:

These deeds form no part of the Berkley plan of lots.

BY MR. HARKINS:

That is correct. It is adjacent to the Miller plan.

BY MR. BARNHART:

The offer is objected to as being incompetent, irrelevant, immaterial and inadmissible.

GRIFFITH, J.:

Overrule objection. An exception is noted to appellee.

BY MR. HARKINS:

We rest.

CURTIS BARNHART called on part of appellee, having heretofore been sworn.

DIRECT EXAMINATION BY MR. BARNHART:

Q. You have testified you are a member of the board of supervisors and have been for twelve or fourteen years?

A. Yes.

Q. You are secretary as well as a member of the board?

A. I am.

Q. Will you state what requests or demands had been made upon you for the approval of these plans and opening of streets in the Berkley plan?

BY MR. HARKINS:

We object to the question including opening of streets, because those are two separate and distinct acts. It appears we are concerned with one only, the approval of the plan of lots. We object to any testimony relative to the opening of streets as being immaterial, irrelevant and inadmissible.

BY MR. BARNHART:

The very act we are talking about provides as follows: "No person shall construct, open, or dedicate any road, street, lane or alley," and so forth. We desire to show what they did request. It is part of the history of the whole matter.

McKENRICK, J.:

We overrule the objection. Exception noted to appellants.

A. In the early part of 1949, William Beam, a son-in-law of Harry Berkley, brought a petition in to me and I presented it to the supervisors, asking us to open and construct streets in the Berkley plan of lots. It didn't ask us to accept a plan. I believe it was twice in the same year. They did it again in the early part of 1950, but only to the extent of asking us to

open streets, not accept a plan or pass on it in any way--just open streets. We knew nothing about a request for having the plan approved until the middle of last summer--I believe July--when the residents of that section had Mr. Locher present us with a tracing to have it signed by the supervisors. We talked it over and handed it on to our solicitor for advice, and the result from there on is this suit.

Q. Was that letter of Mr. Locher dated May 15, 1950?

A. Yes.

Q. Was this plan in duplicate?

A. Just a single plan. There was a place on it for our approval. Mr. Locher signed below. He is not required to, but he signed it anyhow.

Q. Did you make any explanation to Mr. Locher as to not meeting the requirements of the Act of 1933?

A. We told him we had discussed that quite often and it didn't meet the requirements of the Act, and I myself had two sessions with the Berkleys themselves up at their home. I tried to get them to present it in a proper way. Each time they said they would, but they didn't, and I told Mr. Locher we would hand it on to our solicitor.

Q. Did you state to Mr. Locher prior to that your solicitor advised you it didn't comply with the Act of 1933?

A. Yes, we did.

Q. Did you state to him as to the fairness to the other people of the township?

A. Yes. I called his attention to the Beechwood section. This famous McLain, he had a total of three-fourths of a mile of road put in and a mile and a half of sewage. That was all put in without expense to the township. That section incidentally was approved by us. It was all improved without expense to the township.

Q. Had your State Township Association done anything upon this matter under the Act of 1933, and was that brought to your attention?

A. That was discussed at a supervisors' convention in Philadelphia, I believe in January, 1950. There was a discussion by the State Secretary of the Association, and they had a question and answer period, and they attempted in some way to get around some of the things these owners were doing. They will not back up the work they start.

Q. Were you informed as to what the practice was in the eastern part of the State as to the improvement of roads in plans of lots?

A. The State Secretary explained to the gathering--about 400 there--the reason for the Act. He said that there were great farms laid out by promoters who would sell lots and pull out and let the township build the roads at the other taxpayers expense, and this act was designed to prevent such procedure. That was his opinion.

Q. Did you get a copy of the rules and regulations that they had been using and from which you prepared your rules and regulations that Mr. Harkins has offered in evidence?

BY MR. HARKINS:

May I put a general objection ~~fixxx~~ as to all this testimony? I consider it irrelevant and immaterial.

(Witness) A. We got a copy of another township. It is considerably larger than ours, probably richer. We used that as a guide to make our own resolution. In their resolution they ask for real good streets--some of them paved with concrete or macadam, and so on; twenty feet wide; sanitary sewers placed under them. We modified ours. All those nine pages handed in here, eight of them are procedure to follow, such as an application for approval. There is only one page in those sheets that pertains



at all to the structure of the road. We are going to allow as cheap a road as six inches of red dog. The resolution we copied from demanded ten inches of stone and two of macadam, or six inches of concrete. We modified it and made it as cheap as would be reasonable. It is a very cheap construction. We ought to be ashamed of ourselves.

Q. I will show you appellee's exhibit No. 3 and ask you whether those are the rules and regulations you got through the State Secretary and which you used in connection with the preparation of your rules and regulations that have been offered in evidence here?

A. Yes, this is it.

BY MR. BARNHART:

We offer in evidence appellee's exhibit No. 3.

BY MR. HARKINS:

Objected to as having no bearing whatever on this case. You might as well offer in evidence in a school law case something some bunch of teachers adopted in Philadelphia or Pittsburgh.

BY MR. BARNHART:

I don't think it is admissible if it is objected to.

GRIFFITH, J.:

Objection sustained. Exception to appellees.

BY MR. BARNHART:

Q. You have been asked here as to this letter of June 13, 1950, offered here by appellants, marked appellants' exhibit No. 6; was that meeting held?

A. Yes.

Q. Where was the meeting held?

A. At the office of Frank P. Barnhart.

BY MR. HARKINS:

We object to any meetings except the meetings of the board of supervisors.

BY MR. BARNHART:

Even Mr. Harkins representing the appellants was present.

GRIFFITH, J.:

Overrule objection. Exception to appellants.

A. I was present at that meeting. We tried to agree on something, possibly going back to Berkleys to present these plans for approval. We didn't get anywhere, so we just broke up and went home.

Q. Will you state whether or not at that meeting suggestions were made to Mr. Harkins what the supervisors and solicitor felt should be done?

A. Yes, that was discussed at length. The Act was read time and again at that meeting, but he didn't want to agree.

Q. Will you state whether or not the failure of this plan to comply with section 1140 was brought up?

A. Yes, it was brought up. That is practically all that was talked about.

Q. There has been reference here to these subdivisions that Mr. Harkins referred to as having been approved; were they improved before the supervisors adopted them, if you know?

A. No, they were in the act of improvement. It was WPA days when they were still able to get Government help, and Mr. Dickey, our engineer, said it was a chance to get work done, and he asked us to approve them, and in our dumbness we signed it. Fortunately, it never cost the township a nickel. We didn't know there was such a law. At any rate we got through it, and it didn't cost the township anything. Even today the Miller farm is being improved, not at the township's expense. We approved that too. It looks like we are having it done without our paying

anything out.

Q. I believe you have told us about the Beechwood plan. Did that include the Beechwood plan and the P.C. Albert Young plan?

A. P.C. Albert Young has asked us to take over another road, but he won't present a plan for approval, and we have refused to take over the road until he does. But, incidentally, he is going right ahead and building a good road. We are just sitting tight. He won't submit a plan for approval.

Q. Did I ask you whether streets and sewers were installed in these plans?

A. Mr. Young installed a sanitary sewer on Alberta Street at his own expense and improved it at his own expense, and we took that road over as a separate proposition. That is, before he made this big plan. Since that we black-topped it once. His road wore out, and we put a new black top on it. This road is now about twelve or thirteen years old. He built it.

Q. Was that taken over by the Board of Viewers under the Act of 1936?

A. Yes; there was no plan filed of that farm at the time we took that over.

Q. That is, the Act of 1936, repealed by the Act of 1947?

A. I think it is.

Q. Did Upper Yoder Township place the sewers in these plans you referred to where the roads were built by WPA?

A. No.

Q. Who placed them?

A. WPA and the promoter.

Q. Did you talk to Mr. Berkley about what would have to be done in connection with this plan under the Act of 1933?

A. Yes, approximately two and a half years ago. It wasn't Mr. Berkley. It was Mr. Berkley's sister(?) and son-in-law, William Beam and Emma Berkley Beam. I met with them one evening

and spent an hour and a half with them. When I got through I thought they had agreed to go ahead and make a proper layout and submit it. I left, and about a week later I met Mr. Beam down town. He said, I am not getting anywhere. About a month later I ~~met~~ made a request to meet them all, and I again met only Mr. Beam and his wife, and there were no results.

Q. Will you state whether or not on October 4, 1950, or thereabout, another petition was presented which was signed by some of these same appellants here, which has been marked appellees' exhibit No. 4? Was any such petition presented to you?

A. Yes.

Q. Who were the signers on that?

A. All of the people that lived on South Clearfield Street at that time, starting out with A. A. Walker.

BY MR. BARNHART:

We offer in evidence appellees' exhibit No. 4.

BY THE WITNESS:

That has nothing to do with this plan. That is a petition to have us pave that street on a foot front plan, section 1135.

BY MR. HARKINS:

We have a general objection as to all of this. It is incompetent, irrelevant, immaterial and inadmissible.

GRIFFITH, J.:

Overrule objection. Let it be admitted. Exception to appellants.

CROSS-EXAMINATION BY MR. HARKINS:

Q. Do I understand you to say the township supervisors actually spent some money to put a street on a development made by P.C. Albert Young?

A. No. We resurfaced a street.

Q. Did it cost you any township money?

A. Yes, all of our streets are maintained.

Q.. Had Young previously put a hard surface on the street?

A. Yes, of stone and oil.

Q. Was it a hard surface like blacktop?

A. No.

Q. That is in a section that Young had built a lot of houses?

A. He filled the street up with houses.

Q. Do I understand all this explanation was made by you to Mr. Locher, your engineer?

A. Yes, that was discussed at length.

Q. But it wasn't discussed with the petitioners?

A. No, none of the petitioners were at the meeting.

Q. Did you ever fix a hearing by official act of your board?

A. Not specially, but all our meetings are open.

Q. Isn't that provided for in this Act you are talking about?

A. If a developer would ask.

Q. Is Mr. Miller a developer?

A. Yes.

Q. What is a developer?

A. A man that lays out a plot of ground and sells lots for a profit.

Q. Are you opposed to that?

A. No.

Q. Miller owned a farm in Upper Yoder Township?

A. Yes. He is building roads now.

Q. Because his farm grows into a developing community, he is a promoter instead of a land owner?

A. I so understand.

Q. My understanding of a promoter is when a stranger comes in here and develops property, leaving some one holding an empty sack. Do you consider Miller and Berkleys in that class?

A. Any one that would benefit by the township.

Q. Even the Berkleys?

A. Yes.

Q. Do you put Miller in the same class?

A. Yes.

Q. Then why didn't you approve the Berkley plan when you have approved the Miller?

A. The Berkley plan has never been presented for approval.

Q. You approved a plan for C. G. McLain?

A. Yes.

Q. Two of them?

A. Yes.

Q. And John K. Miller?

A. Yes.

Q. And another John K. Miller?

A. Yes.

Q. Are you familiar with the layout of those various plans?

A. Yes.

Q. In what respect does the Beechwood plan of lots as recorded in these Plat Books differ? Is it superior to the plan offered to you by the Berkleys?

A. From the fact it was planned to have it developed by WPA, and the Berkleys haven't offer that.

Q. Is there anything on the record that shows anything about WPA?

A. I don't know.

Q. Is there anything in the layout of the Miller that makes that plan superior to the plan of the Berkleys?

A. The fact he has built his own street and there is drainage there.

Q. Do you understand my questions or are you trying to evade them?

A. I understand them.

Q. Mr. Barnhart, I ask you to examine Plat Book volume 3, at page 124, and ask you to state whether or not there is anything on that record to show any reference to the WPA?

A. There is not that I can see.

Q. Is there anything on that record to show the application was filed in duplicate?

A. No.

Q. As a matter of fact it wasn't filed in duplicate, was it?

A. I think it was filed in quite a lot of plans, including the elevation. I know that is in my office right now, the elevation of this entire business, showing elevation and drainage and all that. I can bring it to you. Mr. Locher has the original.

Q. Is there anything on the plan to show that?

A. No.

Q. Is there anything to show that McClain within a year agreed to pave those streets?

A. No; it was done.

Q. Is there anything to show that McClain agreed to provide any sewage whatever?

A. No, but it was done.

Q. Is there anything ~~xxx~~ to show that McClain filed profiles of any street?

A. No, but I have that.

Q. Is there anything on there showing elevations of any points on the plan?

A. I am afraid that is up to Mr. Locher. I don't understand the figuring.

Q. Then what good would it do to put figures on a plot?

A. We take the advise of people who are paid by the town-

ship, such as our solicitor and engineer.

Q. When McClain offered that plan for approval did you take that up with your solicitor, the plan recorded in Plat Book volume 3, page 124?

A. No.

Q. When the Miller plan was offered for approval, which is recorded in Plat Book volume 3, page 90, did you take that up with your solicitor?

A. No.

Q. When McClain offered for approval plan recorded in Plat Book volume 3, page 120, did you take that up with your solicitor?

A. No.

Q. And when Mr. Miller came along and asked you to approve something recently recorded in Plat Book volume 4, page 117, did you take that up with your solicitor?

A. No.

Q. Did you know that people were building houses on those Upper Yoder Township plans that I have read into the record today. I am referring to P. C. Albert Young property and his plan?

A. Yes; his street was built solid.

Q. You knew that was going on?

A. Yes.

Q. Did he have a plan of lots?

A. No, as far as we knew; he showed us a single street and asked to have viewers appointed, which we did.

Q. How about the Hartley plan of lots? Did you know anything about that?

A. No, that was in the John K. Miller layout.

Q. You knew they were building there?

A. Yes; it was also the John K. Miller farm.

Q. Did you know of the Hickory Lane plan of lots laid out by

A. Yes.



Q. Did you know Adam Kaefer had a plan of lots?

A. No. Is it back into the mountain?

Q. Do you consider that back in the mountain?

A. The back end of it is. Nobody lives up on the mountain.

Q. You don't have to spend any money back there?

A. No.

Q. You don't get any money from any taxes back there?

A. Yes, we get considerable.

Q. As much as you do in this built-up section?

A. Yes, more taxes.

Q. Explain that?

A. Bethlehem Steel Company pays about one-third of the taxes of Upper Yoder Township--undeveloped coal land.

Q. Do we understand from what I have gathered from your testimony it is all right to build up Upper Yoder Township and pay taxes, but don't ask us to spend any money?

A. No. We maintain all the roads in the township. We don't build the original. After that we keep them up.

Q. Did you know they were building on the Isaac D. Bernhart Estate plan of lots?

A. Yes.

Q. That was never submitted?

A. No, it was built long before the Act.

A. You are speaking of Jefferson Street?

Q. That is right?

A. That was built by Mr. Bernhart.

Q. Will you tell me the specific program that you outlined in Frank Bernhart's office when I was present? What were we to do?

A. As I recall it, we were going to ask the Berkleys to submit a plan according to law, as we were advised by our solicitor. He thought it was the only way out.

Q. In other words, it all went back to compel Berkleys to

do something you want them to do rather than file a plan. Isn't that the truth?

A. No.

Q. Didn't you say it was to go back to the Berkleys and they were to submit plans for approval?

A. That is right.

Q. Didn't you say it was to go back to the Berkleys and they were to submit you plans for approval?

A. That is right.

Q. What have you against the Berkleys?

A. We have nothing against the Berkleys. We simply want it presented according to their change from our township map. We will have to change our map and according to our engineer it will cost \$1500.00.

Q. What is the tax millage?

A. Eleven.

Q. How many lots are on this Berkley plan?

A. I don't know.

Q. How much are they assessed at per lot?

A. I didn't look at this year's. Some are assessed as low as \$100.00.

Q. Suppose these young folks build houses there, does that increase the assessed value?

A. If he builds a home, yes.

Q. Are there as many as 150 lots in this berkley plan?

A. I would judge there are.

Q. And if you got houses on them you <sup>can</sup> get a thousand or fifteen hundred increased taxes?

A. We possibly can.

Q. It is just a fact you and these other men will not approve this plan as drawn up at present?

A. Yes; we have to start some place; this is the biggest.

Q. You didn't start with McLain?

A. We were sort of dumb then, and WPA was to do the work.

There is no comparison.

Q. When did McLain first start to develop land in Johnstown?

A. I wouldn't know. He has been operating in Johnstown 25 years.

Q. What is the date of the plan recorded in Plat Book volume 3, page 120? When was the plan laid out according to its own legend?

A. 1938.

Q. When was this plan of McLain, page 124, Plat book volume 3--when was it laid out?

A. In 1939, October 2.

Q. Don't you know as a fact these Berkleys have laid out their farm in lots back as early as 1922?

A. Yes.

Q. Then the thing isn't the age of the plan. The fact is you didn't like the idea they changed some of their plan?

A. That isn't the reason, it hasn't been approved. It is because they didn't present it.

Q. Who else has the idea of not liking the change?

A. The State Highway Department doesn't like it; Post Office Department.

Q. Does Mr. Baer like it?

A. Who is Mr. Baer?

Q. Don't you know him?

A. Carl Baer?

Q. Did you ever talk to him about this plan?

A. I don't know the man to talk to. I never talked to him in my life. I know him to see him.

Q. As I understand it, here are the Berkleys who have lived in Upper Yoder Township how many years?

A. 100 years I think their history runs.

Q. They own the farm up there?

A. Yes.

Q. Now that the city is growing out to meet them, instead of raising vegetables they are dividing their farm up to sell lots?

A. Yes.

Q. It is beneficial for them to do that?

A. Yes.

Q. And it is beneficial to the township if you get 150 lots assessed with houses on them?

A. It isn't beneficial to the township if we collect \$40,000.00 in taxes that we spend the following year to keep up the roads these people need.

Q. Isn't that what you are supposed to do?

A. Yes, but it doesn't benefit us. They didn't do it in the legal, proper manner.

Q. You mean they didn't follow the Act of 1939?

A. 1933 is the one I have been referring to.

Q. Why didn't you refuse to approve the plan of John K. Miller because it wasn't any more in line than our plan is with the Act?

A. They were ready for WPA work, and incidentally I didn't sign. I would have if I had been there.

Q. You didn't sign what?

A. I didn't approve this one in Plat Book volume 3, page 124. I would have approved the Miller if I was there.

Q. And also the McLain?

A. Yes.

Q. And the Miller revised plan?

A. Yes.

Q. But you are not going to sign the Berkley plans?

A. I will sign them tomorrow if these gentlemen say so.

Q. But without a court order you won't?

A. No.

Q. Did the WPA work on the plan of Beeckwood, the C.C. McLain plan?

A. Yes, practically all.

Q. Has that anything to do with the approval of the C.C. McLain plan of lots?

A. Yes, that had all to do with it. That is why it was approved. Our engineer made a layout for the sewer, work proposal, made application for help to put the sewer through there, built roads. They came to us for approval of the thing.

Q. Do you know the location of the public streets leading from Goucher Street?

A. Yes, Magdalena, Dickinson has been abandoned, the next one is Haverford.

Q. Are you planning to improve Haverford?

A. Not that I know of.

Q. Are you planning to pave Susquehanna Street?

A. No. The people living on it are covering it and Henry K. Miller.

Q. Was there a meeting of the Board of Viewers within the past two weeks on that street?

A. No, nobody yet has yet asked to have it approved.

Q. Mr. Barnhart, isn't it a fact when you say there was an argument about this Act at Mr. Barnhart's office practically all of that discussion related to the question where I said the township wouldn't be assuming any obligation in accepting this plan and he said they would; that is what the big argument was about?

A. It could have been. I know we talked of all that.

Q. You heard the same argument here back in October?

A. Yes.

BY MR. HARKINS:

I move to strike out the testimony received under objection.

GRIFFITH, J.:

We deny the motion. Exception to appellants.

T. L. LOCHER, called on part of appellees, sworn.

DIRECT EXAMINATION BY MR. BARNHART:

Q. What is your occupation?

A. Registered civil engineer.

Q. For how long have you been a registered engineer?

A. I have been practicing engineering for a little over 25 years,

BY MR. HARKINS:

His qualification we admit.

BY MR. BARNHART:

Q. Under what name are you practicing now?

A. S. E. Dickey & Company.

Q. Will you tell us how it came about that this plan of 1941 that has been offered here, signed by S. E. Dickey & Company, T. L. Locher, township engineer, came to you?

A. Yes, I had talked to Mr. Harkins concerning getting the plan approved.

Q. Was that prior to May 15, 1950?

A. Yes; and I told him if he would get the original map I would see the supervisors got it and would have a possible chance of getting it approved. So Mr. Harkins got the original tracing to me, and after I received it I had a call from Tillman K. Saylor. I went to his office and Mr. Hinks was there. They asked me if I would sign this plan approving it, and I said I would as to the layout of the streets and the alleys, etc., and I signed it and sent a letter of transmissal along to Mr. Curtis

Barnhart saying that I had approved the layout of the alleys and streets but not as to drainage or anything else.

Q. That is the transmissal by letter of May 15, 1950?

A. Yes.

Q. Did you also talk to Mr. Harkins before you sent the letter of transmissal?

A. I talked to him several times prior to that.

Q. You at that time were township engineer?

A. That is right.

Q. Did you talk to me as attorney for the township concerning this?

A. No.

Q. You didn't talk to any attorney for the township prior to sending the letter?

A. No, it was my feeling that my approval didn't place any responsibility on the supervisors. In other words, I didn't feel that my signature was absolutely necessary, but since they requested it and it was possibly a better means of getting it to the supervisors with maybe a better chance of getting it approved. The supervisors never authorized me to sign it.

Q. Had you even talked to them about it before you signed it?

A. I had talked to Mr. Curtis Barnhart about it, not officially.

Q. The township never authorized you to sign it?

A. No, that is right.

Q. Were you at that time familiar with this Act of 1933?

A. No, I wasn't.

Q. May I ask you about the plan? Did you submit it in duplicate?

A. Just the original.

Q. I want to call your attention to section 1140 on this

question of profile and ask you whether this plan had with it as a part of it a profile map?

A. No. .

BY MR. HARKINS:

Objected to as calling his attention to section 1140. That part of the Act of Assembly is incompetent, irrelevant and immaterial.

GRIFFITH; J.:

Overrule objection. Exception to appellants.

BY MR. BARNHART:

Q. Was it of any importance that there be a profile map?

A. Yes, to show the various grades of the curbs , of the streets, and also for drainage facilities; otherwise you can't figure out how it is going to drain or what would be the grade established on the street.

Q. Would this profile map show the grade of the streets?

A. Yes, and also the sewer. It would show manholes, inlets, and so forth, house connections.

Q. Would the profile map show the drainage?

A. Yes.

Q. What can you say as to the course of drainage facilities? Is that shown on this plan?

A. There is a proposed drainage line going through the northern end of it, but there is nothing shown on the southern end as to how it will drain. This portion of this plan of lots, that has a storm sewer drainage.

Q. What plan is that?

A. This map is the final plan which I approved, and shows a 12" terra cotta sewer pipe going through the northern end of the property and there isn't anything to show how the southern end will drain. There is a storm drainage shown on the plan



for the front section of the plan of lots. That is the north section.

Q. It doesn't show any drainage on the south end of it?

A. That is right; nothing shown at all; no means of drainage.

Q. Is the land high or low?

A. According to this plan it seems to be fairly rolly. They have some grades; that would be for the street curbs. One part goes up and the next part goes down; so they could be drained two ways. On the southern end, the grade on South Blair Street there is a 360 feet fall, 180 feet at 0.83% grade; 400 feet at 1.75% grade. It is all plus going up hill out possibly to Rodney Street, and from there to Goucher Street there is 400 feet minus, 75% grade. It goes over the hill. That goes in the lower point at approximately the dividing line between lots 219 and 220, and from there up to Goucher it is a rise again. There has to be means of drainage back in the southern end, and there is no facilities or anything as to drainage on the southern end.

Q. How can you determine whether the course of drainage facilities as mentioned in this section of the Act is any compliance with the Act?

BY MR. HARKINS:

Objected to; it is asking the engineer for a legal opinion. He is not qualified to give that opinion.

GRIFFITH, J.:

Objection sustained. Exception to appellees.

BY MR. BARNHART:

Q. Does South Blair Street drop towards the southwest?

A. Yes; in my previous statement I came out from the southern end of the property.

Q. As to South Clearfield, what about that?

A. It is practically the same thing. It is on a higher level than South Blair.

Q. How about Derby Street?

A. It is approximately the same thing outside of the top of the hill which would be at lots 315 and 316, rather than at Rodney Street. Back at 315 and 316 it is 350 minus .5. It is dropping off the other way.

Q. The drainage shown on the plan running from the Glessner property to the Johnstown Municipal <sup>Golf</sup> Course, what about that? What can that drain?

A. Of course, there isn't any grades shown on here. That is percentage of drainage. Immediately adjacent to this plan, which is the Glessner property, there is nothing indicated on here whether it is going to drain that or anything about it, and as to whether it would be adequate to take care of all this drainage is something we don't know. There is no grade on there, which would definitely control the capacity of the pipe. So it is pretty hard to tell from the information on here just what it would drain.

Q. What can you say as to the structure of the drainage facilities?

A. All you can say about that it is a 12" terra cotta pipe.

Q. Can you locate that on the map?

A. Yes, according to the plan it starts on Derby Street at the line dividing lots 348 and 349. It comes diagonally across Derby Street to go down on lot 311. It goes through lot 311 and 308 down to South Clearfield Street. Then it turns diagonally across South Clearfield Street to the line dividing lots 272 and 273 and 268 and 269, and down to South Blair Street, and then on South Blair Street in a southwesterly direction, going then through lot 219 into a drainage pipe in the Johnstown Municipal Golf Course, and while I don't know exactly the size of that

pipe, I do know the city measured it within the past few days and they say it is a ten inch pipe. It is questionable whether that pipe is going to be adequate to take care of this drainage running off here. When the streets are graded and paved you would have a much greater run off than before.

Q. After the streets are paved wouldn't that increase the flow of water?

A. Yes; while it is farm land or a field your run off is retarded. When they start to build houses and plant the yards and have nice grass and keep it cut, your run off is greater, and that pipe may not take care of the drainage.

Q. Is that of importance?

A. Yes, because if this area to the west and north of this Berkley plan of lots, if that water that is up there has to come down and drain through here, this 12" inch line may be inadequate to take care of this upper plan of lots. It may be the property immediately to the north and west, the drainage from there would have to come down through this 12" pipe and it would not be big enough.

Q. What about that part of the plan lying southwesterly, the southwesterly part of the strip about 500 feet in width?

A. There is no drainage shown for there. The water from that point, approximately 500 feet southwesterly, would have to drop and fall back to the southeast, and where it would go I don't know, because there isn't anything shown on here. It would have to go over some of the private lots shown here. If we turn the water back and run it through somebody else's lot that wouldn't be so good.

Q. I want to ask you as to the capacity of the drainage system?

A. There is nothing to indicate the capacity at all. The reason I saw that, they show a 12" pipe. I don't know whether they intend to show that 12" pipe on a one percent grade. A 12"

pipe on one percent grade will not carry as much water as a 12" pipe on a 20% grade. Your capacity is controlled by the grade on the street and the size of the pipe. There is nothing to indicate the grade or anything else.

Q I think you said there is a pipe shown on here?

A. There is a 12" terra cotta pipe shown.

Q. Have you located that?

A. Yes.

Q. Did you give the dimension of that pipe at the golf links?

A. Ten inches.

Q. In what respect would you say this 12" pipe line is defective as to the capacity for drainage facilities?

A. I think I have covered that enough.

Q. How would you determine that, Mr. Locher?

A. You mean the capacity?

Q. Yes?

A. According to the grade. To establish that you would have to get the statistics as to the average rainfall, along with the grade of your pipe and the area which this part would have to drain; it may be you would have a square mile or two to drain down through there. That could all be figured out. Of course, it is not up to us to figure that out.

Q. You could determine that as an engineer?

A. Yes. It would be absolutely necessary for you to determine the capacity of the pipe and what size of pipe to put in to absolutely take care of it, so there would not be any floods up there.

Q. Is there anything else you want to call the court's attention to?

A. There is one thing on this drainage. If and when the township ever assumes responsibility for the drainage and for the streets on this plan, there are no easements or right-of-ways

going through these various lots for drainage.

Q. Will you repeat that?

A. I mentioned that there are drains going down through various lot numbers. If and when the township assumes responsibility for the streets and drainage and so forth, there are no provisions made whereby the township would have any right to go on these various lots to enlarge or to maintain any sewer lines going down through there.

GRIFFITH, J.:

Q. In the deeds for the lots through which the drain is shown isn't there an exception?

A. We don't know that. It should be marked on the plan. Every plan we work up, when we do have an easement going through a lot, we show that easement. That is a thing that should be taken into consideration.

BY MR. BARNHART:

Q. Anything else?

A. Not on the drainage.

Q. Anything else besides drainage?

A. No, I don't think so.

Q. Have you told us whether that could affect a sanitary sewer system?

A. Yes, because when the time comes when we have to design a sanitary sewer system, we must follow more or less the natural drainage course. It is naturally the course shown here for the storm sewer. That would have to be put in the easement or right-of-way which this drainage is in now. That is another reason why we should make sure there is an easement going down there through these places.

CROSS-EXAMINATION BY MR. HARKINS:

Q. I understand you did approve this plan as to layout?

A. That is right.

Q. Is it your understanding that if the township supervisors had approved this plan that would not obligate or require the township to construct, reconstruct, maintain or grade any road, street or alley shown on the plan?

BY MR. BARNHART:

Objected to as immaterial. I am afraid you are calling for an opinion.

BY MR. HARKINS:

Q. Is that correct?

A. I was under the impression it didn't obligate the supervisors. The letter stated that.

Q. This question of drainage, paving, gutters and sewers, those are matters separate and distinct from the approval of the layout?

A. Yes.

Q. The approval of the plan has nothing to do with that?

A. Other than as I have learned since this started, this Act which they have which says what must be done as to drainage.

Q. But the actual work or figuring of drainage and sewers and paving and so forth are matters not in issue in proving the plan and will come up later when those things are done?

A. That is right.

BY MR. BARNHART:

Objected to; that is a legal question.

BY MR. HARKINS:

Q. Is it the natural water course down over that hill covered by this plan?

A. Naturally, yes.

Q. Has any corporation or anybody interfered with that natural water course?

A. One.

Q. Did that block or shut off that natural drainage course?

A. They piped it. They never told me what they did, but it is obvious what they did. They took it upon themselves to at least drain all that ground.

Q. They had a natural valley running through the golf course?

A. That is right.

Q. They graded that off and raised the natural level of the soil and that interfered with the natural drainage above?

A. That is right.

Q. And to take care of it they put in a ten-inch pipe?

A. Yes.

Q. If that isn't big enough it will be up to the city?

A. I would say so. Possibly when that time comes if we would accept these streets and turn a great amount of water down there the ten-inch pipe wouldn't carry it away; it would back up and run across the golf course.

Q. The one person who has interfered with the natural course is the city of Johnstown?

A. Yes.

Q. How long have you been borough engineer in Upper Yoder Township?

A. Since January, 1945, when Mr. Dickey passed away.

Q. Are you engineer for other municipalities?

A. Yes.

Q. Name them?

A. Southmont borough, Geistown borough, Lorain borough, Brownstown borough and Adams Township School District.

Q. Is this a correct statement? These municipalities adjacent to the city of Johnstown are today and have been for years suffering what we ~~may~~ could properly describe as growing pains?

A. Yes.

Q. That is the trouble with Geistown Borough and Upper Yoder Township?

A. Yes.

Q. They are both suburban municipalities and in the last ten years thousands of homes were built that were never there before?

A. That is right.

Q. And as these demands for home sites in suburban areas increased the needs for sewers and streets likewise increased?

A. That is right.

Q. And it follows as a natural thing if a home is built the assessment is raised?

A. That is correct.

Q. Geistown and all the areas suffering from these conditions are subject to the same ills?

A. That is right.

Q. Are you familiar with the various plans made by other engineering firms?

A. I have seen them.

Q. Does this appellees' exhibit No. 1. show Atwood Street?

A. Yes. It is now Goucher Street.

Q. What is the date of that plan?

A. September 27, 1922.

Q. And referring to this appellees' exhibit No. 1, the plan in dispute, is that a flat plan?

A. What do you mean?

Q. In a previous answer they say it is just a flat plan?

A. A plat plan.

Q. Does that show streets and alleys?

A. It shows streets. I don't see any alleys.

Q. It shows lot numbers and lot lines?

A. Yes.



Q. And the things ordinarily and usually shown on a plan?

A. Yes.

Q. It does something more, it shows elevations at various points in that map?

A. Yes.

Q. It shows drainage facilities on this plan?

A. Yes.

Q. Will you refer to some recorded plans? Turn to Hickory Lane plan recorded in Plat Book Vol. 3, page 132. There is no substantial difference between the plan in question and the plan already referred to?

BY MR. BARNHART:

Objected to as being incompetent, irrelevant, and immaterial. GRIFFITH, J.:

Objection overruled. Exception to appellees.

BY THE WITNESS:

A. What do you mean by no substantial difference?

BY MR. HARKINS:

Q. Does that plan referred to in Plat Book Vol 3, page 132, have any profile?

A. No.

Q. Any sewer lines?

A. I don't see any?

Q. Does it have any of the various things that Mr. Barnhart questioned you about?

A. No.

Q. In substance or in form it is a regulation lot plan that engineers have been making for many years?

A. That is right.

Q. No. 1 does show some elevations?

A. Yes.

Q. Here are some grades in this one, Plat Book Vol 3, page 132?

A. It has some grades on Hickory Lane.

Q. I want to know, referring to the plans I am calling your attention to, whether there is any substantial difference in that plan marked appellants' exhibit No. 1, and the plan recorded in Plat Book Vol 3, page 143?

BY MR. BARNHART:

We move the testimony of the witness as to comparative plans be stricken out as being immaterial.

GRIFFITH, J.:

Objection overruled. Exception to Appellees.

BY MR. HARKINS:

Q. I am referring to the plans in the Adam Keafer estate. Examine that and tell us whether there is any substantial difference between that plan and the plan in question?

A. No, it is a lay-out of lots.

Q. The same as the one in question?

A. Yes.

BY MR. BARNHART:

We move that the testimony as to the comparative plans be stricken out.

GRIFFITH, J.:

Objection overruled. Exception to appellees.

BY MR. HARKINS:

Q. Referring to Plat Book Vol 3, page 167, P. C. Albert, is there any substantial difference between that plan and the plan in question?

A. No, this shows some lots. It is not a complete plan. There is evidently a space for more lots. It is about the same plan. It shows the grades on the streets and previous grades.

BY MR. BARNHART:

Same objection.

GRIFFITH, J.;

Same ruling.

BY MR. HARKINS:

Q. Turn to the Isaac D. Barnhart Estate Plan of lots recorded in Plat Book Vol. 3, at page 190, and tell us about it in the same respect?

A. That is a plan showing substantially all the property. There are no grades on it.

Q. It is substantially the same as the plan in question?

A. Yes.

Q. How about the plan recorded in Plat Book Vol. 3, at page 180?

A. This one seems to be in the same location as the one we looked at where I stated there seemed to be some room for development or expansion. This has been filled in.

Q. You note my question for all the plans?

A. They are all along the same lines.

BY MR. BARNHART:

Same objection.

GRIFFITH, J.:

Same ruling.

BY MR. HARKINS:

Q. Relative to Beechwood Park Plan recorded in Plat Book Vol. 3, page 120, examine that plan and tell me if there is any substantial difference between that plan and the plan in question?

A. No. Generally they are about the same.

Q. Any profile shown there?

A. No.

Q. Any drainage facilities shown?

A. No.

Q. In reading their Act for draining contiguous territory - -

A. I do know that there are profiles for sewers and streets in

our office.

Q. But none shown on this plan?

A. No.

BY MR. BARNHART:

We move the testimony as to comparing the plans be stricken out.

BY GRIFFITH; J.:

Motion denied. Exception to appellees<sup>4</sup>.

BY MR. HARKINS:

Q. Turn to the Beechwood Plan of Lots recorded in Plat Book Vol. 3, page 124, and tell us whether or not that shows any profile lines?

A. No.

Q. Any drainage facilities?

A. No.

Q. Anything there to show a plan for - -

A. That takes in the same thing and applies to a general plan.

We have the plans and profiles in our office for all of the streets.

BY MR. BARNHART:

Same motion.

BY GRIFFITH, J.:

Same ruling.

BY MR. HARKINS:

Q. In all the plans you have prepared for various officers in the municipalities for which you are borough engineer are they not prepared on the same plan as is this plan?

A. That is right. When a borough wants to do something on a street, or if people petition them to accept a street, it is dedicated, and we go out then and run our levels and establish a grade and prepare a plan and profile of that street.

Q. That is, when you want to accept a street, improve a street, or put in a sewer?

A. Yes.

Q. But there is nothing in the ordinary preparation of the lot plans you have had other than what we have had in this plan of Berkley's?

A. That is right.

Q. Is this area building up very rapidly?

A. Yes.

Q. And it is a very desirable residential area?

A. They are nice properties.

Q. Do you know from your own experience and work in your profession that certain types of mortgage loans cannot be obtained unless the municipality has accepted a plan of lots?

BY MR. BARNHART:

Objected to.

GRIFFITH, J.:

Objection overruled. Exception to appellees.

BY THE WITNESS:

A. I know that for a fact, because I approved quite a few. We have had quite a few people come into Council meetings telling us that they have had loans through FHA and GI and asking that we accept a street. In other words, they would not approve a loan on a property when officially there is no street there. They want some assurance the street is on the ground and is passable and will be maintained by the municipal authorities.

Q. Have you had experience in your profession in cases where loans would not be granted unless the lot plan is accepted by the municipality?

A. Yes, I have had that.

Q. Mr. Locker, are you familiar with that general area with the

plans of lots that are of record in the Office of the Recorder of Deeds for Cambria County, Pennsylvania?

A. Yes, I have had several occasions to come here and check into that and also to prepare the blueprint which would be placed on record.

Q. Have you ever found in the plat records in the Recorder's Office a map which shows a profile of the streets and alleys?

A. No.

BY MR. BARNHART:

Objected to as being incompetent, irrelevant, immaterial, and inadmissible.

BY GRIFFITH, J.:

Objection overruled, and an exception noted to the appellees.

BY MR. HARKINS:

Q. Have you found any in which there is a detailed plan of sewers or had drainage for surrounding areas?

BY MR. BARNHART:

Same objection.

BY GRIFFITH, J.:

Same ruling.

BY THE WITNESS:

A. No, I never have found any.

Q. The plan that goes on record generally is accepted and approved as a plat plan?

A. It is called a plat plan.

TESTIMONY CLOSES.

*Amendments  
#2*

*2*

*4*

May 15, 1950

Mr. Curt Barnhart, Secretary  
Upper Yoder Twp. Supervisors  
216 Dibert Street  
Johnstown, Pennsylvania

Dear Mr. Barnhart:

Harry E. Berkley Estate  
Plan of Lots

In re the above subject we are submitting the original tracing for the Board of Supervisors' approval, as to the layout of lots and streets.

We have checked this plan as per layout and we approve it as such. The drainage question and the acceptances of the streets is a matter to be brought up at some future time, as there is some question as to the responsibility of drainage through the golf course.

It is our understanding that the approval of this plan does not obligate the Board of Supervisors in any way, as to responsibility in the streets or in the drainage. This matter should be taken up with the township's Solicitor for his legal ruling.

Yours very truly

S. E. Dickey & Company  
Upper Yoder Twp. Engineers

By T. L. Locher  
T. L. Locher Vice-Pres.

TLL:mbv

*Applicants 2 & 3*

August 7, 1950

Board of Supervisors of Upper  
Yoder Township  
Cambria County, Pennsylvania

Gentlemen:

C We represent a large number of persons who are owners of lots of land or who have interests in lots of land which are marked, shown and designated on a Plan of Lots laid out for the Harry E. Berkley Estate, in Upper Yoder Township, Cambria County, Pennsylvania, by the Potterman Engineering Company under date of April 21, 1941, which said plan was approved by the City Planning Commission of the City of Johnstown, Cambria County, Pennsylvania, on the 2nd day of May, 1941.

O We have been advised that the original tracing of said plan was submitted to the Board of Supervisors of Upper Yoder Township, Cambria County, Pennsylvania, for approval as to the layout of lots and streets. We are informed that your Board, or the Secretary thereof, now has the original tracing of said plan.

P This notice is being given to you by us as attorneys for the owners of lots shown upon said plan, requesting the Board of Supervisors of Upper Yoder Township, Cambria County, Pennsylvania, to approve said plan hereinabove mentioned. We want this notice to be understood as a formal presentation of that plan for approval by the Board of Supervisors of Upper Yoder Township, Cambria County, Pennsylvania.

Y In the event that we receive no word from you, notifying us that the plan has been approved, or notifying us that the plan has not been approved, on or before the 14th day of August, 1950, your failure to so notify us will be considered by us as a refusal on the part of the Board of Supervisors of Upper Yoder Township, Cambria County, Pennsylvania, to approve said plan of lots.

Very truly yours,

HALKINS AND HARTON

By \_\_\_\_\_

FJH:pw



No. 1, Sept. Sessions, 1950.  
IN THE COURT OF QUARTER  
SESSIONS OF CAMBRIA COUNTY,  
PENNSYLVANIA.

RE: APPEAL FROM REFUSAL OF  
BOARD OF SUPERVISORS OF  
UPPER YODER TOWNSHIP, CAMBRIA  
COUNTY, PENNSYLVANIA, TO AP-  
PROVE A PLAN OF LOTS LAID  
OUT FOR HARRY E. BERKLEY ES-  
TATE, AND RELATING TO LOTS  
OF LAND SITUATE IN UPPER  
YODER TOWNSHIP, CAMBRIA COUNTY  
PENNSYLVANIA.

TESTIMONY.

*Filed  
5/12/52*

FRANCIS J. LEAHEY  
Official Stenographer

Ord # 1 Sept. 1950  
Rate Microfilm



STATE OF PENNSYLVANIA } S.S.  
COUNTY OF CAMBRIA

PERSONALLY APPEARED BEFORE ME,  
A NOTARY PUBLIC, IN AND FOR SAID COUNTY  
AND STATE, LYDIA D. BERKLEY, ADMX. OF THE  
HARRY E. BERKLEY ESTATE, WHO IN DUE FORM  
OF LAW ACKNOWLEDGED THE FOREGOING PLAN  
OF LOTS TO BE THEIR ACT AND DEED TO THE  
END, THAT THE SAME MIGHT BE RECORDED  
AS SUCH.

WITNESS MY HAND AND OFFICIAL SEAL,

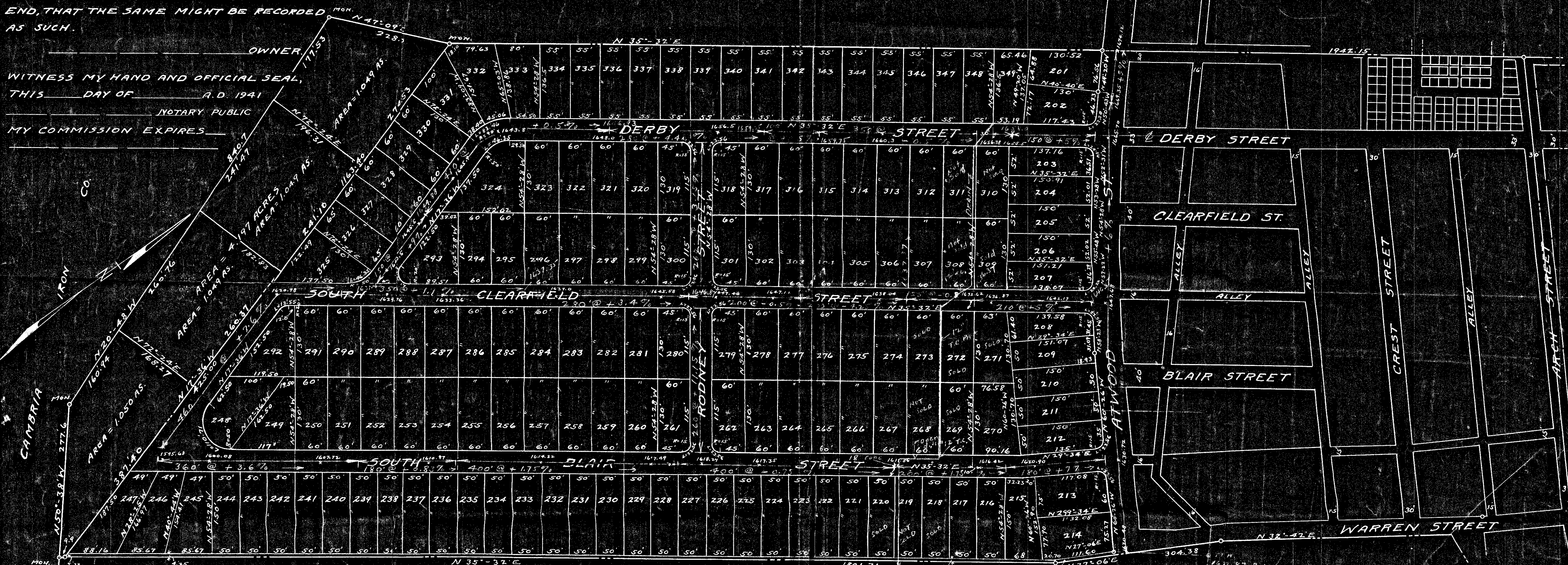
THIS DAY OF A.D. 1941

NOTARY PUBLIC

MY COMMISSION EXPIRES

MRS. JOE GLESSNER

JOHN SELL



RE-APPROVED

May 1, 1941

BY THE

CITY PLANNING COMMISSION

P. E. Dierker PRES.

ATTEST: James H. Hanson SECY.

JOHNSTOWN MUNICIPAL GOLF COURSE

AREA IN LOTS SOUTH OF ATWOOD STREET = 32.656 ACRES.

APPROVED

1941

BY THE SUPERVISORS OF  
UPPER YODER TOWNSHIP

SUPERVISOR

SUPERVISOR

SUPERVISOR

D. E. Dierker & Co. - T. L. Fisher  
TWP. ENGINEER May 15, 1941

PLAN OF LOTS

AS LAID OUT BY

HARRY E. BERKLEY EST.

SITUATE IN

UPPER YODER TWP - CAMBRIA CO. PA.

APRIL 21, 1941

SCALE - 1" = 100'

FETTERMAN ENG. CO.

4302-D-204