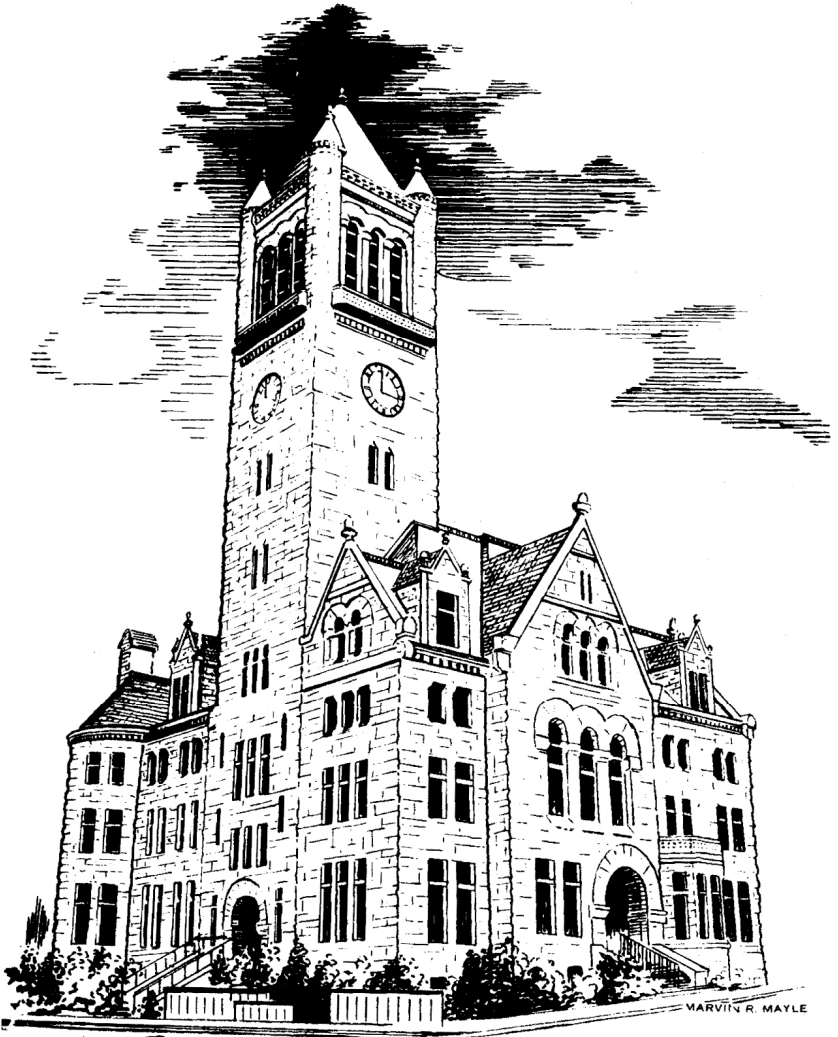


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ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

FRANCES A. ANTOLIK, late of Uniontown, Fayette County, PA (3)

Administrator: James Antolik
64 Euclid Avenue
Uniontown, PA 15401
c/o Tiberi Law
84 East Main Street
Uniontown, PA 15401
Attorney: Vincent M. Tiberi

CLIFFORD BOWERS, late of Farmington, Fayette County, PA (3)

Executor: George Spencer
185 Smith Street
Canonsburg, PA 15317
c/o 17 North Diamond Street
Mount Pleasant, PA 15666
Attorney: Marvin D. Snyder

FRANCES D. CICONI, a/k/a FRANCES CICONI, late of Smock, Franklin Township, Fayette County, PA (3)

Administrator: Gary D. Cicconi
c/o P.O. Box 953
Uniontown, PA 15401
Attorney: Ricardo J. Cicconi

WILLIAM CONWAY, late of Nicholson Township, Fayette County, PA (3)

Administrator: William Conway, Jr.
162 Holbert Stretch
Dilliner, PA 15327

ALBERT EUGENE CORE, SR, a/k/a ALBERT E. CORE, a/k/a ALBERT E. CORE SR., late of Fairchance Borough, Fayette County, PA (3)

Administratrix dncta: Rhonda Core
c/o 9 Court Street
Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

DARLENE MAE DOMINICK, a/k/a DARLENE M. DOMINICK, a/k/a DARLENE DOMINICK, late of North Union Township, Fayette County, PA (3)

Co-Executors: Renee Custer and James Custer
c/o 9 Court Street
Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

LEONA LEA GALLOWAY, a/k/a LEA GALLOWAY, late of Masontown, Fayette County, PA (3)

Executrix: Heidi S. Ezzi
c/o Tiberi Law
84 East Main Street
Uniontown, PA 15401
Attorney: Vincent M. Tiberi

LAWRENCE S. GEORGIANA, late of South Union Township, Fayette County, PA (3)

Executrix: Harriet J. Georgiana
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

JAMES A. HILEMAN, late of Washington Township, Fayette County, PA (3)

Co-Executrix: Laurel Colelli
924 Lynn Avenue
Belle Vernon, PA 15012
Jamie Hileman Butz
105 Kimberly Court
Rostraver Township, PA 15012
c/o 1747 Rostraver Road
Belle Vernon, PA 15012
Attorney: Megan Kerns

JUDITH DIANE KEYSER, a/k/a JUDITH D. KEYSER, late of North Union Township, Fayette County, PA (3)

Executrix: Pamela Zagorski
357 Coltart Avenue, #1
Pittsburgh, PA 15213

c/o Carolann A. Young and Associates
530 North Center Avenue
P.O. Box 344
Somerset, PA 15501
Attorney: Carolann A. Young

JOHN D. MAY, a/k/a JOHN DEWAYNE MAY, late of Springfield Township, Fayette County, PA (3)

Administratrix: Judith A. May
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

MELVA RATH, a/k/a MELVA J. RATH, late of Upper Tyrone Township, Fayette County, PA

Personal Representative: Krista J. Loucks
c/o Watson Mundorff, LLP (3)
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Timothy J. Witt

ANN SANTA, a/k/a ANN A. SANTA, late of Uniontown, Fayette County, PA (3)

Executrix: Milica Jane DeFabbo
149 Lacy Road
Uniontown, PA 15401
c/o Pavina Law, LLC
834 Main Street
P.O. Box 108
Keisterville, PA 15449
Attorney: Bryan Pavina, Jr.

ALVIN SPADE, late of Wharton Township, Fayette County, PA (3)

Executor: Justin Spade
757 Kirby Road
Farmington, PA 15401
c/o Kovach Law Office
9 Court Street, Second Floor
Uniontown, PA 15401
Attorney: Kim Kovach

DALE B. STEWART, a/k/a DALE STEWART, late of Jefferson Township, Fayette County, PA (3)

Executor: George Lovich
7424 Provincial Road
Canton, Michigan 48187
c/o 6253 Highway Drive
Rostraver Township, PA 15012
Attorney: Albert C. Gaudio

PATRICIA LOU WARREN, a/k/a PATRICIA H. WARREN, a/k/a PATRICIA REISCH, late of Wharton Township, Fayette County, PA (3)

Executor: Vincent J. Roskovensky, II
c/o 9 Court Street
Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

Second Publication

MARK HILTABIDEL, late of Uniontown, Fayette County, PA (2)

Administratrix: Paula Piasecky
38 Fourth Avenue
Scottdale, PA 15683
c/o Snyder & Snyder, PLLC
17 North Diamond Street
Mt. Pleasant, PA 15666
Attorney: Marvin Snyder

CARRIE KLETZING, late of Scottdale, Fayette County, PA (2)

Administrator: S. Dennis Kletzing
122 Scottdale Everson Road
Everson, PA 15631
c/o Snyder & Snyder, PLLC
17 North Diamond Street
Mt. Pleasant, PA 15666
Attorney: Marvin Snyder

EDITH A. POPIK, a/k/a EDITH A. LYNN, a/k/a EDITH ANN LYNN, late of Belle Vernon, Fayette County, PA (2)

Executrix: Pamela Ambrose
616 Henry Street
Belle Vernon, PA 15012
c/o 823 Broad Avenue
Belle Vernon, PA 15012
Attorney: Mark E. Ramsier

JAMES H. RITENOUR, late of Perry Township, Fayette County, PA (2)

Executrix: Barbara Stanley
177 Francis Road
Perryopolis, PA 15473
c/o 823 Broad Avenue
Belle Vernon, PA 15012
Attorney: Mark E. Ramsier

DANIEL CHARLES SCHIFFBAUER, late of
Uniontown, Fayette County, PA (2)

Executrix: Rosa M. Schiffbauer
c/o Proden & O'Brien
99 East Main Street
Uniontown, PA 15401
Attorney: Jeffrey S. Proden

RONALD WAGNER, a/k/a RONALD L. WAGNER, SR., a/k/a RONALD LEE WAGNER, late of Markleysburg, Fayette County, PA (2)

Executor: Ronald L. Wagner, Jr.
c/o Spina Law Associates, P.C.
1002 Fifth Avenue
Pittsburgh, PA 15219
Attorney: F. Christopher Spina

JAY SCOTT WROBLE, late of Masontown, Fayette County, PA (2)

Administratrix: Annette Wroble
c/o Higinbotham Law Offices
68 South Beeson Boulevard
Uniontown, PA 15401
Attorney: James Higinbotham

First Publication

DEBORAH A. BARAN, late of Bullskin Township, Fayette County, PA (1)

Administratrix: Wendy L. O'Brien
c/o Proden & O'Brien
99 East Main Street
Uniontown, PA 15401
Attorney: Wendy L. O'Brien

DONNA KAY BRANT, a/k/a DONNA BRANT, late of Redstone Township, Fayette County, PA (1)

Personal Representatives: Michele Renee Vasiloff and Frank Angelilli
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

LYNN PAUL COULTER, late of Uniontown, Fayette County, PA (1)

Administratrix: Stephanie Coulter
c/o Proden & O'Brien
99 East Main Street
Uniontown, PA 15401
Attorney: Wendy L. O'Brien

JUDY T. LANDMAN, a/k/a JUDY T. HAMMETT, late of Stewart Township, Fayette County, PA (1)

Personal Representatives: Dorsey Ray Hammett and Constance M. Joseph
c/o 208 Arch Street, Suite 2
Connellsville, PA 15425
Attorney: Richard Husband

LILLIAN L. ROGERS, a/k/a LILLIAN LOUISE ROGERS, late of South Union Township, Fayette County, PA (1)

Executor: Michael James Rogers
c/o DeHaas Law, LLC
51 East South Street
Uniontown, PA 15401
Attorney: Ernest P. DeHaas, III

RONALD WAGNER, a/k/a RONALD L. WAGNER, SR., a/k/a RONALD LEE WAGNER, late of Markleysburg, Fayette County, PA (1)

Executor: Ronald L. Wagner, Jr.
c/o Spina Law Associates, P.C.
1002 Fifth Avenue
Pittsburgh, PA 15219
Attorney: F. Christopher Spina

LEGAL NOTICES

NOTICE

Notice is hereby given that a Certificate of Organization was filed with the Pennsylvania Department of State, on April 12, 2023, for a Limited Liability Company, organized under the Limited Liability Company Law of 1994, as from time to time amended. The name of the Company is The Skin Gallery, LLC having an address of 92 Mountain Road, Uniontown, PA 15401.

Cody Adams
1252 Connellsville Road
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724-963-9968

Registers' Notice

Notice by JEFFREY L. REDMAN, Register of Wills and
Ex-Officio Clerk of the Orphans' Court Division of the Court of Common Pleas

Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Monday, July 3, 2023, at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2619-0410	NORMA J. COFFMAN, deceased	Pamela Glassburn, Executrix

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

Monday, July 17, 2023, at 9:30 A.M.

in Courtroom No. 1 of the **Honorable President Judge Steve P. Leskinen** or his chambers, Second Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Monday, July 3, 2023, at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2619-0639	BRINLEY LOWHIGH, deceased	Leslie G. Ritenour, Executrix

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

Monday, July 17, , 2023, at 9:30 A.M.

in Courtroom No. 5 of the **Honorable Judge Joseph M. George, Jr.** or his chambers, Third Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.


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JUDICIAL OPINION

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

CHRISTOPHER FRANCHEY,	:	
Plaintiff,	:	
v.	:	
CITY OF CONNELLSVILLE ZHB,	:	
Defendant,	:	
v.	:	
THE CITY OF CONNELLSVILLE,	:	
Intervenor	:	No. 1971 of 2020, G.D.
THE CITY OF CONNELLSVILLE,	:	
Plaintiff,	:	
v.	:	
CHRIS FRANCHEY,	:	No. 2554 of 2019, G.D.
Defendant.	:	President Judge Steve P. Leskinen

OPINION AND ORDER

LESKINEN, J. May 2, 2023

Before the Court is Plaintiff, Christopher Franchey's ("Franchey"), Motion for Re-consideration of this Court's Order dated November 29th, 2022, affirming the October 7th, 2020, Opinion, Decision, and Order of the City of Connellsville Zoning Hearing Board. After consideration of the entire record of the matters at No. 1971 of 2020, G.D., and No. 2554 of 2019 G.D., (consolidated at No. 1971 of 2020 G.D. by Order dated November 8th, 2021) and oral arguments presented by the parties on February 14th, 2023, the Court hereby issues the following Opinion and Order:

FACTUAL AND PROCEDURAL HISTORY

The consolidated cases before the Court both concern Franchey's use of his property on South Eighth Street in the City of Connellsville (Tax ID Number 05-07-0005) ("Property") to park four semi-trailers (the storage container portion of a tractor trailer). The Property is zoned as an R-1 Low to Moderate Density Residential Zoning District.

The matter originally filed by the City of Connellsville against Franchey at No. 2554 of 2019 arises out of a zoning enforcement action against Franchey, resulting in the entry of a Default Judgment against him dated October 16th, 2019, at the Magisterial District Court No. MDJ-14-1-02. Franchey filed a timely Notice of Appeal on November 15th, 2019.

The matter originally filed by Franchey against the City of Connellsville Zoning Hearing Board at No. 1971 of 2020 arises out of Franchey's timely appeal from a decision of the Zoning Hearing Board of the City of Connellsville dated October 7th, 2020, denying Franchey's petitions for a special exception and/or a use variance.

This Court affirmed the Decision of the City of Connellsville Zoning Hearing Board by Order dated November 29th, 2022. This Order was interlocutory, as it did not

resolve all matters before the Court. Mr. Franchey timely filed a Motion for Reconsideration on December 19th, 2022, and this Court heard oral arguments on the Motion on February 14, 2023.

APPEAL FROM MDJ JUDGMENT (No. 2554 of 2019 G.D.)
CIVIL ENFORCEMENT PROCEEDING

On March 27th, 2019, the City Zoning Officer for the City of Connellsville sent a notice of violation letter by certified mail to Franchey indicating that Franchey's use of the Property for the storage of semi-trailers violated Section 2-103 of the City's Zoning Ordinance. (Exhibit "B" to Complaint.) The Zoning Officer posted a copy of the violation letter on the Property on April 23rd, 2019, and hand delivered a copy to Franchey on May 3rd, 2019. Franchey submitted a written response on May 3rd, 2019, which the ZHB interpreted as requesting a use variance from the Zoning Hearing Board of the City of Connellsville ("ZHB"). (Exhibit "C" to Complaint.) The ZHB held a hearing on Franchey's request on June 14th, 2019, at which Franchey personally appeared.

After the hearing, the ZHB issued a decision dated June 14th, 2019, finding that Franchey's use of the Property for the storage of semi-trailers was not permitted. (Exhibit "D" to Complaint.) The decision required Franchey to remove the semi-trailers within 30 days and allowed 30 days to appeal the decision of the ZHB to the Fayette County Court of Common Pleas. Franchey neither removed the semi-trailers nor did he appeal the decision of the ZHB within 30 days.

On July 31st, 2019, the City Zoning Officer filed a civil enforcement action against Franchey at the office of Magisterial District Judge Haggerty ("MDJ"). After two continuances at Franchey's request, the MDJ held a hearing on October 16th, 2019. The MDJ found in favor of the City of Connellsville and entered a default judgment against Franchey in the amount of \$591.50 (\$500.00 claim plus \$91.50 in costs), which Franchey timely appealed.

Franchey's recourse, if he wished to dispute the June 14th, 2019, decision of the ZHB, was to file an appeal to the Court of Common Pleas. When he failed to do so, the ZHB's decision finding Franchey's use to be in violation of the City of Connellsville Zoning Ordinance became a conclusive determination of a violation. A conclusive determination of a violation can arise out of the appeal process or by the failure to appeal. *Borough of Bradford Woods v. Platts*, 799 A.2d 984, 991 (Pa. Cmwlth. 2002). "The MPC [Municipalities Planning Code] vests the zoning hearing board with exclusive jurisdiction to hear appeals of zoning violations; the MPC vests the magisterial district judge with the power to levy fines once a violation is finally adjudicated." *Borough of West Conshohocken v. Soppick*, 164 A.3d 555, 561 (Pa. Cmwlth. 2017). "Once [landowner] has exhausted his appeal rights, the Township may choose to seek an enforcement remedy if the Property has not been brought into compliance with the zoning ordinance." *Id.*

With a conclusive determination of a violation, the only matters before the MDJ and before this Court on appeal are the determination of any fines and the award of attorney's fees and costs under Section 617.2 of the MPC and the Zoning Ordinance. (Pennsylvania Municipalities Planning Code, 53 P.S. §10617.2)

Section 617.2 allows the courts to enter a judgment of "not more than \$500 plus all court costs, including reasonable attorney fees incurred by a municipality as a result thereof." The reasonable attorney fees include any fees incurred from the time an enforcement notice is sent to the property owner through any appeals. Borough of Bradford Woods at 991. Additional fines of up to \$500/day may be assessed if the violation is not abated.

The trial court has the discretion to determine the fines under Section 617.2. *Township of Cranberry v. Spencer* 249 A.3d 9, 20 (Pa. Cmwlth. 2021)(distinguished on other grounds). The appellate courts have upheld a fine of \$0 issued by the trial court (*Loganville Borough v. Godfrey*, 50 A.3d 1149, 1152 (Pa. Cmwlth. 2012)) and upheld a fine of \$100 per day for 140 days (*City of Erie V. Freitas*, 681 A.2d 840, 843 (Pa. Cmwlth. 1996)). Section 617.2(b) also allows the court of common pleas to grant an order of stay, upon cause shown, tolling the per diem fine pending a final adjudication of the violation and judgment. As this Court noted during oral argument, Franchey would have been within his rights to request such a stay and it was unclear why his former attorney declined to do so.

This Court finds that the MDJ's assessment of the maximum fine of \$500 for the initial violation was appropriate. As Franchey timely filed his notice of appeal, the Court further finds that a fine of \$0 per day is appropriate during the pendency of the appeal, from the date of the MDJ judgment through the date of this Court's Order dated November 29th, 2022. And finally, the Court finds that a fine of \$250 per day is appropriate from the date of the November 29th, 2022, Order through the date the semi-trailers were removed, December 7th, 2022, (8 days at \$250/day).

Counsel for the City of Connellsville filed an Affidavit on February 15th, 2023, itemizing attorney fees and costs through February 13th, 2023, totaling \$7,525. No other fees or expenses have been put on record. The Court finds that the total of \$7,525 in attorney fees and costs is reasonable and appropriate based on the record.

APPEAL FROM DECISION OF
ZONING HEARING BOARD (No. 1971 of 2020, G.D.)

Mr. Franchey filed a Petition for Special Exception or Variance with the City of Connellsville on August 27th, 2020. The ZHB conducted a hearing on October 7th, 2020 and issued a decision dated October 7th, 2020 denying Franchey's Petition. Franchey timely filed a notice of appeal.

The Zoning Ordinance for the City of Connellsville states that a party cannot petition for the same relief more than once a year. (Appeal at ¶ 12.) Franchey did not appeal the 2019 decision of the ZHB to the Court of Common Pleas, instead waiting until a year had passed and then filing a new Petition, even though this 2020 Petition was related to the same issue (the semi-trailers on the Property) as his 2019 hearing before the ZHB. This is an important distinction. Though the two matters were consolidated for all purposes by this Court by Order dated November 8th, 2021, the outcome of this Appeal from the Decision of the Zoning Hearing Board is not determinative in the outcome of the civil enforcement proceeding, which was based on Franchey's 2019 request for a hearing on the City Zoning Officer's enforcement notice.

Section 1005-A of the MPC (53 P.S. § 11005-A) sets forth the standard for review and the presentation of additional evidence on appeal to the Common Pleas Court:

§ 11005-A Hearing and argument of land use appeal. If, upon motion, it is shown that proper consideration of the land use appeal requires the presentation of additional evidence, a judge of the court may hold a hearing to receive additional evidence, may remand the case to the body, agency or officer whose decision or order has been brought up for review, or may refer the case to a referee to receive additional evidence, provided that appeals brought before the court pursuant to section 916.11 shall not be remanded for further hearings before any body, agency or officer of the municipality. If the record below includes findings of fact made by the governing body, board or agency whose decision or action is brought up for review and the court does not take additional evidence or appoint a referee to take additional evidence, the findings of the governing body, board or agency shall not be disturbed by the court if supported by substantial evidence. If the record does not include findings of fact or if additional evidence is taken by the court or by a referee, the court shall make its own findings of fact based on the record below as supplemented by the additional evidence, if any.

"The question of whether presentation of additional evidence is to be permitted is a matter within the sound discretion of the trial court." *Wimer Realty, LLC v. Township of Wilmington*, 206 A.3d 627, 644 (Pa. Cmwlth. 2019) (distinguished on other grounds). A trial court faces compulsion to hear additional evidence in a zoning case only where the party seeking the hearing demonstrates that the record is incomplete because the party was denied an opportunity to be heard fully, or because relevant testimony was offered and excluded." *Id.*

The ZHB developed an extensive Certified Record, filed with this Court on November 25th, 2020. This includes a transcript of the hearing and the documents filed by Franchey with the ZHB. The ZHB's October 7th, 2020, decision included a thorough and well-reasoned legal analysis supporting the ZHB's decision. Franchey raises no claim that he was denied an opportunity to be heard at the hearing before the ZHB, nor does he point to any relevant testimony that was offered and excluded. Franchey was represented by counsel at the hearing but did not personally attend.

Therefore, this Court finds that no additional evidence was necessary. Under such circumstances, this Court is bound by any findings of fact made by the ZHB that are supported by substantial evidence in the record. This Court does find that the factual findings of the ZHB were supported by substantial evidence in the record and that the decision of the ZHB denying Franchey's Petition was appropriate.

NOTICE AND DUE PROCESS ISSUES

In his Motion for Reconsideration, Franchey seeks the opportunity to present testimony on his own behalf or in his defense. Franchey contends that he did not receive notice of the date and time set for the oral argument on the case that took place on May 17th, 2022. The Court finds that the evidence supports Franchey's claim that notices mailed from the Prothonotary were mailed to an address with the incorrect Zip Code. Though the Court notes that this error with the Zip Code originated from Franchey's own pleadings, it is plausible that Franchey did not receive notice of the May 17th, 2022, oral arguments.

Did this result in the denial of Franchey's due process right to be heard? Franchey argues in his Motion for Reconsideration at ¶5 that had he received notice, he would have appeared at the oral argument and offered testimony on his own behalf. As already discussed supra, the only matter before this Court with respect to the appeal of the MDJ decision in the civil enforcement action are the questions of fines, attorney fees, and costs. Franchey was permitted to argue his position and provide testimony on that issue at the hearing on the Motion for Reconsideration.

Similarly, this Court did not hear any additional evidence beyond the Certified Record in the Appeal from the Decision of the ZHB. Franchey was represented and had the opportunity to present his case and supporting evidence at the ZHB's hearing on his 2020 Petition. This Court considered that testimony in considering Franchey's appeal. The Court also provided Franchey with an opportunity to be heard on his legal arguments by conducting a hearing on his Motion for Reconsideration.

Thus, the Court finds that it is plausible that Franchey did not receive notice of the May 17th, 2022, oral arguments. However, any prejudice to Franchey was remedied with the opportunity to be heard at the argument for the Motion for Reconsideration.

WHEREFORE, the Court issues the following Order:

ORDER

AND NOW, this 2nd day of May, 2023, upon the consideration of Christopher Franchey's, Motion for Reconsideration and a review of the entire record in the consolidated matters above, the Court ORDERS as follows:

The Court again AFFIRMS the October 7th, 2020 Opinion, Decision, and Order of the City of Connellsville Zoning Hearing Board.

The Court hereby ENJOINS Christopher Franchey from any use of the Parcel with Tax ID Number 05-07-0005 that is inconsistent with the City of Connellsville Zoning Ordinance.

Judgment is entered against Christopher Franchey for attorney fees in the amount of \$7,525 and fines of \$2,500 (1 day at \$500/day, 8 days at \$250/day, and \$0/day for all other days) for a total of \$10,025, plus costs.

This Order shall be a final order, disposing of all claims and of all parties, and is immediately appealable.

BY THE COURT:
STEVE. P. LESKINEN,
PRESIDENT JUDGE

ATTEST:
PROTHONOTARY

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