

LEGAL NOTICES, cont.

NOTICE IS HEREBY GIVEN that Articles of Incorporation of a proposed non-profit corporation to be called "Franklin Mennonite Conference Mission Board, Inc." will be filed on Friday, August 8, 1980, in the Office of the Department of State, Corporation Bureau, Commonwealth of Pennsylvania, Harrisburg, Pennsylvania, under the provisions of the Nonprofit Corporation Law of 1972 of the Commonwealth of Pennsylvania.

The purpose or purposes for which the corporation is formed are as follows:

"The Franklin Mennonite Conference Mission Board, Inc., exists for the purpose of witnessing to the Gospel of Jesus Christ. More specifically, the purpose is to promote and administer activities and programs of evangelism, church growth, and social concerns at home and overseas. In carrying out this purpose the Mission Board commissions workers, calls persons to life in Jesus Christ, and receives and channels resources to minister to the spiritual and physical needs of people wherever the Lord leads."

The proposed corporation does not contemplate any pecuniary gain or profit incidental or otherwise, to its members.

William R. Davis, Jr.
of Davis and Zullinger
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Chambersburg Trust Co. Bldg.
Chambersburg, PA 17201

Attorney

(8-15)

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Act of Assembly of May 24, 1945, P.L. 967 and its amendments and supplements of intention to file with the Secretary of the Commonwealth of Pennsylvania at Harrisburg and with the Prothonotary of the Court of Common Pleas of Franklin County, Pennsylvania, on August 22, 1980, an application for a certificate for the conducting of a business under the assumed or fictitious name of Krystal Wharf with its principal place of business at 151 South Main Street, Chambersburg, Pa. 17201. The name and address of the person owning or interested in said business is Burton C. Israel, R. D. 3, Box 154B, Mercersburg, Pa. 17236.

Courtney J. Graham
of Sharpe and Sharpe
Attorneys-at-Law
257 Lincoln Way East
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(8-15)

NOTICE

NOTICE is hereby given that a corporation by the name of Morningstar Enterprises, Inc., filed its Articles of Incorporation with the Pennsylvania Department of State July 14, 1980 and has been organized under the provisions of the Business Corporation Law of May 5, 1933 (P.L. 364) as amended for the following purposes: The corporation shall have unlimited power to engage in and to do any lawful act concerning any or all lawful business for which corporations may be incorporated under the Business Corporation Law Act of May 5, 1933, P.L. 364 as amend-

LEGAL NOTICES, cont.

ed, and for the purpose of manufacturing and sales.

Stephen E. Patterson
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(8-15)

GEESAMAN AND WIFE v. ZONING BOARD OF THE BOROUGH OF WAYNESBORO, et al., Misc Docket Vol. X, Page 348

Zoning - Zoning Hearing Board - Section 908(7) of the Municipalities Planning Code - Stenographic Record

1. Section 908(7) of the Municipalities Planning Code does not require the Court to remand for a stenographic record or schedule a de novo hearing where there are no exceptions to the record itself and the record appears to be a sufficient one for appellate review.

Stephen E. Patterson, Esq., Attorney for Appellant

Edward I. Steckel, Esq., Attorney for Appellee

Robert E. Graham, Jr., Esq., Attorney for Intervenors, The Rocks

D. L. Reichard, II, Esq., Attorney for Intervenor, The Borough of Waynesboro

OPINION AND ORDER

EPPINGER, P.J., June 17, 1980:

The Zoning Office of Waynesboro issued a building permit to Donald L. and Linda B. Rock so they could build a single family dwelling. David and Irene Geesaman appealed this decision to the Zoning Hearing Board because they said the zoning hearing officer made a mistake in granting the permit. A hearing was held by the board and the board dismissed the Geesaman's appeal. This appeal followed and the only issue before us at this time is whether the record before the board is adequate. If it is not, then the question is whether the case should be sent back to the zoning hearing board for a new hearing or whether the court should hear it itself.

We conclude that the record is adequate. The testimony at the board's hearing was recorded on a tape recorder and later was transcribed. Section 908(7) of the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, 53 P.S. Sec.10908, says that the zoning hearing board shall "keep a stenographic record of the proceedings." This language was an amendment from an earlier provision which permitted the record to be kept either stenographically or by sound recording. The only other "record" made at the hearing were some sketchy minutes. It could not be said that the recording in this case was mere back up. On the face, the zoning hearing board

seems not to have complied with the Municipalities Planning Code.

In *Printzas v. Borough of Norristown*, 10 Pa. Cmwlth. Ct. 482, 313 A.2d 781 (1973), the court, despite the Planning Code's provisions that the board shall keep a stenographic record of the proceedings, approved a record made from the secretary's extensive notes and a sound recorder, emphasizing that the transcript appeared to be a verbatim transcript, especially on matters in contention.

In the Administrative Agency Law, Act of June 4, 1945, P.L. 1388, Sec.31, 71 P.S. Sec.1710.31, there is a provision that all testimony taken at a hearing before such agency shall be stenographically recorded and a full and complete record shall be kept of the proceedings. In *Sharp's Convalescent Home v. Dept. of Public Welfare*, 7 Pa. Cmwlth. Ct. 623, 300 A.2d 909 (1973), the testimony was taken by a tape recorder rather than by a stenographer. Even though the tape was inaudible at points, causing omissions, the court approved the record, saying:

The crucial aspect on appeal is whether there is a complete and accurate record of the testimony taken so that the appellant is given a base upon which he may appeal, and also that the appellate court is given a sufficient record upon which to rule on the questions presented. Due process is afforded to any party, regardless of whether the testimony is taken by a stenographer or first taken by a tape recorder and then duly transcribed by a stenographer.

7 Pa. Cmwlth, at 628, 300 A.2d at 911.

The court made it clear it would not approve an incomplete or inaccurate transcript and that there is risk in using sound recording devices. The court said, however, "In this case, the Agency (Dept. of Public Welfare) was fortunate; the transcript is not so vague or remiss so as to require re-hearing." *Id.*

The Geesamans, appellants here, do not contend that the record is inadequate, incomplete or inaccurate. They simply argue that the zoning hearing board did not comply with the act and that therefore there should be a new hearing. Unless the record that was maintained, despite the way it was done, was somehow deficient, it is futile to require a new hearing. We conclude from the Commonwealth Court cases that have been cited that at least where there are no exceptions to the record itself and it appears to be a sufficient one for appellate review,

the record must stand and there is no occasion to remand for a stenographic record or a de novo hearing before the court.

We will make an order overruling that portion of appellants' appeal which we have discussed. There are other matters to be argued before the court, however, so we will order that the matter be listed for further argument.

ORDER OF COURT

June 17, 1980, the portion of the appeal of David Geesaman and Irene B. Geesaman in this matter as stated in paragraph 8 (b) of the Notice of Appeal is overruled. It is ordered that the remaining portions of the appeal shall be argued either at a regular session of argument court or at a time fixed by the Court Administrator to be agreed upon by counsel.

COLLEGE v. GOTHIE, C.P. Fulton County Branch, No. 141 of 1978—C

Assumpsit - Preliminary Objections - Pleading General and Special Damages

1. Where plaintiff pleads a breach of contract and a loss of profits "estimated to be in the area of \$50,000.00", the fact that the defendant can secure the entire factual basis of the plaintiff's claim for damages through discovery does not relieve the plaintiff of pleading damages with more specificity.
2. General damages are the usual and ordinary consequences of the wrong done.
3. Loss of profits is the usual and ordinary consequences of an assumpsit action for breach of contract.
4. A distinction is made between whether a pleading is sufficient to permit the offer of proof at trial for damages and whether the pleading is sufficiently specific so that if objected to at the pleading stage the defendant is not entitled to a more specific pleading.
5. The plaintiff should specify the items of damage claimed, whenever possible whether the damages be general or specific.

Robert J. Pfaff, Esq., Counsel for Plaintiff

Jerome T. Foerster, Esq., Counsel for Defendant