

IN THE COURT OF COMMON PLEAS OF ARMSTRONG COUNTY, PENNSYLVANIA

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OFFICE OF OPEN RECORDS

JANET and SCOTT BRUNERMER,

Plaintiffs/Petitioners,

vs.

APOLLO BOROUGH,

Defendant/Respondent.

) No. 2019-01343-CIVIL  
) No. 2019-01402-CIVIL  
) No. 2019-01518-CIVIL  
) No. 2019-01790-CIVIL

) **REPLY BRIEF**

) Filed on behalf of Plaintiffs/Petitioners,

) JANET and SCOTT BRUNERMER

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IN THE COURT OF COMMON PLEAS OF ARMSTRONG COUNTY

JANET AND SCOTT BRUNERMER,	:	
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Plaintiffs/Petitioners,	:	
	:	
v.	:	No. 2019-1343-CIVIL
	:	No. 2019-1402-CIVIL
APOLLO BOROUGH,	:	No. 2019-1518-CIVIL
	:	No. 2019-1790-CIVIL
Defendant/Respondent.	:	

**REPLY BRIEF**

AND NOW, comes the Plaintiffs/Petitioners, Janet and Scott Brunermer, by and through their attorneys, Del Sole Cavanaugh Stroyd, LLC, and respectfully submit this Reply Brief:<sup>1</sup>

**I. INTRODUCTION**

This case involves Right-to-Know-Law (“RTKL”) 65 P.S. § 67.101, *et. seq.*, requests submitted by the Plaintiffs/Petitioners, Janet and Scott Brunermer (Requesters) in June, July, and August of 2019. In these requests directed to Apollo Borough, the Borough did not timely respond, the Borough did not participate in the appeals before the Office of Open Records (“OOR”), and the Borough substantially failed to provide the requested records until ordered to do so by this Court. The Borough’s Brief suggests its responses were complete in August and November of 2019. That ignores the Borough’s later submissions in January and February of 2020. It also ignores that the Borough consented to providing additional records in March of 2020, and only some of those records were eventually provided with its Brief. Many other records are still outstanding. In short, the Borough’s actions repeatedly violated its statutory duties, disobeyed this Court’s Orders, and thwarted the prompt transparency purpose of the RTKL.

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<sup>1</sup> With this Court’s permission, the parties agreed to extend the filing deadline to June 26.

“[T]he objective of the RTKL ‘is to empower citizens by affording them access to information concerning the activities of their government.’” Levy v. Senate of Pennsylvania, 618, 65 A.3d 361, 381 (Pa. 2013) (quoting SWB Yankees LLC v. Wintermantel, 45 A.3d 1029, 1042 (Pa. 2012)). The RTKL made “significant changes” to Pennsylvania’s prior open records law, and those “significant changes demonstrate a legislative purpose of expanded government transparency through public access to documents.” Levy, 65 A.3d at 381. The Pennsylvania Supreme Court further explained that, “The legislative intent for efficient resolution is justifiable given that the public’s interest in government documents is often time dependent.” Id.

In a response to a RTKL request, the agency is supposed to provide the records requested within 5 business days. 65 P.S. § 67.901. The agency should also inquire to see if its contractors have responsive records. 65 P.S. § 506(d). Records in an agency’s possession are presumed public and should be provided unless an agency can show by a preponderance of the evidence that the records are exempt from disclosure. 65 P.S. § 67.708. Here, the Borough has never argued that any exemption or privilege protects the requested records. Thus, every responsive record is a public record the Borough is required to provide. 65 P.S. §§ 67.102, 67.305, 67.901.

This case involves four consolidated actions seeking mandamus relief, because the Borough has not complied with multiple Final Determinations from the OOR requiring the Borough to provide records. When the case before the Court involves noncompliance with an OOR disclosure order, the agency has the burden to prove it provided all responsive records. Uniontown Newspapers, Inc. v. Pennsylvania Dep’t of Corr., 185 A.3d 1161, 1173 (Pa. Cmwlth. Ct. 2018, single judge opinion), appeal granted in part, 218 A.3d 375 (Pa. 2019) (“As to noncompliance with OOR’s Disclosure Order, DOC bore the burden to prove it provided ‘all responsive records.’”). Here, every Final Determination at issue in the four consolidated cases required the Borough to

disclose all responsive records, so the Borough bears the burden of proof to establish it provided all records.

In addition, that same opinion further clarified:

Enforcement proceedings should not be necessary to ensure an agency's compliance with its statutory duties. DOC's delay in complying with the Disclosure Order was unreasonable. Once this Court issued the Summary Relief Opinion, there was no excuse for further delay. Yet, DOC forced Requester to expend time and resources to discern what responsive records remained undisclosed. Under these circumstances, DOC's persistent denial of access constitutes bad faith.

Id. at 1174. The “Disclosure Order” described in this passage clearly relates to an OOR Final Determination. Id. at 1164.

This Court scheduled a hearing on January 15, 2020, which was continued in part due to an emergency that made one Borough employee unavailable to testify. This Court held a review hearing on February 20, 2020, where the Borough elected not to call any witnesses. At that hearing, the parties agreed that the case could be resolved by filing of briefs and other supplemental material,<sup>2</sup> and this Court granted Apollo Borough’s oral request to have 45 days to file a Brief from February 20, 2020.

Due to extensions for all court filings due to COVID-19, Apollo Borough did not file its brief until June 1, 2020.<sup>3</sup> Thus, instead of making a submission in early April, Requesters had to wait all of April and May to receive the Borough’s Brief. Even with that additional time, the Borough’s Brief failed to address many of the issues raised in Requesters’ proposed order and summary of outstanding items provided to the Court on February 20, 2020 (“Summary Table”). (Feb. 20, 2020 Tr. P. 7-8). To ensure a complete record, additional copies of both documents are

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<sup>2</sup> As for supplemental material, Requesters provide Proposed Exhibits 37-43 as Appendix 3.

<sup>3</sup> Apollo Borough did not mail its Brief on June 1, 2020 as indicated on its certificate of service. The post-mark on the mailing was dated June 5, 2020.

attached hereto. The Summary Table is included as Appendix 1 and the Proposed Order is included as Appendix 2. For clarity, Exhibits referenced in this Brief refer to Plaintiffs' exhibits admitted at trial unless specifically indicated.<sup>4</sup>

On March 12, 2020, this Court also entered a consent order addressing Requesters' Motion for Sanctions. The Order required the Borough to provide affidavits and/or additional records within 14 days. The Borough did not do so. There is hardly any reference to the Motion for Sanctions in the Borough's brief, but the Borough attached to its brief two affidavits from its open records officer Deanna Shupe along with some additional records. The affidavits were both filed on June 1, 2020, but one was dated March 30, 2020 and the second affidavit, was dated May 8, 2020. The Borough did not provide these affidavits or records prior to the filing of its Brief.

The Borough's Brief primarily ignores any detailed analysis of the records at issue and raises two arguments. First, Apollo Borough argues it tried its best by providing responses in August and November of 2019 and that is good faith under the RTKL. Second, Apollo Borough argues that this Court should not find Apollo Borough acted in bad faith, because the OOR never found that the Borough acted in bad faith. Both positions are suspect factually and legally incorrect. As for the first issue, whether conduct is bad faith is a fact-intensive inquiry, so this Brief will address that issue in more detail below in Part II.

As for the second issue, the Commonwealth Court has unequivocally held that the OOR may not make bad faith findings under Section 1304 and 1305 under the RTKL:

Although Requester refers to OOR's findings regarding DOH's noncompliance with its statutory duties, **the statute is clear that only a court may make a finding regarding an agency's bad faith.** See Sections 1304 and 1305 of the RTKL, 65 P.S. §§ 67.1304-67.1305; Uniontown Newspapers, Inc. v. Dep't of Corr., 197 A.3d 825 (Pa. Cmwlth. 2018) (single j. op.).

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<sup>4</sup> The Borough introduced Exhibit A and Defendant's Exhibits 1-4. The Requesters introduced Exhibits 1-36. References in this Brief without more clarification refer to Requesters' Exhibits.

Mission Pennsylvania, LLC v. McKelvey, 212 A.3d 119, 138 (Pa. Cmwlth. Ct. 2019), appeal granted in part sub nom. McKelvey v. Pennsylvania Dep't of Health, 223 A.3d 672 (Pa. 2020).

While the Supreme Court accepted review of that case, it did not accept review of the bad faith issue. Id. Thus, the Commonwealth Court's clear holding that only a Chapter 13 Court can make findings of bad faith for purposes of Section 1304 and Section 1305 of the RTKL is binding on this Court. Notably, the Borough has provided this Court no authority from the Commonwealth Court contradicting this clear statement of the law.

However, the specific issue of whether the OOR is permitted to say an agency acted in bad faith is not needed to resolve this case. Instead, this Court can look to what the OOR did find in the Final Determinations. Requesters admit that the OOR did not explicitly state that it found the Borough acted in bad faith in these cases. The OOR noted, however, that a reviewing court could find the Borough's conduct is bad faith under the RTKL. For example in AP-2019-1021, the OOR concluded that the Borough "did not comply with the RTKL" by not responding to the requests, "nor did it provide any factual or legal support for denying access to responsive records." The OOR then added a footnote, which stated:

*See generally* 65 P.S. § 67.1304(a) (noting that a court "may award reasonable attorney fees and costs of litigation ... if the court finds ... the agency receiving the ... request willfully or with wanton disregard deprived the requester of access to a public record ... or otherwise acted in bad faith..."); 65 P.S. § 67.1305(a) ("A court may impose a civil penalty of not more than \$1,500 if an agency denied access to a public record in bad faith").

Exhibit 5, fn. 3. The OOR then added that the Borough failed "to comply with the statutory requirements of the RTKL . . ." Id. This is a strong factual finding by the OOR, that the Borough failed to meet its obligations under the RTKL. As described later in this brief, Courts have repeatedly held that failure to meet an agency's statutory obligations is bad faith under the RTKL.

In addition, similar discussions are contained in other Final Determinations that are part of this case. Exhibit 9, fn. 4; Exhibit 12, fn. 3; Exhibit 2 to Exhibit 19 fn. 1; and Exhibit 5 to Exhibit 19, fn. 1.

The Borough's Brief does not address these clear findings in the OOR's Final Determinations. Instead, the Borough asks this Court to assume what the OOR meant when the OOR did not include an explicit statement that the Borough acted in bad faith. The Borough concedes, however, that the OOR lacks the authority to do anything upon making a finding of bad faith. Even assuming the Borough's position is correct, the OOR only had evidence of the Borough not responding to requests and not participating in the OOR appeals. The OOR never made any findings evaluating the Borough's conduct after the OOR issued its Final Determinations. The Borough's Brief suggests that the OOR considered the Borough's responses to the Final Determinations, but this is a fundamental misstatement of how the OOR operates.

Once the OOR issues a final determination, it does not enforce its own orders. OOR, Enforcing a Final Determination, <https://www.openrecords.pa.gov/Appeals/EnforcingFD.cfm> (last accessed June 11, 2020) (stating that to enforce a final determination a requester, "must seek help from a Court to enforce the FD [Final Determination]."). The OOR would not evaluate if the Borough complied with the Final Determinations (absent perhaps a request for reconsideration or a Court order remanding the case to the OOR – neither are present in this case). Only a Court can evaluate an agency's compliance with a final determination. See id.; Uniontown Newspapers, Inc. v. Pennsylvania Dep't of Corr., 151 A.3d 1196, 1202 (Pa. Cmwlth. Ct. 2016, single judge opinion) ("We are asked to discern DOC's compliance with the Disclosure Order."). The OOR would not evaluate the Borough's compliance with any of the Final Determinations and the Borough has not cited anything in the record showing the OOR reviewed the Borough's responses to the Final

Determinations. Once the OOR issues a Final Determination, it takes no further action (absent a request for reconsideration or remand from an appeal).

In addition, the Borough places a lot of emphasis on additional Final Determinations issued by the OOR resolving other RTKL requests between the parties. The Borough attached those Final Determinations to its brief.<sup>5</sup> Those decisions resolving other requests are of limited relevance to this Court deciding whether the Borough acted in bad faith in responding to the requests being enforced in these four cases. Those other Final Determinations, however, show that the Borough still failed to provide a timely response as all requests were originally deemed denied. Thus, the Borough continued to fail to provide a timely response to the requests as required by the RTKL.

The Borough's responses to those later requests also showed, however, that the Borough knew it needed to provide affidavits to prove records do not exist in December of 2019. Many of these decisions reference affidavits the Borough submitted to the OOR (the OOR also told the Borough about the necessity of affidavits in August of 2019 (Exhibit 22)). The Borough, however, did not provide any affidavits responding to the requests in these cases until this Court entered an Order in January of 2020. The Borough's first affidavit was not provided until February of 2020. Even assuming the Borough and its solicitor could be excused for not knowing about its obligations from a law enacted in 2008, the OOR expressly told the Borough of its obligations in August of 2019. The Borough was aware of those obligations in December of 2019, but still failed to first attempt to comply with those obligations for this case until required to do so by Court Order.

It is also worth noting that the Borough attempts to avoid responsibility under the RTKL, because its records were a "mess." The Commonwealth Court has not excused non-compliance with the RTKL due to an agency's poor record storage policies. Com., Dep't of Env'tl. Prot. v.

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<sup>5</sup> It appears these Final Determinations were entered into evidence as Defendant's Exhibit 3.



Legere, 50 A.3d 260, 265 (Pa. Cmwlth. Ct. 2012). In that case, the Commonwealth Court explained:

[T]he burden on [the agency,] DEP, comes not from some vast array of documents requested by Legere, but from DEP's method of tracking its records. The RTKL permits a requestor to request and obtain public records, subject to claims of exemption. A requestor cannot control how an agency catalogues or organizes such files. As such, **an agency's failure to maintain the files in a way necessary to meet its obligations under the RTKL should not be held against the requestor. To so hold would permit an agency to avoid its obligations under the RTKL simply by failing to orderly maintain its records.**

Id. (emphasis added). In that case, the Commonwealth Court rejected the DEP's argument that a request was not specifically specific, but its logic applies in full force here. Agencies, like the Borough, should not be permitted to avoid "obligations under the RTKL simply by failing to orderly maintain its records." Id. Nearly eight years ago, the Commonwealth Court had already rejected the argument advanced by the Borough. This Court should not credit it.

The Borough's more general argument that it acted in good faith is addressed in more detail in Part II along with a discussion of the specific requests. Part III reviews the Borough's non-compliance with this Court's March 12, 2020 Order and Requesters' Motion for Sanctions. Part IV provides a summary of the fees, sanctions, and penalties that Requesters seek.

## **II. REVIEW OF THE FINAL DETERMINATIONS IN THESE FOUR CONSOLIDATED CASES SHOW REPEATED BAD FAITH CONDUCT**

The Borough's Brief's second argument for why this Court should find the Borough did not act in bad faith is that the Borough did the best it could since the Borough's responded to the requests by letters sent in August of 2019 (Exhibit 2) and November of 2019 (Exhibit 3 to Exhibit 19). The Borough is wrong. The Borough's initial responses violated many of the RTKL's provisions requiring prompt access and were woefully incomplete.

The Borough's Brief provides sparse analysis of the text of the relevant statute for "bad faith" under the RTKL. Section 1304(a) provides:

**(a) Reversal of agency determination.**--If a court reverses the final determination of the appeals officer or grants access to a record after a request for access was deemed denied, the court may award reasonable attorney fees and costs of litigation or an appropriate portion thereof to a requester if the court finds either of the following:

- (1) the agency receiving the original request willfully or with wanton disregard deprived the requester of access to a public record subject to access or **otherwise acted in bad faith** under the provisions of this act; **or**
- (2) the exemptions, exclusions or defenses asserted by the agency in its final determination were not based on a reasonable interpretation of law.

65 P.S. § 67.1304(a) (emphasis added).

First, in each of the Final Determinations at issue in these consolidated cases, the initial request by the Requesters "was deemed denied." For example, in Exhibit 5, the Final Determination issued by the OOR in AP-2019-1021 (and consolidated appeals), "The Borough did not respond to the Requests within five business days, and the Requests were, therefore, deemed denied on June 25, 2019. 65 P.S. § 67.901." Similar deemed denials findings were included in the other Final Determinations being enforced. Thus, the first part of Section 1304(a) is satisfied.

The second part of Section 1304(a) is satisfied because this Court by Orders dated January 15, 2020 (Exhibits 31 and 32) and March 12, 2020 ordered the Borough to provide additional records. Thus, the requests were deemed denied and this Court granted access to the records. This Court may then award fees if either of the conditions in Section 1304(a)(1) or 1304(a)(2) are met. The Requesters maintain that under Section 1304(a)(1) the Borough's conduct in these cases constitute bad faith justifying an award of fees and other penalties.

The Commonwealth Court has reviewed and explained when an agency's conduct constitutes bad faith under the RTKL:

In the RTKL context, “bad faith” does not require a showing of fraud or corruption. The lack of good faith compliance with the RTKL and an abnegation of mandatory duties under its provisions rise to the level of bad faith. Phila. DA (affirming trial court’s award of \$500 civil penalty for bad faith); Chambersburg Area Sch. Dist. v. Dorsey, 97 A.3d 1281 (Pa. Cmwlth. 2014) (agency failure to review responsive records was grounds from which fact-finder could discern bad faith); Staub v. City of Wilkes-Barre & LAG Towing, Inc. (Pa. Cmwlth., No. 2140 C.D. 2012, filed October 3, 2013), 2013 WL 5520705 (unreported) (**affirming attorney fee award for agency failure to confer with contractor before responding to request**). The RTKL reserves bad faith determinations for disposition by Chapter 13 Courts. Bowling v. Office of Open Records, 621 Pa. 133, 75 A.3d 453 (2013).

The RTKL requires an agency to make a good faith effort to find and obtain responsive records before denying access. Dorsey. “[A]n agency [may not] avoid disclosing existing public records by claiming, in the absence of a detailed search, that it does not know where the documents are.” Pa. State Police v. McGill, 83 A.3d 476, 481 (Pa. Cmwlth. 2014) (emphasis added). **Where an agency did not perform a search of its records under the RTKL until the matter was in litigation, the agency denied access in willful disregard of the public’s right to public records.** Parsons v. Pa. Higher Educ. Assist. Agency (PHEAA), 910 A.2d 177 (Pa. Cmwlth.) (en banc), appeal denied, 591 Pa. 686, 917 A.2d 316 (2006) (agency failure to review records before a hearing on denial showed willful violation of former Right-to-Know Law). . . .

**After-discovered records are a type of evidence from which a court may discern bad faith.** Dorsey. **Evidence of an agency’s failure to perform its mandatory duties, including a failure to search its records prior to a denial of access, may suffice.** Dorsey; accord PHEAA.

Uniontown Newspapers, Inc. v. Pennsylvania Dep’t of Corr., 185 A.3d 1161, 1170 (Pa. Cmwlth. Ct. 2018), appeal granted in part, 218 A.3d 375 (Pa. 2019)(emphasis added).

As noted in Part I, the OOR found in these cases that the Borough failed to meet its obligations to timely respond to these requests. 65 P.S. § 67.901. In every request before this Court, the Borough failed to perform this mandatory duty and did not provide any records or the required notice for denying a request. See 65 P.S. § 67.903.

Further, in every request before this Court, the Borough failed to participate in the appeal process before the OOR. After being required by the OOR to provide records, the Borough did not provide many documents that it admitted were responsive until the Requesters obtained Orders

from this Court. Requesters' attempted to resolve or narrow the issues by summarizing the outstanding records in the first three cases in November of 2019 (Exhibit 4), but the Borough did not respond. Further, the Borough then violated this Court's January 15, 2020 Orders and March 12, 2020 Orders. The Borough consented to those Orders.

In many instances, the Borough also failed to check with its contractor for responsive records until long after the Borough's initial refusal to provide any records. This is a violation of a clear duty under the RTKL. Uniontown Newspapers, Inc., 185 A.3d at 1170; 65 P.S. § 67.506(d).

On August 15, 2019, before the Borough made any response to the Requesters, the Borough's solicitor emailed the OOR to ask how to proceed under the RTKL. (Exhibit 22). In that email, the OOR advised the Borough's solicitor to provide responsive records and/or an affidavit under penalty of perjury that nothing exists. Despite this clear instruction of what the law required, the Borough's first affidavit in this case was not provided until February of 2020.

Paragraph 16 of the February 2020 Proposed Order (Appendix 2) also included detailed legal and factual summaries of Requesters' position on bad faith, which are incorporated by reference herein. As set forth therein, even months after some of the requests, the Borough's open records officer, Deanna Shupe could not recall when she first looked for records (Exhibit 25, p. 16, 27), did not know anything about certain requests (Id. at p. 18), did not know what records had been provided (Id. at p. 20), and generally did not recall many items. In relation to many items related to the Shiloh Baptist Church, Ms. Shupe testified that she did not know what that church was, that she did not talk to any other Borough employee to find those records, and she did not know if anyone at the Borough looked for those records. (Id. at p. 32, 33). There were also many other indications, where Ms. Shupe testified that she did not recall searching for records (Id. at p.

36-38, 43, 48, 51, 52, 53). When she did recall looking for records “It wasn’t that long ago.” (Id. at p. 37).

Ms. Shupe also testified on multiple occasions that she did not ask Borough contractors for records. (Id. at p. 20, 53, 65). Grant Kanish testified on January 15, 2020 that no one at the Borough asked him for certain records. Jan. 15, 2020 Tr., p. 11. On cross-examination he generally stated he spoke with the Borough’s solicitor (Id. at p. 21), but on re-direct he could not recall any specific dates and admitted that most of the conversations did not pertain to RTKL requests (Id. at p. 22-23). In response to other RTKL requests, the Borough provided emails between the Borough solicitor and Mr. Kanish. Those emails show that many of the Borough’s inquiries to its contractor seeking records occurred after the January 15, 2020 hearing. See Proposed Exhibit 38 (discussed in more detail below). Brenda Troup also confirmed that at least for a few of the requests she did not contact the Borough’s contractors to obtain responsive records. (Exhibit 26, p. 47, 51-52).

The Borough also received two notices from the Office of Open Records identifying that the Borough’s conduct was deficient under the RTKL (See Exhibit 6 to Exhibit 19, the Complaint in 2019-1790). After receiving those letters from the OOR, the latest dated October 28, 2019, the Borough continued to ignore its obligations under the RTKL.

In addition, the Borough admitted or failed to deny, which is a deemed admission, most of the factual allegations in the Mandamus Complaint at 2019-1790 including Paragraphs 1-37 and 42-47. See Jan. 15, 2020 Tr., p. 43 (regarding Paragraph 29). Paragraph 37 alleged that the Borough had not complied with the OOR’s Final Determinations in that case. The Borough expressly admitted Paragraph 37. Thus, in that case, the Borough essentially admitted that it failed to meet its obligations to comply with Final Determinations under the RTKL. This is bad faith. Uniontown, 185 A.3d at 1174. This Brief will now examine the Borough’s compliance with the

Final Determinations in each of these cases to show further evidence of the Borough's bad faith and overview records and other items still needed.

**1. The Records Still at Issue from AP-2019-1021 (and Consolidated Dockets) and How the Borough Acted in Bad Faith in Addressing these Requests**

The first case before this Court at docket number 2019-1343 addresses one Final Determination issued by the OOR at AP-2019-1021, which was a consolidated Final Determination also resolving appeals at AP-2019-1022 and AP-2019-1023. This Final Determination was issued on July 16, 2019. The Final Determination addresses three separate RTKL requests the Requesters submitted to the Borough on June 11, 2019. The requests are described in full on the Summary Table (Appendix 1) as Item Nos. 1-3. The Borough did not timely respond to the requests and did not make a submission during the appeals before the OOR. The OOR granted the appeals and required the Borough to provide the requested records within 30 days. The Borough did not appeal the OOR's Final Determination. The Requesters brought this action to enforce the OOR's consolidated Final Determination on August 30, 2019.

As described in Item No. 1 of the Summary Table, the first request asked for records related to 723 North Warren Ave. The Borough did not claim these records were exempt from public access. Ms. Shupe testified that she did not even recall this request or looking for these records. Exhibit 25, p. 14, 18. The Borough's August 22, 2019 letter (Exhibit 2) provided some information about this property, which admitted that responsive records existed. The Borough did not provide any responsive records. The Borough also failed to provide these records, despite Requesters'

counsel's letter dated November 14, 2019 asking for them (Exhibit 4).<sup>6</sup> Ms. Troup also admitted that a variety of records existed. Exhibit 26, p. 18-19.

The Borough then waited until January 29, 2020 to provide records responsive to this request for the first time (Exhibit 28). This was after this Court entered an Order requiring the Borough to provide responsive records. It is completely contrary to the aims of the RTKL to allow agencies to withhold records for absolutely no reason. However, that is exactly what Apollo Borough did for Item No. 1. Instead of providing records it admitted it had in August of 2019, the Borough provided nothing until the Requesters were forced to obtain a Court Order in January of 2020. This is bad faith conduct under the RTKL as the Borough should have provided these records within five days of the request (Section 901), or within 30 days of the Final Determination. Uniontown Newspapers, Inc., 185 A.3d at 1174.

The Borough has still never verified that it provided all responsive records for Item No. 1. The Requesters' Proposed Order submitted at the February 20, 2020 hearing (Appendix 2, p. 1, ¶ (1)(b)) raised this issue, but the Borough's Brief ignored it.

As described in Item No. 2 of the Summary Table, the second request resolved in the Final Determination decided in AP-2019-1021 and consolidated dockets asked for records related to another June 11, 2019 request for a January 2018 letter. The Borough responded on August 22, 2019 and provided the record. While, the requesters agree nothing further is needed for this request,

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<sup>6</sup> This letter addressed the first 3 lawsuits that were already filed. The Borough admits that it never responded to this letter and appears to argue it did not respond because the Requesters filed a fourth lawsuit addressing different records shortly thereafter. Had the Borough responded, the issues to be litigated could have been substantially narrowed. That did not occur. At her December 2019 deposition, Deanna Shupe testified as to not having read the November 14, 2019 letter. (Exhibit 25, p. 12-13). The Borough's Solicitor even admitted at the deposition that he had not shared the letter with anyone at the Borough (Id. at p. 14)

the Borough did not provide any sworn testimony or affidavit verifying that the August 22, 2019 letter response was complete for this request until December of 2019, when the Borough provided deposition testimony from various Borough employees. Thus, even though the Borough has provided all of the responsive records, it still failed to act in good faith by not timely responding to this request, not participating in the appeal before the OOR, not providing a response until August 22, 2019, more than 30 days after the OOR's Final Determination dated July 16, 2019, and by not providing any verified affidavit or statement until many months later when the Requesters had to depose Borough employees.

As described in Item No. 3 of the Summary Table, the third request resolved in the Final Determination decided in AP-2019-1021 and consolidated dockets asked for records related to the Requester's property at 719 N. Warren Ave. As described in Part III regarding the Motion for Sanctions, many of the electronic records responsive to this request were not provided until nearly a year later, when the Borough filed its brief on June 1, 2020. Other items responsive to this request are still overdue.

The Borough originally stated in its August 22, 2019 letter (Exhibit 2) that it had provided everything. That was not correct. The Borough in its December 13, 2019 deposition testimony cited throughout its brief, also alleged that the Borough had provided everything (Exhibits 25 and 26). In its January 29, 2020 letter (Exhibit 28), the Borough provided more documentation, including two additional dumpster permits. On February 5, 2020, the Borough by affidavit then stated it had provided everything (Exhibit 29). The Borough then provided additional records from its contractor on February 20, 2020. (Proposed Exhibit 37). As described in Part III, those records revealed other documents that were responsive and existed, but had not been provided, which was the reason for Requesters' Motion for Sanctions. The Borough's Brief also included additional



emails contradicting the February 5, 2020 affidavit's claim that all responsive emails had been provided. Those emails were required by the January 15, 2020 Order (Exhibit 32) and should further subject the Borough for penalties under Section 1305(b) as described in Parts III and IV.

The Borough has also failed to allege in any of its affidavits, that it has provided every permit related to 719 N. Warren in response to this request. This was explicitly set out as being needed in Paragraph 1(b)(iii) of the January 15, 2020 Order (Exhibit 32). The very last two pages of the Borough's January 29, 2020 response (Exhibit 28) include permit applications with Borough notations. However, the Requesters had submitted additional permit applications during the months surrounding the months of the permits provided, but the Borough did not provide those permits. In addition, in the February 20, 2020 proposed order, the requesters noted that the June 2019 transcript revealed that the Borough had sent a notification regarding the vacancy ordinance to the requesters in August of 2017, but the Borough has still failed to provide this or verify nothing else exists.

In addition, the Borough provided a file from its contractor Mr. Grant Kanish at the February 20, 2020 hearing (Proposed Exhibit 37). Requesters' counsel attempted to make the file provided by Mr. Kanish an Exhibit by consent, but the Borough's counsel never responded to emails seeking to do so (Proposed Exhibit 41). As detailed in Proposed Exhibit 41, in conversations between counsel discussing the Motion for Sanctions, the Borough's counsel made a comment suggesting that Mr. Kanish had produced additional documents to the Borough's counsel that the Borough's counsel had not produced. The Borough's Brief ignored this issue and no affidavit for these records have been provided. Clarification as to whether the entire file was provided is still needed.

As the Borough failed to timely respond to this request, and failed to provide records until after this Court had to enter Orders on January 15, 2020 and March 12, 2020, the Borough's conduct violated its duties to promptly respond to RTKL requests and so the Borough's actions in response to this request is bad faith under the RTKL. The Borough's bad faith is also evidenced by its multiple affidavits and attestations that everything has been provided, only to have the Borough later contradict its prior statement by producing additional records. This is bad faith conduct and the failure to disclose documents promptly despite multiple court orders justifies penalties under Section 1305(b) for non-compliance as described in more detail in Part III.

**2. The Records Still at Issue from AP-2019-1103 and AP-2019-1116<sup>7</sup> (and Consolidated Dockets) and How the Borough Acted in Bad Faith in Addressing these Requests**

The second case before this Court at docket number 2019-1402 addresses two Final Determinations issued by the OOR at AP-2019-1103 (consolidated with AP-2019-1114), and AP-2019-1116 (consolidated with AP-2019-1117). Both Final Determinations were issued on August 2, 2019. These Final Determinations address multiple RTKL requests the Requesters submitted to the Borough on June 21, 26, and 28, 2019. The requests are described in full on the Summary Table as Item Nos. 4-14. The Borough did not timely respond to the requests and did not make a submission during the appeals before the OOR. The OOR granted the appeals and required the Borough to provide the requested records within 30 days. The Borough did not appeal those Final Determinations. The Requesters brought this action to enforce the OOR Final Determinations on September 10, 2019.

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<sup>7</sup> This Court entered an Order on January 15, 2020 noting that no party was objecting to multiple Final Determinations being enforced in one action.

Item No. 4 of the Summary Table is the first part of a 6-part request in a June 26, 2019 request which sought the current list of vacant properties. The Borough provided a list of properties on the vacancy list as Exhibit C to its August 22, 2019 letter (Exhibit 2 (§5a)). In Pages 71-81 of its Answer in Docket No. 2019-1790 before this Court, the Borough produced copies of the documents appearing to be the 2015-2017 versions of the vacancy list, which shows some of the information missing from the current list provided as Exhibit C to August 22, 2019 letter (Exhibit 2). The Borough's January 29, 2020 letter (Exhibit 28) explains that the Borough would attest that the current vacancy list did not have additional information compared to the prior year's vacancy list, but no such attestation or statement was included in the one affidavit the Borough provided. See Exhibit 29. Thus, the Borough still needs to either verify that its current list as produced was complete or provide the list with the other information compiled for the 2015-2017 lists.

If more records exist, then sanctions under Section 1305(b) are warranted because the Borough was required to provide this information in this Court's January 15, 2020 Order. If nothing else exists, the Borough still needs to verify that fact. It is nearly a year after this request and the Borough has not yet resolved this issue.

Items Nos. 5-8 of Summary Table were also part of the June 26, 2019 request. While Requesters agree that the Borough has proved nothing exists for these requests, the Borough's conduct still evidences bad faith compliance under the RTKL. First, during the January 15, 2020 hearing, Mr. Brunermer explained that during a June 24, 2019 hearing (transcript admitted as Exhibit 20), Borough employees testified that the Requesters' property had previously been found vacant. Items Nos. 5-8, 11-12, and 27-39 on the Summary Table all relate to requests for records the Borough would have if Requesters' property had previously been declared vacant consistent with the Borough's testimony at the June 24, 2019 hearing.

The Borough's August 22, 2019 and November 14, 2019 letter stated that nothing existed related to these requests, but those unsworn statements contradicted the Borough's prior June 24, 2019 testimony. Neither of these letters included affidavits. Finally, during depositions in December of 2019, the Borough for the first time under penalty of perjury admitted that the June 24, 2019 testimony had not been accurate, and Requesters' property was not declared vacant until after the Requesters purchased the property. Had the Borough provided a verified affidavit in response to the OOR appeal or in its August 22, 2019 letter, explaining these facts, then the Borough could have saved everyone considerable effort.

Instead, the Borough elected to make unverified statements that contradicted prior sworn testimony without any explanation. Only a week earlier, the Borough had been told explicitly of the need for an affidavit (Exhibit 22). The first affidavit in this case was not provided until February of 2020. This is not good faith. The Borough failed to meet its obligations as advised by the OOR for months. The Borough only complied with its obligations after the Requesters filed lawsuits, attended hearings, and deposed Borough witnesses. This is not the inexpensive and prompt access to government records required by the RTKL.

Items Nos. 9 and 10 both sought the vacancy inspection checklist. These items are addressed more fully in response to the Motion for Sanctions in Part III herein. Even if this Court overlooks the serious issues of their being multiple versions of the vacancy inspection checklist described in Part III, the Borough's first response to these requests came on August 22, 2019, nearly two months after the requests were made on June 26, 2019 and June 21, 2019. Thus, the Borough's ignoring these requests and the appeals of these requests are still evidence of failing to meet its obligations under the RTKL.

Items Nos. 11-12 related to the prior owners of the Requesters' property and nothing further is needed. As described for Item Nos. 5-8 above, the Borough acted in bad faith under the RTKL.

Item No. 13 described a June 28, 2019 request for a change of use for Kerr manufacturing. The OOR required the Borough to provide this record. The Borough did not provide an affidavit verifying that the Borough lacked responsive records until February 2020 (Exhibit 29). This long delay is not a good faith response under the RTKL, and clearly violates the time to respond in Section 901 of the RTKL. 65 P.S. § 67.901.

Item No. 14 summarized a June 28, 2019 request for the Borough's zoning map. The OOR required the Borough to provide this record. The Borough admitted that it had this record in its August 22, 2019 letter (Exhibit 2), but the Borough failed to provide it to the Requesters. It was not until this Court Ordered the Borough to provide this record on January 15, 2020, that the Borough finally provided it on January 29, 2019 (Exhibit 28). It is a complete violation of the Borough's obligations under the RTKL to fail to provide records as required by the OOR. The Borough never objected to providing this record, but still forced the Requesters to get a Court Order before the Borough provided it. This is bad faith conduct under the RTKL as the Borough should have provided this record within five days of the request (Section 901), or within 30 days of the Final Determination. Uniontown Newspapers, Inc., 185 A.3d at 1174. Instead, the Borough waited many additional months and forced the requesters to obtain an order.

### **3. The Records Still at Issue from AP-2019-1242 (and Consolidated Dockets) and How the Borough Acted in Bad Faith in Addressing these Requests**

The third case before this Court at docket number 2019-1518 addresses a Final Determination issued by the OOR at AP-2019-1242 (consolidated with AP-2019-1244 and AP-2019-1245). The Final Determination was issued on August 20, 2019. The Final Determination addresses multiple RTKL requests the Requesters submitted to the Borough on July 12, 2019. The requests are described in full on the Summary Table as Item Nos. 15-25. The Borough did not timely respond to the requests and did not make a submission during the appeals before the OOR. The OOR granted the appeals and required the Borough to provide the requested records within 30 days. The Borough did not appeal that Final Determination. The Requesters brought this action to enforce on October 1, 2019.

Item No. 15 sought the list of requirements for a vacancy inspection and the Borough finally responded on August 22, 2019 stating that the only requirements were in a Borough ordinance, which the Borough provided. The Borough, however, has never verified in an affidavit that nothing else exists, despite this Court's January 15, 2020 Order requiring the Borough to do so, and the OOR informing the Borough solicitor of the need for affidavits on August 15, 2019 (Exhibit 22). The Borough maintains the burden of proof. Uniontown Newspapers, Inc., 185 A.3d at 1173. The Borough should provide any remaining documents or a verified affidavit that nothing else exists.

Item No. 16 sought a list of officials permitted to perform inspections for the Borough. While the Borough has stated in letters that it does not have such as list, the Borough's affidavits have never addressed this issue, despite this Court's January 15, 2020 Order requiring the Borough to do so, and the OOR informing the Borough solicitor of the need for affidavits on August 15,

2019 (Exhibit 22). The Borough maintains the burden of proof. Uniontown Newspapers, Inc., 185 A.3d at 1173. The Borough should provide any remaining documents or verified affidavits that nothing else exists.

Item No. 17 sought the list of qualifications for a Borough inspector. The Borough first provided a verified affidavit on this issue in February of 2020 for a July 2019 request. While, the Requesters now agree that the Borough has proved no records exist, the Borough still failed to timely respond to this request and failed to timely provide an affidavit that nothing exists until the Requesters were forced to get a Court Order. This clearly violated the Borough's duty to promptly respond to this request and is further evidence of the Borough's bad faith.

Item No. 18 sought various Borough codes. The Borough eventually provided most of these records on January 29, 2020 after a January 15, 2020 Court Order for a July 2019 request. Further, the Borough has still failed to provide the Requesters access to the Uniform Construction Code referenced in the Borough's response. See also Exhibit 30. Thus, the Borough's response to this request is not yet complete, and further supports sanctions under Section 1305(b).

Item No. 19 sought records for costs of enforcing the vacancy ordinance. The Borough consented to this Court's order requiring the Borough to provide: "Financial records showing the Borough's cost to enforce the vacancy ordinance." January 15, 2020 Order (Exhibit 32, ¶ 7(e)). The Borough's counsel signed and initialed the January 15, 2020 Order, and agreed to the Order in open court. The January 15, 2020 Transcript on page 42 states:

6 THE COURT: Now I have a total of three  
7 orders. One is consolidating the documents and then the  
8 other two have to deal with the specific Right-to-Know  
9 requests.

10 MR. ANDREASSI: Correct.

11 THE COURT: Both attorneys have had a  
12 chance to review these orders.

13 MR. GORDON: Yes, Your Honor.

14 MR. ANDREASSI: That is correct.

15 THE COURT: Everybody is fine with me  
16 signing these today?

17 MR. GORDON: Yes, Your Honor.

18 MR. ANDREASSI: That is correct.

19 THE COURT: What I will do then is I will  
20 send these orders over to the court administrator's  
21 office and she will schedule the follow-up hearing.

22 MR. ANDREASSI: Thank you, Judge.

In addition, the language in this Order was identical to the language provided to the Borough's counsel on November 14, 2019 (Exhibit 4, p. 5, ¶ 4(e)). If the Borough objected to providing this information, it had ample notice of what was being sought and never objected.

The Borough's affidavit from February 2020 (Exhibit 29, ¶ n) states the Borough has nothing, but Ms. Shupe admitted at her deposition that she had failed to look for this information as of December of 2019 and never asked anyone else to search for it (Exhibit 25, p. 47). She then admitted that the Borough maintains records of at least some of its costs to enforce the ordinance. (Exhibit 25, p. 48). As the Borough consented to a Court Order requiring it to provide these records, previously admitted in deposition testimony that records exist, and has still provided no responsive records, the Borough should be sanctioned under Section 1305(b) for its failure to



provide these records in violation of a Court Order and this conduct further evidences the Borough's failure to comply with its obligations under the RTKL.

Item No. 20 asks for the Borough's change of use ordinance related to vacancy. The Borough failed to provide a verified and definitive response to this request until February of 2020. (Exhibit 29). While Requesters now agree that the Borough has satisfied this request by proving nothing responsive exists since the Borough does not have its own change of use requirements, it is hard to fathom why it took from July 12, 2019 until February of 2020 for the Borough to simply verify it had no records. Exhibit 26, p. 45 (Ms. Troup was unsure in December of 2019 if the Borough had such an ordinance). This is well beyond the time periods required by the RTKL and further evidences the Borough's bad faith conduct. Further, even though the Borough was told it had to provide affidavits explicitly by the OOR on August 15, 2019, the Borough failed to do so until ordered by this Court.

Item No. 21 asked for any Borough ordinances condemning a structure. The Borough has never provided an affidavit responding to this request but has stated without verification that nothing exists. The Borough has known since August 15, 2019, that a verified affidavit is required under the RTKL and failed to provide one. This is still outstanding. The Borough's failure to respond with an affidavit for this request further evidences its failure to meet its obligations under the RTKL. The Borough maintains the burden of proof. Uniontown Newspapers, Inc., 185 A.3d at 1173. The Borough should provide any remaining documents or a verified affidavit that nothing else exists.

Item No. 22 sought records related to the date of hire for one specific employee of one of the Borough's contractors. The Borough finally provided a verified response to this request in February of 2020, which claims that the Borough only contracted with this employee's third-party

employer. In her deposition, Ms. Shupe explained that the Borough has used the employee for occupancy inspections and she never looked to see the date he was first used as an inspector. Exhibit 25, p. 51-52. The Borough should provide records showing the first date he was used as an inspector. These would be additional records that the Borough was required to provide and failed to do so from this Court's January 15, 2020 Order, and subject the Borough to the penalty provision of Section 1305(b).

Item No. 23 sought a copy of paperwork necessary to rent or let to another business. The Borough responded in its August 22, 2019 letter (Exhibit 2) that an ordinance covered this issue, but the Borough did not provide this ordinance until January 29, 2020 after being ordered to do so. (Exhibits 29, 32). While, nothing further is needed for this request, it should not have taken the Borough nearly half a year (July 2019 to the end of January 2020) to provide a copy of an ordinance in response to a RTKL request. The Borough's significant delay in providing the records to this request violated the prompt response provisions in the RTKL and is further evidence of the Borough's bad faith.

Item No. 24 sought the Borough's change of use requirements. As with Item No. 20, the Borough explained that it lacks a change of use ordinance. Instead, the Borough relies on a contractor, Bureau Veritas to perform these functions. Jan. 15, 2020 Tr. p. 19 (stating change of use requests are directed to Bureau Veritas). The Borough's initial response stated that it would be impossible to provide a response to the request without more information. Ms. Shupe, however, admitted she had not looked for this information (Exhibit 25, p. 50). With information obtained in a later RTKL request, it is now obvious that the Borough failed to ask its contractor for these records until after the January 15, 2020 hearing.

As detailed in Proposed Exhibit 38, the Borough provided most of its emails between its solicitor Scott Andreassi and Mr. Kanish. On December 2, 2019, Mr. Kanish states to Attorney Andreassi, “there has never been a formal request from Apollo Borough to me to provide any records.” Proposed Exhibit 38, page 13. December 2, 2019 is months after the Requests were submitted as well as months after the OOR issued its Final Determinations. During Mr. Kanish’s testimony, the Requesters’ counsel attempted to get a clear answer from Mr. Kanish as to when the Borough first asked him for records. Jan. 15, 2020, Tr. P. 22-23, but Mr. Kanish repeatedly refused to provide any details of when he spoke to the Borough about RTKL requests.

It now appears that this was because the Borough had not asked him to search for records as of December 2, 2019. In a January 31, 2020 email chain, Attorney Andreassi essentially admits to Mr. Kanish that the Borough’s initial response to this request was completely made up and asks Mr. Kanish if the Borough’s original response was accurate (Proposed Exhibit 38, p. 31, 50). The Borough despite receiving an answer from Mr. Kanish that the records would be the Uniform Construction Code (“UCC”), has not provided the UCC.

Before responding to a RTKL request, the Borough is required to reach out to its contractors when its contractors possess records before responding to the request. Here, the Borough did not do that. Instead, the Borough waited until after the OOR required it to respond before providing any response. It is now clear that the Borough’s initial response was completely made up, and the Borough then waited until the last day that this Court gave the Borough to provide records in the January 15, 2020 Order to finally ask its contractor for the records. This is bad faith under the RTKL.

Item No. 25, asked for the qualifications of one of the Borough’s contractors. The Borough has never provided these records. Proposed Exhibit 38, page 29, shows that the Borough waited

until January 28, 2020 to ask the Borough's contractor, Mr. Kanish, for these records. It is not clear if, Mr. Kanish's response is that this employee was hired outside of the normal process so no resume is in anyone's possession, or if the email is stating that Mr. Kanish does not have the resume but another person at Bureau Veritas would have this record. This Court should require the Borough to resolve this uncertainty. If the record does exist, then the Borough has failed to provide despite a court order to do so and Section 1305(b) penalties should apply. Even if nothing exists, the Borough acted in bad faith by waiting until January 28, 2020 to ask a contractor about records from a July 2019 request. The Borough should have asked its contractor within the 5-business day period of receiving the request. It did not. The Borough could have also asked its contractor within the 30 days after receiving the OOR's Final Determination. It did not. This is bad faith under the RTKL.

#### **4. The Records Still at Issue from AP-2019-1551 and AP-2019-1552 and How the Borough Acted in Bad Faith in Addressing these Requests**

The fourth case before this Court at docket number 2019-1790 addresses two Final Determinations issued by the OOR at AP-2019-1551 and AP-2019-1552. Both Final Determinations were issued on October 15, 2019. Those Final Determinations address two RTKL requests the Requesters submitted to the Borough on August 26, 2019. The requests are set forth in full on the Summary Table as Item Nos. 26-31. As with the other requests, the Borough did not timely respond to the requests and did not make a submission during the appeals before the OOR. The OOR granted the appeals and required the Borough to provide the requested records within 30 days. The Borough did not appeal that decision. The Requesters brought this action to enforce the OOR Final Determinations on November 25, 2019.

Item No. 26 asked for a municipal inspection report for 719 N. Warren Ave. Despite being expressly told that proving no records exist requires a verified affidavit, the Borough simply provided a letter on November 14, 2019 (the last day to comply with the Final Determination), which stated no records exist (Exhibit 3 to Exhibit 19). The Borough has never provided an affidavit for this request, and the only reason the Requesters and this Court know nothing else exists is because Requesters were forced to take the extraordinary step of subpoenaing a Borough contractor to appear and that contractor, Mr. Kanish, testified nothing else existed. Jan. 15, 2020, Tr. p. 25. While, there is nothing further for the Borough to provide, its conduct in refusing to timely respond to the request and failure to participate in the OOR appeal process to submit a verified affidavit is bad faith conduct under the RTKL.

Item No. 27-29 related to the prior use of the Requesters' property. As explained above in Part II, Section 2, the Borough had introduced testimony in a June 2019 proceeding claiming that the property was listed as vacant when the Requesters' purchased it, so these requests sought information about that. It was not until the December 2019 depositions that Borough employees admitted that the prior testimony was incorrect and that is why there is no vacancy paperwork related to the prior owners of 719 N. Warren Ave.

Item No. 30 sought information regarding the Borough's decision to Opt-In from the Department of Labor and Industry. The Borough provided some records in its November 14, 2019 letter (Exhibit 2 to Exhibit 19), but the Borough has failed to verify that it has nothing else. The Borough maintains the burden to prove its compliance with a Final Determination. Uniontown Newspapers, Inc., 185 A.3d at 1173. To the extent there are more records that the Borough has not provided, then Section 1305(b) sanctions are appropriate as the Borough was ordered to provide this information and has failed to do so. Even assuming nothing else exists, the emails the Borough

provided in response to another RTKL (Proposed Exhibit 38, page 10), show that the Borough did not ask its contractor about these records until November 14, 2019. In that email Attorney Andreassi asked Mr. Kanish about this request for apparently the first time. As described above, the Borough was supposed to seek records from its contractors in the initial 5 business day period to respond. The Borough did not. The Borough ignored the request, ignored the OOR appeal process, and then waited until the final day to comply with the OOR Final Determination to seek information in possession of its contractor. This is a clear violation of a mandatory duty under the RTKL and constitutes bad faith.

Item No. 31 summarized a request for a copy of the documents sent from the Pennsylvania Department of Labor and Industry to Apollo Borough regarding the occupancy records of the property located at 719 N. Warren Avenue, Apollo, PA 15613. The Borough finally provided an affidavit that it had no responsive records in February of 2020 (Exhibit 29). While nothing further is needed for this request, the Borough's failure to provide an affidavit in a timely fashion violated its duties under the RTKL.

### **III. NON-COMPLIANCE WITH MARCH 12, 2020 ORDER**

In response to Requesters' Motion for Sanctions, the Borough, agreed to entry of a consent order, which this Court approved and signed on March 12, 2020. The Borough's Brief barely addresses this Order. The Borough has not complied.

#### **1. Non-Compliance with Paragraph 2**

Paragraph 2 of the March 12, 2020 Consent Order required the Borough to provide:

- a. A 2018 water usage report for the 719 N. Warren Property;
- b. Documentation of the property being listed for sale in October of 2018; and
- c. A letter from Mrs. Brunermer regarding her residency status.

As indicated in the Motion for Sanctions, documents the Borough produced for the first time at the February 20, 2020 hearing revealed that the Borough had other items responsive to Item No. 3 on the Summary Table, and that this was information that the Borough was required to disclose according to this Court's January 15, 2020 Consent Order (Exhibit 32), but the Borough failed to do so.

Despite twice agreeing to consent orders to provide the requested information, the Borough's Brief provided nothing in response to Paragraph 2 of March 12, 2020 Consent Order. The two new affidavits provided with the Borough's Brief only address Paragraphs 4 and 5 of the March 12, 2020 Consent Order. This Court required the Borough to provide these records twice, both times with the Borough's consent. The Borough has failed to comply with both Orders and still has not provided these records.

The January 15, 2020 Order gave the Borough 14 days to provide all outstanding records. The March 12, 2020 Consent Order, provided in Paragraph 3 that this Court would calculate the penalty for non-compliance with a Court Order under 65 P.S. § 67.1305(b) from January 29, 2020, because this was the date these records were originally due and not provided. Between January 29, 2020 and June 1, 2020 when the Borough filed its Brief, 124 days elapsed. Requesters ask that this Court provide the \$500 per day penalty in Section 1305(b) for these records, which is \$62,000 and impose \$500 per day penalty for each additional day until those records are provided.<sup>8</sup>

Requesters believe that no published appellate court or trial court opinions have currently addressed non-compliance with a Court ordered disclosure. The few decisions to address this issue have found Section 1305(b) was not applicable, because the failure to comply alleged was the

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<sup>8</sup> The Borough's Brief did not address Requesters' claim for penalties under Section 1305(b) To fully effectuate Section 1305's purpose the \$500 per day penalty should apply in full.

agency's failure to comply with an OOR final determination, not a Court Order. See e.g., Uniontown Newspapers, Inc. v. Pennsylvania Dep't of Corr., 185 A.3d 1161, 1175 (Pa. Cmwlth. Ct. 2018), appeal granted in part, 218 A.3d 375 (Pa. 2019) ("In the fact-finding phase, Requester also sought penalties in the amount of \$500 per day under Section 1305(b) of the RTKL, 65 P.S. § 67.1305(b), for DOC's noncompliance with the Disclosure Order. Such penalties are reserved for noncompliance with a court order.").

While Requesters are not aware of a decision involving a violation of a Court Order to disclose records under Section 1305(b), the Commonwealth Court has explained the purpose of Section 1305 in general. In one such decision, the Commonwealth Court found that:

Section 1305 of the RTKL places the requester, through the aegis of the court, in the role of the regulator and the agency in the role of a regulated entity subject to civil penalties for violation of a statute. . .

Unlike Section 1304, the purpose of Section 1305 of the RTKL is not to remedy harm to a party but to penalize conduct of a local agency and to provide a deterrent in the form of a monetary penalty in order to prevent acts taken in bad faith in the future. . . .

. . . [T]he focus in Section 1305 of the RTKL is not on the mental state of the actor but the actions taken by the agency.

Office of the Dist. Attorney of Philadelphia v. Bagwell, 155 A.3d 1119, 1141 (Pa. Cmwlth. Ct. 2017).

The punitive purpose of Section 1305(b) should be applied in full because the January 15, 2020 and March 12, 2020 Court Orders were both entered by consent. In addition, many of the records at issue were not voluntarily disclosed by the Borough, but only discovered after Requesters' received additional responsive records from the Borough's contractor on February 20, 2020. These records were responsive to Item No. 3 in the Summary Table. The Requests in that case were submitted on June 11, 2019, and the OOR issued its Final Determination on July 16,



2020. Thus, these records were already long overdue before this Court's January 2020 and March 2020 consent orders. Even with that delay, the Borough still failed to provide these three simple documents when specifically singled out by this Court. It should not take a court order, let alone, two orders for the Borough to comply with its obligations under the RTKL. The RTKL, however, is clear that when agencies disobey a Court Order, these penalties are warranted.<sup>9</sup>

In addition, the Borough's conduct is also sanctionable under 65 P.S. § 67.1304(c). That section provides that:

**(c) Other sanctions.**--Nothing in this act shall prohibit a court from imposing penalties and costs in accordance with applicable rules of court.

Paragraph 18 of the Motion for Sanctions cited this provision as another grounds for sanctions, because not only has the Borough violated its obligations under the RTKL, but it has now repeatedly disobeyed orders of this Court. Under 42 Pa. C.S.A. § 2503(7), Requesters should be entitled to counsel fees for the Borough's dilatory, obdurate, and vexatious conduct by failing to comply with this Court's Orders.

#### **Non-Compliance with Paragraph 4 and 5 of the March 12, 2020 Order**

Paragraph 4 of the March 12, 2020 Consent Order addressed the Borough's vacancy inspection checklist. This is Item No. 4 on the Summary Table. It was included in one of the requests submitted on June 11, 2019. The Borough provided one checklist, but then the items included as Exhibit D to the Motion for Sanctions, showed that the Borough had a second version of this inspection checklist. Paragraph 4 of the March 12, 2020 Order required the Borough to

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<sup>9</sup> Proposed Exhibit 38, p. 29 contains an email from Mr. Kanish again referencing the property being listed for sale. This documentation was required by the March 12, 2020 Order. In this message, Mr. Kanish suggests that the Borough take punitive action against the Requesters for an alleged land use violation as retaliation for these and other RTKL requests. A few days later (Proposed Exhibit 38, p. 31) Mr. Kanish calls the requests "stupid questions" and says he has "better things to do with my time."

verify no other versions existed. Instead, the Borough included an affidavit dated March 30, 2020 from Ms. Shupe filed on June 1, 2020, which was not previously provided to the Requesters. The affidavit stated that the prior inspection checklist provided by the Borough was the only vacancy inspection checklist used and that the new document in Exhibit D to the Motion for Sanctions was simply a draft version never used.

The Borough's affidavit on this issue should not be considered reliable. It is hearsay. It is an affidavit from Ms. Shupe describing what Brenda Troup told Ms. Shupe. The Borough offered no reason why Ms. Troup could not execute an affidavit. Even if this Court were to accept this evidence, Ms. Shupe's affidavit states that this document is a "draft," but the email attaching the document to Mr. Kanish (Exhibit D to the Motion for Sanctions), states, "Inspection report attached." This was in an email asking the Borough's contractor to perform a vacancy inspection using the attached form not to review a draft of a new form. Thus, the Borough's own evidence conflicts.

As for Paragraph 5, the Order required the Borough to search for responsive electronic records, including emails, related to the Requesters' property 719 N. Warren Ave. This related to Item No. 3 on the Summary Table. The Borough's Brief included an affidavit dated May 8, 2020 (filed on June 1, 2020 and not previously provided to the Requesters). This affidavit provided records that were due under this Court's January 15, 2020 Orders, which the Borough had previously certified as not existing. (Exhibit 29, Feb. 2020 affidavit). Those records were due by January 29, 2020, but the Borough failed to provide them until it served its June 1, 2020 Brief. The new affidavit admits additional records were responsive and provided them directly contradicting

the February 5, 2020 affidavit stating no other emails exist (Exhibit 29).<sup>10</sup> As these records were not provided until June 1, 2020, the same calculation for sanctions for non-compliance under Section 1305(b) for not-complying with paragraph 2 should apply for the time period the Borough withheld these records in violation of multiple Orders from this Court.

The Requesters also seriously question the veracity of this affidavit that all emails relating to their property have been provided as ordered. The Borough provided no emails for 2019 related to Requesters' property despite that being the year when the Borough brought a criminal charge against Mrs. Brunermer related to the property (Exhibit 20). In addition, Ms. Shupe states in the May 8, 2020 affidavit that she "attempted to inquire" with relevant personnel. May 8, 2020 affidavit, ¶ 4. This Court did not Order the Borough to "attempt" to locate other records, this Court required the Borough to search and describe the searches of these accounts and provide any other records. Upon examination of the records provided, however, the Borough only provided emails sent or received by the "BoroughManager@apollopa.org" address, which Ms. Shupe testified is her email address (Exhibit 25, p. 10). She also attests in the May 8, 2020 affidavit that this address was used by former employee Cindee McDermott.

While Ms. Shupe's affidavit might be sufficient to prove nothing else exists for the Borough Manager email account, it does not detail who searched the other email accounts identified in those affidavits, but only that Ms. Shupe "attempted to inquire." The Borough agreed to provide this information by consent on January 15, 2020 (Exhibit 32, ¶(1)(b)(vi). On February 20, 2020, the Borough disclosed records described in the Motion for Sanctions which contradicted its prior affidavit that all emails had been provided. The Borough again agreed to provide updated

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<sup>10</sup> The Borough's failure to perform an adequate search is further evidence of bad faith under the RTKL. Uniontown Newspapers, Inc., 185 A.3d at, 1170.

responses and clarification, which was made an Order signed by this Court on March 12, 2020. The Borough waited nearly two months after the second order to finally search one account and then waited nearly another month to provide the results to Requesters. This continued conduct is bad faith and warrants additional penalties and sanctions. Requesters ask that the Court require additional information and/or records to address these serious issues as set forth in the updated proposed order.

#### **IV. REQUESTED SANCTIONS, FEES, PENALTIES, AND OTHER RELIEF**

As described herein, the Borough's conduct constitutes bad faith under the RTKL. Thus, this Court may award reasonable counsel fees (Section 1304(a)), civil penalties for bad faith (Section 1305(a)), and a \$500 per day penalty for non-compliance with this Court's orders (Section 1305(b)). As described in more detail above, awards under each section is appropriate.

##### **1. Counsel Fees**

Requesters are entitled to counsel fees under Section 1304(a) of the RTKL, because of the Borough's bad faith conduct. The Requesters presented a request at the February 20, 2020 hearing including a request for counsel fees and costs of \$28,265.38. At the time of that hearing, the February 2020 bill was not complete, but an estimate of time was provided. The estimate was accurate, but the actual bill was more due to time incurred on the Motion for Sanctions. The additional time incurred has been to prepare the within brief to adequately respond to the Borough's allegations and to highlight the ways that the Borough has still failed to meet its obligations.

In addition, the Borough's counsel stated that he would not cross-examine Requesters' counsel but would address any issues with fees in the Borough's brief. Feb. 20, 2020 Tr. p. 12. On the last page of the Borough's Brief, there is half a sentence addressing the reasonableness of

Requesters' fees stating, "As to whether such counsel fees are 'reasonable', [sic]". The Borough, therefore, provided no argument and is apparently not objecting to the reasonableness of the fees introduced at the February 20, 2020 hearing. The Borough's only argument is that fees are not proper because the Borough did not act in bad faith. If, however, this Court agrees with the Requesters that the Borough did act in bad faith, then the Borough has not provided any objection to the reasonableness of Requesters' fees through the February 20, 2020 hearing.

The new counsel fee bills are attached as Proposed Exhibit 39, the updated summary is Proposed Exhibit 40, and an affidavit from counsel in support of the fees is attached as Proposed Exhibit 43. Thus, Requesters ask for an award of counsel fees and costs as set forth in those Proposed Exhibits.

As an alternative basis, the time incurred after the January 15, 2020 hearing was to enforce this Court's January 15, 2020 Orders and now the March 12, 2020 Order. As described in detail in Part II, the Borough has acted in bad faith under the RTKL by failing to provide records, but the Borough has also repeatedly failed to comply with this Court's directives to provide records and verify that no other records exist. Thus, as described earlier in this Brief, an award of counsel fees would also appropriate for fees under Section 1304(c) through 42 Pa. C.S.A. § 2503(7).

## **2. Section 1305(a) Penalties**

The Borough's conduct relates to multiple RTKL requests, and bad faith conducted committed in response to multiple requests justifies a separate 1305(a) sanction of \$1,500. Appendix 2 to this Brief is the proposed order submitted at the February 20, 2020 hearing. As described therein and in this brief, the Borough acted in bad faith in denying access to records

related to 10 separate requests<sup>11</sup> (2 requests in AP-2019-1021, 2 requests in AP-2019-1103, 1 request in AP-2019-1116, 3 requests in AP-2019-1242, 1 request in AP-2019-1551, and 1 request in AP-2019-1552). Thus, Requesters ask for the \$1,500 sanction for each request for a total of \$15,000.

### **3. Section 1305(b) Penalties**

Section 1305(b) provides for up to \$500 per day penalty for violating a Court Order to provide records. Here, the Borough has failed to provide the records for at least four separate requests. First, the records overdue from Paragraph 2 of the March 12, 2020 Order were also required by the January 15, 2020 Order. These records all relate to Item No. 3 in the Summary Table. Thus, sanctions under 1305(b) for this request are justified. 124 days have elapsed between January 29, 2020, the date the Borough was originally required to comply with the January 15, 2020 Orders (Exhibit 32, ¶(1)(b)), and June 1, 2020 when the Borough filed its brief. Thus, the \$500 per day penalty for that period is \$62,000. The Court should also assess a \$500 per day penalty for each day after June 1, 2019 until the records are provided.

The second request where the Borough failed to comply with a Court Order (Exhibit 32, ¶(7)(d)) is described in Item No. 18. The Borough maintains that the Uniform Construction Code is responsive, in control of its contractor, but the Borough still, has not provided it. Thus, a separate penalty for from January 29, 2020 until these records are provided for this separate request is warranted.<sup>12</sup>

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<sup>11</sup>In Part II, this Brief explained how the Borough's conduct in responding to each Request constituted bad faith, but Requesters are seeking the Section 1305(a) penalty only for the 10 requests that required additional information at the time of the January 15, 2020 hearing.

<sup>12</sup>Item No. 18 sought property maintenance codes and the Borough said the UCC was responsive, Item No. 20 sought Borough Code related to change of use and the Borough itself has no specific ordinance or code, and Item No. 24 sought copy of change of use requirements, which is maintained by the Borough's contractor.

The third request where the Borough failed to comply with a Court Order (Exhibit 32, ¶7(e)) is described as Item No. 19 on the Summary Table. This request sought the costs of enforcing the vacancy ordinance, which the Borough has still not provided. Thus, separate penalties of \$500 per day for non-compliance with this Court's Order for this request from January 29, 2020 to June 1, 2020 for \$62,000 should be awarded as well as additional \$500 per day from June 2, 2020 until the records are provided.

The fourth request where the Borough failed to comply with a Court Order (Exhibit 32, ¶7(g), (i), and (j)) described on the Summary Table as Item Nos. 22 (date of hire of Borough contractor), 24 (change of use requirements), and 25 (qualifications of a Borough contractor) are all from the same request and have outstanding items. Thus, separate penalties of \$500 per day for non-compliance with this Court's Order for this request from January 29, 2020 to June 1, 2020 for \$62,000 should be awarded as well as additional \$500 per day from June 2, 2020 until the records are provided.

As described in detail in Part II, the Borough has also never verified that all records that exist have been provided for many requests such as Item Nos. 4, 9, and 10 on the Summary Table. To the extent anything else does exist, Requesters ask that this Court impose a separate penalty under Section 1305(b) for \$500 per for each request where additional records have been withheld.

Thus, there are four requests ((1) Item No. 3, (2) Item No. 18, (3) Item No. 19, and (4) Item Nos. 22, 24, and 25) where the Borough has failed to provide records as required by a Court Order. The Requesters ask for the \$500 per day penalty to apply to each separate request. The Requesters ask that this penalty apply from January 29, 2020 to June 1, 2020, which is 124 days. At \$500 per day for 124 days for four requests, the total penalty should be \$248,000. In addition, the penalties should continue to accrue at \$500 per day, per request for each additional day after June 1, 2020.

If further records exist for other requests where the Borough has not verified it has provided all responsive records, then the \$500 per day penalty for those records should also apply until the Borough provides those records. Requesters agree if the Borough proves it previously provided all records for those other requests, then Section 1305(b) would not apply to those other requests.

#### **4. Future Proceedings**

As described throughout this Brief, the Borough has still failed to provide affidavits and/or records for many of the requests as ordered. Requesters suggest that the most effective use of judicial resources would be for this Court to enter an Order addressing the current outstanding issues with the Borough's responses. The Requesters have included an updated proposed order, which asks this Court to require the Borough to provide the overdue affidavits and records and award counsel fees and penalties. Requesters also ask for another hearing to review the Borough's compliance and determine if additional penalties and fees are warranted.

The main thrust of the dispute is that the Borough maintains it has acted in good faith and should not be penalized whereas the Requesters maintain that the Borough's conduct has violated the RTKL on numerous instances to such a degree that serious penalties, counsel fees, and sanctions are warranted. While the Borough still needs to do more to fully comply with this Court's prior Orders and the OOR's Final Determinations, that should not prevent this Court from assessing penalties and fees for the Borough's non-compliance thus far and scheduling appropriate future proceedings until the Borough has complied in full. See Uniontown Newspapers, Inc. v. Pennsylvania Dep't of Corr., 185 A.3d 1161, 1176 (Pa. Cmwlth. Ct. 2018), appeal granted in part, 218 A.3d 375 (Pa. 2019) (awarding penalties under the RTKL and allowing additional proceedings to occur in the future).



WHEREFORE, Plaintiffs respectfully request that this Court enter the attached Order requiring production of additional records, scheduling another compliance review hearing, penalizing the Borough under Section 1305(a) and Section 1305(b) of the RTKL, and awarding counsel fees under Section 1304(a) and Section 1304(c).

DEL SOLE CAVANAUGH STROYD LLC

By:   
\_\_\_\_\_  
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***Counsel for Plaintiffs/Petitioners***

Dated: June 22, 2020

IN THE COURT OF COMMON PLEAS OF ARMSTRONG COUNTY

JANET AND SCOTT BRUNERMER,	:	
	:	
Plaintiffs/Petitioners,	:	
	:	
v.	:	No. 2019-1343-CIVIL
	:	No. 2019-1402-CIVIL
APOLLO BOROUGH,	:	No. 2019-1518-CIVIL
	:	No. 2019-1790-CIVIL

**CERTIFICATE OF SERVICE**  
**(Civil Division Matter)**

I, the undersigned, hereby certify that I caused a copy of the attached Reply Brief to be served upon:

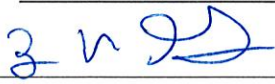
<u>Name of Person</u>	<u>Method of Service</u>	<u>Date of Service</u>
Scott J. Andreassi Counsel for Defendant/ Respondent Apollo Borough	U.S. Mail to: Charlton Law 617 South Pike Road Sarver, PA 16055 Electronic Mail to: scott@charltonlawyers.com	June 22, 2020

  
\_\_\_\_\_  
Zachary N. Gordon

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Counsel for Plaintiffs/Petitioners

Signature: 

Name: Zachary N. Gordon

Attorney No.: 318808

## Summary of Items Outstanding

This summary reviews the various requests that Janet and Scott Brunermer submitted to Apollo Borough pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* The Office of Open Records (“OOR”) has issued many final determinations regarding these requests and presently before this Court are four enforcement actions seeking to compel Apollo Borough’s compliance with the OOR’s final determinations.

The four cases before this Court:

Brunermer v. Apollo Borough docketed at 2019-1343 and commenced on August 30, 2019  
Brunermer v. Apollo Borough docketed at 2019-1402 and commenced on September 10, 2019  
Brunermer v. Apollo Borough docketed at 2019-1518 and commenced on October 1, 2019  
Brunermer v. Apollo Borough docketed at 2019-1790 and commenced on November 25, 2019

The Borough has filed answers in all four dockets. The Borough has attempted to show it has complied with the OOR’s final determinations by referring to many different requests and incorporating responses to one request into responses to other requests, so the Plaintiffs have prepared this summary reviewing the requests, the final determinations of the OOR, what was provided, and what Plaintiffs maintain is still outstanding.

To aid in clarity, this summary covers all four dockets. The first column starts with an item number for each category of documentation requested to allow this Court and the parties a short-hand reference.

# APPENDIX 1

**Armstrong County Court of Common Pleas Docket No. 2019-1343**

<b>Item No./ Date of Request</b>	<b>What Requested</b>	<b>OOR Decision</b>	<b>What agency has provided</b>	<b>What is still needed</b>	<b>Other Comments</b>
<b>Item No. 1</b> First June 11, 2019 Request (no other items were included on this request)  <b>Exhibits<sup>1</sup> 5-8</b>	Records relating to the vacancy and/or landlord applications related to the property located at 723 N. Warren Ave., Apollo, PA 15613, owned by the Mary Persoskie Estate.	AP-2019-1021 <sup>2</sup> <b>(July 16, 2019)</b> finding agency failed to respond, granting appeal, and requiring agency to produce records.  <b>Exhibit 5</b>	August 22, 2019 letter (Ex. 2) states facts about the 723 N. Warren Ave Property, but no records have been provided.  <b>Troup Deposition</b> <b>(Ex. 26): p. 18-19</b> <b>identifies vacancy</b> <b>inspection</b> <b>reports, and</b> <b>requests for</b> <b>waivers as</b> <b>possibly</b> <b>responsive</b> <b>documentation.</b>  <b>Shupe Deposition</b> <b>(Ex. 25)</b> <b>p. 18 she does not</b> <b>remember</b> <b>looking into this</b> <b>request.</b>	<b>All records</b> <b>responsive to the</b> <b>request:</b>  2/5/2020 letter and affidavit (Ex. 29) fail to provide that nothing else exists responsive to the request.	Items were due by August 15, 2019.  Items were not provided until 1/29/2020.  January 15, 2020 Order for the 3 cases at ¶ 1 (a)(i)- (v).

<sup>1</sup> This refers to the Exhibit numbers used during the Court hearings on January 15, 2020 and February 20, 2020.

<sup>2</sup> The OOR consolidated the three appeals of the three requests at docket AP-2019-1021, the other consolidated dockets before the OOR were AP-2019-1022 and AP-2019-1023.

<b>Item No. 2</b> Second June 11, 2019 Request (no other items were included on this request) <b>Exhibits 5-8</b>	[A ]letter from Cynthia McDermott, Borough Manager, to [the Requesters] from January 2018, stating we must file vacancy paperwork.	AP-2019-1021 <b>(July 16, 2019)</b> finding agency failed to respond, granting appeal, and requiring agency to produce records. <b>Ex. 5</b>	<b>1/29/2020 letter (Ex. 28) providing 15 responsive records.</b> Per August 22, 2019 letter ( <b>Ex. 2</b> ), the Borough claims a responsive letter dated January 18, 2018 was provided on August 7, 2019 <sup>3</sup> and with the August 22, 2019 letter.	<i>Plaintiffs agree that nothing further is needed for this request.</i>	
<b>Item No. 3</b> Third June 11, 2019 Request (no other items were included on this request) <b>Exhibits 5-8</b>	Files related to the property [the Requesters] ... own, located at 719 N. Warren Ave., Apollo, PA, be they real estate related, prior ownership, certification of the building, etc.	AP-2019-1021 <b>(July 16, 2019)</b> finding agency failed to respond, granting appeal, and requiring agency to produce records. <b>Ex. 5</b>	Per August 22, 2019 letter ( <b>Ex. 2</b> ), the Borough claims all “files” provided on August 7 or as otherwise described in the August 22, 2019 letter. At the trial (on 6/24/19 not 8/7/19) the Borough provided as Exhibits: 1. Non-traffic citation;	Borough needs to prove all files it has related to 719 N. Warren Ave. and provide them.  Affidavit does not state there are no emails responsive or that are no other dumpster permits.  Bureau Veritas Records	<b>Items were due by August 15, 2019.</b>  <b>See Order ¶ 1 (b)(i)-(v).</b>  <b>Shupe deposition (Ex. 25) p.20-21. She did not ask Bureau Veritas for these records, and she was not sure if anyone else did.</b>

<sup>3</sup> The 8/22/19 letter refers to an 8/7/19 court date. It appears the letter meant to refer to a 6/24/19 hearing date, not an 8/7/19 hearing.



			of Labor and Industry Numbers; <ul style="list-style-type: none"> <li>• All emails and electronic records have been provided.</li> </ul>		
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**Armstrong County Court of Common Pleas Docket No. 2019-1402**

<b>Item No./ Date of Request</b>	<b>What Requested</b>	<b>OOR Decision</b>	<b>What agency has provided</b>	<b>What is still needed</b>	<b>Other Comments</b>
<b>Item No. 4</b> June 26, 2019 (the OOR found that there were 2 requests submitted on June 26, 2019 and the 2 requests sought 6 categories of records <sup>4</sup> ) <b>1 of 6</b> This was the only item in the request at AP 2019-1103 <b>Exhibits 9-11</b>	[A] list of properties current[ly] on the vacant property list (but not the names or telephone numbers).	AP-2019-1103 <sup>5</sup> <b>(August 2, 2019)</b> finding agency failed to respond, granting appeal, and requiring agency to produce records. <b>Exhibit 9.</b>	The Borough provided a list of properties on the vacancy list as Exhibit C to its 8/22/19 letter ( <b>Ex. 2</b> ) ( <b>¶5a</b> ). <sup>6</sup> In Pages 71-81 of its Answer ( <b>Ex. 19</b> ) in No. 2019-1790. The Borough produced copies of the documents appearing to be the 2015-2017 versions of the list, which shows some of the information missing from the	Date of vacancy and any other information deemed necessary by Borough Manager for the list of vacant property or proof that the Borough does not maintain those items.  <b>Ex. 28 (1/29/2020 letter) explains that the Borough would attest that current vacancy list did not have additional</b>	Ordinance 272-16 (Article 4(b) and 5) establishes six items the Borough was supposed to maintain a registry of. Plaintiffs seek the items required by the ordinance but not included. <b>Order ¶ 3 (a).</b>  <b>Troup deposition (Ex. 26) p. 28 admitting there may be centralized list of vacant property with additional information.</b>

<sup>4</sup> There was a 7<sup>th</sup> item sought in the two requests. In the request appealed at AP-2019-1103, Plaintiffs sought “A current copy of the occupancy inspection checklist.” The OOR did not include this and no one appealed, so this part of this request has been excluded and Plaintiffs are not seeking enforcement of it.

<sup>5</sup> The OOR consolidated the two appeals of the two requests at docket AP-2019-1103. The other docket was AP-2019-1114.

<sup>6</sup> The OOR heard an appeal at AP-2019-1162 (**Exhibit 24**), which consolidated four appeals of four requests. The other appeals were docketed at AP-2019-1163, AP-2019-1164, and AP-2019-1165. Those final determinations were all issued on August 14, 2019 and there is some overlap between those items and the records the OOR ordered the agency to provide in AP-2019-1103 on August 2, 2019. The agency, however, does not specifically acknowledge the August 2, 2019 final determination in its 8/22/19 letter. Plaintiffs have attempted to apply the agency’s responses in the 8/22/19 letter to the similar requests in AP-2019-1164. The Plaintiffs have not filed enforcement action for the OOR dockets consolidated at AP 2019-1162.

<p><b>Item No. 5</b> June 26, 2019 <b>2 of 6</b> Item Nos. 5-9 are part of the same request at AP-2019-1114. <b>Exhibits 9-11</b></p>	<p>A copy of the vacancy letter from Apollo Borough to the property located at 719 N. Warren Ave., Apollo, PA 15613.</p>	<p>AP-2019-1103 (<b>August 2, 2019</b>) finding agency failed to respond, granting appeal, and requiring agency to produce records. <b>Ex. 9</b></p>	<p>current list provided as Exhibit C to the 8/22/19 letter (Ex. 2).</p>	<p>information compared to the prior year's vacancy list. No such attestation or statement was made in the one affidavit the Borough provided (Ex. 29). <i>Nothing further is needed.</i></p>	<p><b>Order ¶ 3 (b)</b></p>
<p><b>Item No. 6</b> June 26, 2019 <b>3 of 6</b> <b>Exhibits 9-11</b></p>	<p>A copy of the vacancy registration paperwork from Shiloh Baptist Church to Apollo Borough from 2016-2017.</p>	<p>AP-2019-1103 (<b>August 2, 2019</b>) finding agency failed to respond, granting appeal, and requiring agency to produce records. <b>Ex. 9</b></p>	<p>The Borough in its August 22, 2019 letter (Ex. 2)(¶5e) claims no vacancy registration paperwork exists. 2/5/2020 letter (Ex. 29) attests to no such registration paperwork.</p>	<p><i>Nothing further is needed.</i></p>	<p><b>Order ¶ 3 (c).</b>  <b>P. 10 of 6/24/19 hearing testimony that Borough cited Shiloh Baptist Church</b></p>
<p><b>Item No. 7</b> June 26, 2019 <b>4 of 6</b></p>	<p>A copy of the Zoning Officer's findings from the vacancy</p>	<p>AP-2019-1103 (<b>August 2, 2019</b>) finding agency</p>	<p>In the 8/22/19 letter (Ex. 2) (¶5f) the Borough</p>	<p><i>Nothing further is needed.</i></p>	<p><b>Order ¶ 3 (d).</b></p>

<b>Exhibits 9-11</b>	inspection report from 2016-2017 with Shiloh Baptist Church, 719 N. Warren Ave, Apollo.	failed to respond, granting appeal, and requiring agency to produce records. <b>Ex. 9</b>	claims no inspection took place and no records exist. 2/5/2020 letter ( <b>Ex. 29</b> ) attests to no such inspection.	
<b>Item No. 8</b> June 26, 2019 <b>5 of 6</b> <b>Exhibits 9-11</b>	A copy of the vacancy payments and waiver from 2016-2017 for Shiloh Baptist Church, 719 N. Warren Ave., Apollo.	AP-2019-1103 ( <b>August 2, 2019</b> ) finding agency failed to respond, granting appeal, and requiring agency to produce records. <b>Ex. 9</b>	In the 8/22/19 letter ( <b>Ex. 2</b> )(¶5g), the Borough claims no inspection took place, so no payments or waiver documents exists. 2/5/2020 letter ( <b>Ex. 29</b> ) attests to no payments.	<b>Order ¶ 3 (e).</b>
<b>Item No. 9</b> June 26, 2019 <b>6 of 6</b> <b>Exhibits 9-11</b>	A copy of the vacancy inspection checklist for 2016, 2017 and 2018.	AP-2019-1103 ( <b>August 2, 2019</b> ) finding agency failed to respond, granting appeal, and requiring agency to produce records. <b>Ex. 9</b>	In the 8/22/19 letter ( <b>Ex. 2</b> ) (¶5h), the Borough provided Exhibit A/F, which purports to be the vacancy inspection checklist for 2016-2018.	<i>Nothing further is needed.</i>
<b>Item No. 10</b> June 21, 2019 Request	“[a] copy of the [v]acancy	AP-2019-1116 <sup>7</sup> ( <b>August 2, 2019</b> )	Same as Item No. 9	Same as Item No. 9

<sup>7</sup> The OOR consolidated the two appeals of the two requests at docket AP-2019-1116, the other docket was AP-2019-1117.

Only 1 item on this request at AP-2019-1116 <b>Exhibits 12-14</b>	[i]inspection [c]hecklist.”	finding agency failed to respond, granting appeal, and requiring agency to produce records. <b>Ex. 12</b>	In the 8/22/19 letter ( <b>Ex. 2</b> ) (¶ 5i), the Borough claims no documentation exists. 2/5/2020 letter ( <b>Ex. 29</b> ) attests to no receipt.	<i>As the testimony revealed payment was received after the date of the request, nothing further is needed.</i>	<b>Order ¶ 5 (a).</b>
<b>Item No. 11</b> June 28, 2019 Request Part 1 of 4 of the Request at AP-2019-1117 <b>Exhibits 12-14</b>	1. A copy of the receipt for Brenda Troup, Zoning Officer, receipt of payments for the vacancy inspection of 719 N. Warren Ave., Apollo, PA 15613. 2. A copy of the police summons that the property of Shiloh Baptist Church, 719 N. Warren Ave., was vacant 2016-2017.	AP-2019-1116 ( <b>August 2, 2019</b> ) finding agency failed to respond, granting appeal, and requiring agency to produce records. <b>Ex. 12</b>	In the 8/22/19 letter ( <b>Ex. 2</b> ) (¶ 5j), the Borough claims no documentation exists. 2/5/2020 letter ( <b>Ex. 29</b> ) attests to no police summons.	<i>Nothing further is needed.</i>	<b>Order ¶ 5 (b).</b>
<b>Item No. 13</b> June 28, 2019 Request Part 3 of 4 <b>Exhibits 12-14</b>	3. A copy of the change of use, of the Kerr Manufacturing building going from a Tattoo Parlor, to light manufacturing.	AP-2019-1116 ( <b>August 2, 2019</b> ) finding agency failed to respond, granting appeal, and requiring	In the 8/22/19 letter ( <b>Ex. 2</b> ) (¶ 5k), the Borough claims no documentation exists “to the best	A copy of the change of use, of the Kerr Manufacturing building going from a Tattoo Parlor, to light manufacturing.	<b>Order ¶ 5 (c).</b>

<p><b>Item No. 14</b> June 28, 2019 Request Part 4 of 4 <b>Exhibits 12-14</b></p>	<p>4. A copy of the [B]orough Zoning District Map.</p>	<p>agency to produce records. <b>Ex. 12</b></p>	<p>of the borough's knowledge." 2/5/2020 letter (<b>Ex. 29, ¶ k</b>) simply says no record without any explanation.</p>	<p>Confirmation that no other Borough Zoning District Map exists other than the one provided.</p>	<p>The Borough admits in the 8/22/19 letter that records exist which have not been provided. The OOR required the Borough to produce this record without any cost to the Plaintiffs. <b>Order ¶ 5 (d).</b> <b>Troup Deposition (Ex. 26) p. 38 admits the Borough still had this record.</b> <b>Shupe deposition p. 38 (Ex. 25) admits the Borough still had this record and she cannot remember seeing this request.</b></p>
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**Armstrong County Court of Common Pleas Docket No. 2019-1518**

<b>Item No./ Date of Request</b>	<b>What Requested</b>	<b>OOR Decision</b>	<b>What agency has provided</b>	<b>What is still needed</b>	<b>Other Comments</b>
<b>Item No. 15</b> July 12, 2019 (Three requests on this date involving many different categories of records) Part 1 of 4 of the First 7/12/19 Request [The First 7/12/19 Request was docketed at AP-2019-1242] <b>Exhibits 15-18</b>	Under Ordinance 272-16, Article 10: Inspections (c), please present 1) The list of minimum requirements for the inspection.	AP-2019-1242 <sup>8</sup> ( <b>August 20, 2019</b> ) finding agency failed to respond, granting appeal, and requiring agency to produce records. <b>Ex. 15</b>	In the 8/22/19 letter ( <b>Ex. 2</b> )(¶3a), the Borough claims Exhibit A to the 8/22/19 letter contains the minimum requirements for Ordinance 272-16.  1/29/20 letter ( <b>Ex. 28</b> ) included ordinance 272-16. 2/5/20 affidavit ( <b>Ex. 29</b> ) does not address this.	The Borough has yet to provide a verified response stating no such list exists other than the ordinance, either the list or a verified statement is needed.	<b>Order ¶ 7 (a).</b>
<b>Item No. 16</b> Part 2 of 4 of the First 7/12/19 Request <b>Exhibits 15-18</b>	Under Ordinance 272-16, Article 10: Inspections (c), please present: 2) A list of code officials that have the authority to perform inspections.	AP-2019-1242 ( <b>August 20, 2019</b> ) finding agency failed to respond, granting appeal, and requiring agency to produce records. <b>Ex. 15</b>	In the 8/22/19 letter ( <b>Ex. 2</b> ) (¶3b), the Borough claims, "Brenda Troup, Zoning Officer performs inspections, as per appointment. The Borough has and will continue to reserve the right to	The list of code officials that the Borough uses to perform inspections or proof that no such list exists.	<b>Order ¶ 7 (b).</b>

<sup>8</sup> The OOR consolidated the three appeals of the three requests at docket AP-2019-1242, the other consolidated dockets before the OOR were AP-2019-1244 and AP-2019-1245.

			contract for inspection services as needed.” 2/5/20 affidavit (Ex. 29, l) does not state that the Borough does not keep a list.			
<b>Item No. 17</b> Part 3 of 4 of the First 7/12/19 Request <b>Exhibits 15-18</b>	Under Ordinance 272-16, Article 10: Inspections (c), please present (3) A list of the qualifications required to become a code official for Apollo Borough.	AP-2019-1242 (August 20, 2019) finding agency failed to respond, granting appeal, and requiring agency to produce records. <b>Ex. 15</b>	In the 8/22/19 letter (Ex. 2) (¶3c), the Borough claims, “Zoning Officer Brenda Troup serves by appointment by the Borough of Apollo.”  2/5/20 affidavit (Ex. 29, m) states the Borough has no formal list of qualifications.	<i>Nothing further is needed</i>	<b>Order ¶ 7 (c).</b>	
<b>Item No. 18</b> Part 4 of 4 of the First 7/12/19 Request <b>Exhibits 15-18</b>	Under Ordinance 272-16, Article 10: Inspections (c), please present 4) A list of the property maintenance codes.	AP-2019-1242 (August 20, 2019) finding agency failed to respond, granting appeal, and requiring	In the 8/22/19 letter (Ex. 2) (¶3d), the Borough cites to 5 codes and ordinances and states that these are available for	Only the Uniform Construction Code <sup>9</sup> is still needed.	<b>Order ¶ 7 (d) (i)-(iv).</b>	

<sup>9</sup> The 8/22/19 letter (¶3d) refers to this as the Uniform Commercial Code, but it appears that is a mistake.

		agency to produce records. <b>Ex. 15</b>	<p>review and inspection at the Borough Offices. The Borough also provided a copy of ordinance 272-16 during the summary appeal trial. The letter incorrectly identifies the date of that trial as 8/7/19, instead of 6/24/19.</p> <p>1/29/20 (<b>Ex. 28</b>) records included Ordinances: 272-16, A-190-79, 273-16, and A-206-81.</p> <p>The Borough did not provide the UCC code, but provided access to a website, which requires a login. (<b>Ex. 30</b>)</p>		
<b>Item No. 19</b> Part 1 of 2 of Second 7/12/19 Request	Proof that it costs more to enforce the vacancy ordinance in	AP-2019-1242 ( <b>August 20, 2019</b> ) finding agency	In the 8/22/19 letter ( <b>Ex. 2</b> )(¶1a), the Borough	Financial records showing the Borough's cost to	The Borough's response challenges the language of the request, but by not



<p>[The Second 7/12/19 Request was docketed at AP-2019-1244] <b>Exhibits 15-18</b></p>	<p>the years 2-10+ tha[n] it does the first year.</p>	<p>failed to respond, granting appeal, and requiring agency to produce records. <b>Ex. 15</b></p>	<p>alleges, “the request is a conclusion of fact and not a request for information. The Borough in accordance with applicable law, statute and Code, advertised and adopted Ordinance No. 272-16.”  2/5/20 affidavit (<b>Ex. 29, n</b>) states Borough has no records.</p>	<p>enforce the vacancy ordinance.</p>	<p>appealing the OOR’s decision is final. The Borough waived its objections. <b>Order ¶ 7 (e).</b>  <b>Shupe Deposition (Ex. 25)</b> p. 47 states that she didn’t look for this information or ask anyone to look for it. On page 48, she admits the Borough does track at least some of the costs of enforcing the ordinance.</p>
<p><b>Item No. 20</b> Part 2 of 2 of Second 7/12/19 Request <b>Exhibits 15-18</b></p>	<p>A copy of the code that states in order to be granted a change of use, a vacancy inspection must take place.</p>	<p>AP-2019-1242 (<b>August 20, 2019</b>) finding agency failed to respond, granting appeal, and requiring agency to produce records. <b>Ex. 15</b></p>	<p>In the 8/22/19 letter (<b>Ex. 2</b>) (¶1b), the Borough alleges, “The Ordinance addressing the issue of vacancies is found at No. 272-16. Copies of all Ordinances are available for inspection by the Requestors and any member of the public at the</p>	<p><i>Nothing further is needed.</i></p>	<p><b>Order ¶ 7 (f)</b> <b>P. 50 (Ex. 25)</b> Shupe did not look for it. <b>P. 44-45 (Ex. 26)</b> Troup not sure if Borough has a change of use ordinance.</p>

			Borough offices. . ” 2/5/20 affidavit (Ex. 29, o) states there is no borough code related to change of use zoning.		
<b>Item No. 21</b> Part 1 of 5 of Third 7/12/19 Request [The Third 7/12/19 Request was docketed at AP- 2019-1245] <b>Exhibits 15-18</b>	[1] Copy of the ordinance for condemnation of a structure.	AP-2019-1242 ( <b>August 20, 2019</b> ) finding agency failed to respond, granting appeal, and requiring agency to produce records. <b>Ex. 15</b>	In the 8/22/19 letter (Ex. 2) (¶2a), the Borough states no such ordinance exists.  Not addressed in the 2/5/20 affidavit (Ex. 29).	To the extent the Borough provides credible evidence that no such ordinance exists, then <i>nothing</i> <i>further is needed</i> .	
<b>Item No. 22</b> Part 2 of 5 of Third 7/12/19 Request <b>Exhibits 15-18</b>	[2] Date of hire of Rich McMillen, Bureau Veritas, as vacancy inspector by Apollo.	AP-2019-1242 ( <b>August 20, 2019</b> ) finding agency failed to respond, granting appeal, and requiring agency to produce records. <b>Ex. 15</b>	In the 8/22/19 letter (¶2b), the Borough states that Mr. McMillen is not employed by the Borough.  2/5/20 affidavit (Ex. 29, p) states, “Any Borough contract that exists is with Bureau Veritas and not Mr. McMillen, therefore there exists no ‘contract’	Record showing the first time Apollo Borough contracted with Bureau Veritas employee Rich McMillen.	<b>Order ¶ 7 (g).</b> <b>Shupe deposition (Ex.</b> <b>25) p. 51 says he does</b> <b>occupancy inspections;</b> <b>Shupe p. 52 did not look</b> <b>to see when he was first</b> <b>used to do those</b> <b>inspections.</b>

<b>Item No. 23</b> Part 3 of 5 of Third 7/12/19 Request <b>Exhibits 15-18</b>	[3] Copy of paperwork necessary to rent or let to another business.	AP-2019-1242 ( <b>August 20, 2019</b> ) finding agency failed to respond, granting appeal, and requiring agency to produce records. <b>Ex. 15</b>	with Mr. McMillen. As such, no contract exists with Mr. McMillen.”  In the 8/22/19 letter ( <b>Ex. 2</b> ) (2c), the Borough identifies Ordinance No. 264-14.  <b>Ex. 28 1/29/20</b> <b>letter</b> included Ordinance 264-14.	<i>Nothing further is needed.</i>	<b>Order ¶ 7 (h).</b>
<b>Item No. 24</b> Part 4 of 5 of Third 7/12/19 Request <b>Exhibits 15-18</b>	[4] Copy of change use requirements.	AP-2019-1242 ( <b>August 20, 2019</b> ) finding agency failed to respond, granting appeal, and requiring agency to produce records. <b>Ex. 15</b>	In the 8/22/19 letter (2d), the Borough states, “‘Change of Use’ requirements would be dependent upon the current permitted use and the specific applied for change of use. As such, it would be impossible to list requirements until such information is known to the Responder.”	All Change of Use requirements.	<b>Order ¶ 7 (i).</b>

<p><b>Item No. 25</b> Part 5 of 5 of Third 7/12/19 Request <b>Exhibits 15-18</b></p>		<p>[5] Rich McMillan's qualifications to be a zoning officer.</p>		<p>AP-2019-1242 (<b>August 20, 2019</b>) finding agency failed to respond, granting appeal, and requiring agency to produce records. <b>Ex. 15</b></p>	<p>2/5/20 affidavit (Ex. 29) did not address this. In the 8/22/19 letter (Ex. 2) (2e), the Borough states, "Mr. McMillen is not employed by and does not serve as a Zoning Officer for the Borough of Apollo."  2/5/20 affidavit (Ex. 29, q) states the Borough has no list of qualifications for Mr. McMillen to serve as a zoning officer.</p>	<p>Rich McMillan's qualifications to be a zoning officer.  <b>Borough's response did not state it asked its contractor for his resume or CV.</b></p>	<p>The Borough has a duty to seek responsive records from its contractor under the RTKL. The Borough waived its right to challenge this. See Comment to Item No. 14. <b>Order ¶ 7 (j).</b>  <b>Troup (Ex. 26) p. 47 never asked for his CV.</b></p>
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**Armstrong County Court of Common Pleas Docket No. 2019-1790**

<b>Item No. 26</b> August 26, 2019 Request <b>Ex. 19 and Exhibits</b> <b>thereto.</b>	A copy of the Municipal Inspection issued with the “Temporary Certificate of Use and Occupancy”, on April 5, 2017 to [Plaintiffs] owners [of] the property located at 719 N. Warren Ave., Apollo, PA 15613.	AP-2019-1551 <b>(October 15, 2019)</b> finding agency failed to respond, granting appeal, and requiring agency to produce records. <b>Ex. 2 to Ex. 19</b>	November 14, 2019 Letter, <b>(Ex. 3 to Ex. 19)</b> paragraph 1 claiming no records exist.  Nothing in the 1/29/20 records <b>(Ex. 28)</b> or 2/5/19 <b>(Ex. 29)</b> affidavit addressed this.	The responsive records or a verified affidavit that no responsive records exist.  <b>Shupe Deposition (Exhibit 25) p. 65, stating she did not ask anyone at Bureau Veritas for this record or instruct anyone else to ask Bureau Veritas to look for this.</b>	The Borough has a duty to seek responsive records from its contractor under the RTKL.
<b>Item No. 27</b> August 26, 2019 Request Part 1 of 5	1) A copy of the request by the members of Shiloh Baptist Church, located at 719 N. Warren Avenue, Apollo, PA 15613 to request a waiver from vacancy from 2017.	AP-2019-1552 <b>(October 15, 2019)</b> finding agency failed to respond, granting appeal, and requiring agency to produce records. <b>Ex. 5 to Ex. 19</b>	November 14, 2019 Letter <b>Ex. 3 to Ex. 19)</b> , paragraph 2(a) claiming no records exist.  <b>Ex. 29 (r) 2/5/20 affidavit</b> states no request exists.	<b>Order to No. 2019-1790 Complaint, ¶ 1.</b>  <b>Order to No. 2019-1790 Complaint, ¶ 2 (a).</b>	
<b>Item No. 28</b> August 26, 2019 Request Part 2 of 5	2) A copy of the letter from Apollo Borough to the members of Shiloh Baptist Church,	AP-2019-1552 <b>(October 15, 2019)</b> finding agency failed to respond,	November 14, 2019 Letter <b>Ex. 3 to Ex. 19)</b> , paragraph	<b>Order to No. 2019-1790 Complaint, ¶ 2 (b).</b>	

	located at 719 N. Warren Ave, Apollo, PA 15613 that they are scheduled for a vacancy inspection to be held in October 2017.	granting appeal, and requiring agency to produce records. <b>Ex. 5 to Ex. 19</b>	2(b)claiming no records exist. <b>Ex. 29 (s) 2/5/20 affidavit</b> states no request exists.		
<b>Item No. 29</b> August 26, 2019 Request Part 3 of 5	3) A copy of the application, sent by the members of Shiloh Baptist Church located at 719 N. Warren Avenue, Apollo, PA 15613, registering the building as a vacant building.	AP-2019-1552 <b>(October 15, 2019)</b> finding agency failed to respond, granting appeal, and requiring agency to produce records. <b>Ex. 5 to Ex. 19</b>	November 14, 2019 Letter <b>Ex. 3 to Ex. 19</b> ), paragraph 2(c) claiming no records exist. <b>Ex. 29 2/5/20 (t) affidavit</b> states no request exists.	<i>Nothing further is needed.</i>	<b>Order to No. 2019-1790 Complaint, ¶ 2 (c).</b>
<b>Item No. 30</b> August 26, 2019 Request Part 4 of 5	4) A copy of the Apollo Borough Meeting minutes and or letter to the Pennsylvania Department of Labor and Industry that the Borough has chosen to "Opt-In" from the Department of Labor and Industry.	AP-2019-1552 <b>(October 15, 2019)</b> finding agency failed to respond, granting appeal, and requiring agency to produce records. <b>Ex. 5 to Ex. 19</b>	November 14, 2019 Letter <b>Ex. 3 to Ex. 19</b> ), paragraph 2(d) providing (i) PA Uniform Construction Code: Municipal Election Form; (ii) Ordinance No. 265-14; (iii) Ordinance No. 266-14.	The Borough has not verified that the records provided were complete and no other records exist.	<b>Order to No. 2019-1790 Complaint, ¶ 2 (d).</b>

<p><b>Item No. 31</b> August 26, 2019 Request Part 5 of 5</p>	<p>5) A copy of the documents sent from the Pennsylvania Department of Labor and Industry to Apollo Borough regarding the occupancy records of the property located at 719 N. Warren Avenue, Apollo, PA 15613.</p>		<p>AP-2019-1552 <b>(October 15, 2019)</b> finding agency failed to respond, granting appeal, and requiring agency to produce records. <b>Ex. 5 to Ex. 19</b></p>	<p><b>Ex. 28</b> that information again. <b>Ex. 29</b> does not confirm that nothing else exists.</p> <p>November 14, 2019 Letter <b>Ex. 3 to Ex. 19</b>, paragraph 2(c) claiming no records exist.</p> <p>2/5/20 affidavit (<b>Ex. 29, u</b>) claims no records exist.</p>	<p><i>Nothing further is needed.</i></p>		<p><b>Order to No. 2019-1790 Complaint, ¶ 2 (e).</b></p>
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IN THE COURT OF COMMON PLEAS OF ARMSTRONG COUNTY

JANET AND SCOTT BRUNERMER,	:	
	:	
Plaintiffs/Petitioners,	:	
	:	
v.	:	No. 2019-1343-CIVIL
	:	No. 2019-1402-CIVIL
APOLLO BOROUGH,	:	No. 2019-1518-CIVIL
	:	No. 2019-1790-CIVIL
Defendant/Respondent.	:	

**ORDER OF COURT**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2020, after considering the evidence and argument submitted on January 15, 2020, and February 20, 2020 in the above-captioned matters, it is hereby, ORDERED, ADJUDGED, and DECREED as follows:

1. The Borough was previously ordered to provide records as required by the Office of Open Records' Final Determination with docket number AP-2019-1021 and all other Office of Open Records dockets consolidated therewith. The Court finds that the Borough's January 29, 2020 record production is incomplete as follows:

- a. The Borough shall provide to Plaintiffs the unredacted file from Bureau Veritas regarding 719 N. Warren Ave., Apollo, PA 15613 described in Exhibit 33<sup>1</sup>;
- b. The Borough via verified affidavit shall describe that it has produced all records in its possession regarding 723 N. Warren Ave., Apollo, PA 15613 or provide any additional responsive records;
- c. The Borough via verified affidavit shall specifically describe how it searched for electronic records regarding 719 N. Warren Ave., Apollo, PA and attest

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<sup>1</sup> All Exhibits reference the Exhibits introduced at the two hearings on January 15, 2020 and February 20, 2020.



that no electronic records exist or if the Borough locates responsive electronic records, then the Borough shall provide those records to Plaintiffs.

- d. The Borough shall provide the August 2017 notification referenced during the prior summary appeal testimony (Ex. 20, p. 14: 7-11) and verify it has no other responsive records regarding 719 N. Warren Ave., Apollo, PA 15613.

2. This Court finds that the Office of Open Records Final Determination in AP-2019-1021 involved two separate RTKL requests that Plaintiffs had to litigate. This Court finds that the Borough by failing to respond to the Requests, by failing to participate in the appeals before the Office of Open Records, by failing to appeal or comply with the Final Determinations of the Office of Open Records, by failing to provide all records or definitively certifying that no further records exists, initially denied and unduly delayed access to public records responsive to both Requests in bad faith. As a result of the above findings:

- a. The Borough is directed to pay Plaintiffs \$3,000 representing the \$1,500 civil penalty authorized by 65 P.S. § 67.1305 (a) for both requests.
- b. This Court further finds that the records owed in Paragraph 1(a) were due by January 29, 2020, but had not yet been provided, despite the Borough's February 5, 2020 affidavit (Exhibit 29) incorrectly affirming that the records had been provided. 22 days have elapsed since the Borough failed to provide these records. The Borough is therefore subject to the civil penalty of 65 P.S. 67.1305(b) shall pay Plaintiffs a civil penalty of \$500 per day for 22 days for a total civil penalty of \$11,000.

3. The Borough was previously ordered to provide the records as required by the Office of Open Records' Final Determination docket number AP-2019-1103 and all other Office

of Open Records dockets consolidated therewith. After hearing the evidence, the Borough has still not complied with its obligation to provide or prove it has no other records for:

The registry of vacant properties as of June 26, 2019 required by Ordinance No. 272-16, Articles 4-5, including for all properties the date of vacancy and any other information deemed necessary by the Borough Manager with names and telephone numbers redacted.

The Borough's January 29, 2020 letter (Exhibit 28) providing records alleged the Borough would verify the current vacant property list previously provided with Exhibit 2 was complete in the form originally provided, but the Borough's February 5, 2020 affidavit (Exhibit 29) failed to include any such verification. The Borough's Zoning Office, Brenda Troup also testified (Exhibit 26, p. 26) that there may be other information on this current vacancy list, which was not included in the document provided to the Plaintiffs. The Borough shall provide either the entire vacancy registration list as previously ordered or provide a verified affidavit that the version produced previously is the only such responsive record.

4. This Court finds that the Office of Open Records Final Determination in AP-2019-1103 and all other Office of Open Records dockets consolidated thereto involved two separate RTKL requests. This Court finds that the Borough by failing to respond to the Requests, failing to participate in the appeals before the Office of Open Records, by failing to appeal or comply with the Final Determinations of the Office of Open Records, and by failing to verify the completeness of its responses initially denied and unduly delayed access to public records responsive to both Requests in bad faith. The Borough is directed to pay Plaintiffs \$3,000 representing the \$1,500 civil penalty authorized by 65 P.S. § 67.1305 (a) for both requests. In addition, this Court finds that the Borough's prior testimony in a summary appeal hearing against Plaintiff, Janet Brunermer, (Exhibit 20) affirmatively alleging that the Borough had cited the prior owners' of Plaintiffs property for vacancy when that was not true combined with the extensive delay it took the Borough

to give a verified explanation that its prior testimony at that hearing was not true further justifies the finding of bad faith.

5. The Borough was previously ordered to provide the records as required by the Office of Open Records' Final Determination docket numbers AP-2019-1116 and all other Office of Open Records dockets consolidated therewith. The Court finds that the Borough affidavits and Record production still failed to adequately describe how the Borough searched for "A copy of the change of use, of the Kerr Manufacturing building going from a Tattoo Parlor, to light manufacturing" and so the Borough shall provide a supplemental affidavit describing in detail the search for this specific record stating no records exist or if any records are found, the Borough shall provide them.

6. This Court finds that the Office of Open Records Final Determination in Paragraph 5 regarding AP-2019-1116 arises from one RTKL request. This Court finds that the Borough by failing to respond to the Request, by failing to participate in the appeals before the Office of Open Records, by failing to appeal or comply with the Final Determination of the Office of Open Records, and by failing to provide complete affidavits certifying no further records exists has denied access to this Request in bad faith. The Borough is directed to pay Plaintiffs a \$1,500 civil penalty authorized by 65 P.S. § 67.1305 (a). This finding of bad faith is further supported by the fact that the Borough had acknowledged by August 22, 2019 letter (Exhibit 2) that it had the zoning map, but still failed to provide that document to the Plaintiffs until January 29, 2020 when ordered to do so by this Court (Exhibit 28). In addition, this request also included requests for records related to the prior owner of Plaintiffs' property and the findings in Paragraph 4 are equally applicable here and support a finding of bad faith for this request.

7. The Borough was previously ordered to provide the records as required by the Office of Open Records' Final Determination docket number AP-2019-1242 and all other Office of Open Records dockets consolidated therewith. For clarity, this Court describes what the Borough was previously required to provide followed by this Court's finding and further directives for each item in bold:

- a. Under Ordinance 272-16, Article 10: Inspections (c) The list of minimum requirements for the inspection; **The Borough has failed to provide this list or verify that no such list exists. The Borough shall provide the list or a verification that no such list exists.**
- b. The list of code officials that the Borough uses to perform inspections. **The Borough has failed to provide this list or verify that no such list exists. The Borough shall provide the list or a verification that no such list exists.**
- c. A list of the qualifications required to become a code official for Apollo Borough. **The Borough provided verification that no list exists on February 5, 2020. No further action is required.**
- d. The following ordinances identified in the Borough's August 22, 2019 letter (Exhibit 2):
  - (i) Uniform Construction Code; **The Borough has not yet provided access to this (Exhibit 30). The Borough shall provide this to the Requester.**
  - (ii) Ordinance No. [A]-190-79 (Grass/Weeds). **The Borough provided this on January 29, 2019. No further action is required.**
  - (iii) Ordinance No. 273-16 (Dangerous Structures); and **The Borough provided this on January 29, 2019. No further action is required.**
  - (iv) Ordinance No. [A]-2[0]6-81 (Nuisances). **The Borough provided this on January 29, 2019. No further action is required.**
- e. Financial records showing the Borough's cost to enforce the vacancy ordinance; **The Borough did not provide any records showing the cost to enforce the vacancy. On page 47 to 48 of Exhibit 25, the Borough's Open Records Officer admitted in her deposition that some of these costs would**

**exist in Borough records. The Borough shall provide all records showing the costs to enforce the vacancy ordinance.**

- f. Aside from Ordinance 272-16, any other ordinances of borough code related to change of use zoning; **The Borough provided this by affidavit on February 5, 2020. No further action is required.**
- g. Record showing the first time Apollo Borough contracted with Bureau Veritas employee [Mr.] McMillen. **The Borough provided no records and said they have no contracts with this employee. (Exhibit 29). The Borough shall provide the records showing the date they first used Mr. McMillen to do inspections or verify no records exist, including verifying that the Borough inquired with its third-party contractors for responsive records.**
- h. Ordinance No. 264-14 and any other ordinances or paperwork necessary to rent or let to another business. **The Borough provided this on January 29, 2020. No further action is required.**
- i. All of the Borough's Change of Use requirements. **The Borough did not provide records in response to this Court's Order and this was not addressed by the Borough's February 5, 2020 affidavit (Exhibit 29). The Borough shall provide its Change of Use requirements or verify it has no such records.**
- j. Rich McMillan's qualifications to be a zoning officer, such as a resume or CV. **The Borough stated it did not possess this document in its February 5, 2020 affidavit (Exhibit 29), but the Borough never attested to whether it requested this information from its contractor. The Borough shall provide this record or verify no records exist, including verifying that the Borough inquired with its third-party contractors for responsive records**

8. Items (a)-(j) of Paragraph 7 arise from three RTKL requests. This Court finds that the Borough by failing to respond to the Requests, by failing to participate in the appeals before the Office of Open Records, by failing to appeal or comply with the Final Determination of the Office of Open Records, and by failing to provide all records or attestations that no records exists as required by this Court's Order all show that the Borough has denied access to those Requests in

bad faith. The Borough is directed to pay Plaintiffs \$4,500 representing the \$1,500 civil penalty authorized by 65 P.S. § 67.1305 (a) for each of the three requests. This finding of bad faith is also warranted as many of the records the Borough was required to provide were ordinances that the Borough identified as being responsive and in its possession on August 22, 2019 (Exhibit 2), but the borough failed to provide those ordinances until ordered to do so by this Court. Plaintiffs tried to cooperate to avoid litigation on this issue by again asking the Borough to provide those ordinances on November 14, 2019 (Exhibit 4), but the Borough did not provide those records until January 29, 2020 after Plaintiffs had to obtain relief from this Court.

9. This Court previously ordered the Borough to comply with the Final Determination by the Office of Open Records at AP 2019-1552, by providing a copy of “the Municipal Inspection issued with the “Temporary Certificate of Use and Occupancy” certificate issue to the Requesters on April 5, 2017 for 719 N. Warren Ave., Apollo, PA 15613.” The Borough failed to provide this record or a verified affidavit that this record does not exist. The Borough shall provide this record or a verified affidavit describing the Borough’s search for this record and averring that the Borough does not have any such record.

10. This Court previously ordered the Borough to comply with the Final Determination by the Office of Open Records at AP 2019-1551, by requiring the Borough to provide the following records related to 719 N. Warren Ave, Apollo, PA 15613. For clarity, this Court describes what the Borough was previously required to provide followed by this Court’s finding and further directive for that item in bold:

- a. A copy of the request by the members of Shiloh Baptist Church, located at 719 N. Warren Avenue, Apollo, PA 15613 to request a waiver from vacancy from 2017; **The Borough provided an affidavit on February 5, 2020 stating that no records exist. Nothing further is needed.**
- b. A copy of the letter from Apollo Borough to the members of Shiloh Baptist Church, located at 719 N. Warren Ave, Apollo, PA 15613 that they are scheduled for a vacancy inspection to be held in October 2017; **The Borough provided an affidavit on February 5, 2020 stating that no records exist. Nothing further is needed.**
- c. A copy of the application, sent by the members of Shiloh Baptist Church located at 719 N. Warren Avenue, Apollo, PA 15613, registering the building as a vacant building; **The Borough provided an affidavit on February 5, 2020 stating that no records exist. Nothing further is needed.**
- d. A copy of the Apollo Borough Meeting minutes and or letter to the Pennsylvania Department of Labor and Industry that the Borough has chosen to “Opt-In” from the Department of Labor and Industry; **The Borough had previously provided some documents in response to this request (Exhibit 3 to Exhibit 19 and Exhibit 28), but the Borough has still failed to certify that nothing else responsive to this request exists. The Borough shall provide any other responsive records or verify that no other responsive records exist.**
- e. A copy of the documents sent from the Pennsylvania Department of Labor and Industry to Apollo Borough regarding the occupancy records of the property located at 719 N. Warren Avenue, Apollo, PA 15613. **The Borough provided an**

**affidavit on February 5, 2020 stating that no records exist. Nothing further is needed.**

11. Paragraphs 9 and 10 arise from enforcement of two final determinations regarding two separate RTKL requests. This Court finds that the Borough by failing to respond to the Requests, by failing to participate in the appeals before the Office of Open Records, by failing to appeal or comply with the Final Determinations of the Office of Open Records, and by not verifying that its response was complete despite this Court's Order to do so, has denied access to both Requests in bad faith. The Borough is directed to pay Plaintiffs \$3,000 representing the \$1,500 civil penalty authorized by 65 P.S. § 67.1305 (a) for both requests. The comments in Paragraph 4 regarding the prior owner of the Plaintiffs' property also applies to some these requests and further supports this Court's finding of bad faith.

12. All outstanding records described in the paragraphs above are due with seven (7) days of the date of this Order. Failure to provide the records by that date, may result in additional sanctions of \$500 per day for each individual Right-to-Know-Law Request pursuant to 65 P.S. § 67.1305(a).

13. To the extent the Borough still maintains that it does not have the records required to be provided as described in this Order, then within seven (7) days of the date of this Order, the Borough shall provide verified affidavit(s) describing the Borough's efforts to locate the records. The verified affidavit shall state that no records were found as a result of that search. If the Borough's contractor(s) may have responsive records, the Borough's affidavit(s) shall describe that the Borough specifically contacted those contractor(s) to attempt to locate responsive records. If the Borough fails to conduct a good faith effort to search its records as required by 65 P.S. §



67.901, then the Borough may be subject to further sanctions for violations of the RTKL and this Order.

14. This Court finds the above-described RTKL requests were “deemed denied” by Apollo Borough and that the Borough acted in bad faith under the provisions of the RTKL. As such, an award of counsel fees is justified pursuant to 65 P.S. § 67.1304(a)(1).

15. This Court finds that the Plaintiffs’ incurred reasonable counsel fees and costs of \$28,265.58 in these enforcement actions, which the Borough shall pay to the Plaintiffs’ within seven (7) days of the date of this Order.

16. The Court further notes additional facts and legal authority that support its findings that the Borough’s conduct evidenced “bad faith” in performing its statutory duties under the RTKL which justifies an award of counsel fees, civil penalties, and sanctions:

- a. First, the Pennsylvania Supreme Court has found that prompt resolution of RTKL cases is one of the statutory purposes of the RTKL. Levy v. Senate of Pennsylvania, 619 Pa. 586, 619, 65 A.3d 361, 381 (2013) (describing many expedited procedural provisions of the RTKL and concluding that “The legislative intent for efficient resolution is justifiable given that the public’s interest in government documents is often time dependent.”).
- b. The Commonwealth Court has routinely granted requests to expedite the briefing and argument schedule in RTKL cases. Frederick N. Frank, Esquire & Zachary N. Gordon, Esquire, Trump Wages War Against the Media While Pennsylvania State Agencies Wage A Behind the Scenes Cold War, 27 Widener Commonwealth L. Rev. 7, 33, n. 145-151 (2018) (describing multiple instances of expedited review being granted in the RTKL context); see also id. at 9-13 (describing many features of the RTKL that evidence a legislative intent for prompt access to records).

- c. Under Section 901, 65 P.S. § 67.901, the Borough had an affirmative obligation to respond to the RTKL requests within 5 business days. With every request in this case, the Borough failed to acknowledge the request, let alone respond to the request and made a timely good faith search for records.
- d. “An example of bad faith is a local agency's failure to comply with the mandate of Section 901 of the RTKL, which requires that a local agency make a good faith search for information responsive to a request and determination of whether that information is public.” Office of the Dist. Attorney of Philadelphia v. Bagwell, 155 A.3d 1119, 1140–41 (Pa. Cmwlth. Ct. 2017).
- e. Even months after some of the requests, the Borough’s open records officer, Deanna Shupe could not recall when she first looked for records (Ex. 25, p. 16, 27), did not know anything about certain requests (Ex. 25, p. 18), did not know what records had been provided (Ex. 25, p. 20), and generally did not recall many items. In relation to many items related to the Shiloh Baptist Church, Ms. Shupe testified that she did not know what that church was, that she did not talk to any other Borough employee to find those records, and she did not know if anyone at the Borough looked for those records. (Ex. 25, p. 32, 33). There were also many other indications, where Ms. Shupe testified that she did not recall searching for records (Ex. 25, p. 36-38, 43, 48, 51, 52, 53). When she did recall looking for records “It wasn’t that long ago.” (Ex. 25, p. 37).
- f. The Commonwealth Court has also found that a finding of bad faith is appropriate under the RTKL when an agency fails to confer with its contractor before responding to a request. Uniontown Newspapers, Inc. v. Pennsylvania Department of Corrections, 185 A.3d 1161 (Pa. Cmwlth Ct. 2018) (appeal granted in part and still pending Pa. 2019)(citing Staub v.

City of Wilkes-Barre & LAG Towing, Inc., No. 2140 C.D. 2012, 2013 WL 5520705 (Pa. Cmwlt. Ct. Oct. 3, 2013).

- g. Ms. Shupe also testified on multiple occasions that she did not ask Borough contractors for records. (Ex. 25, p. 20, 53, 65). Grant Kanish testified on January 15, 2020 that no one at the Borough asked him for certain records. 1/15/20 N.T., p. 11. On cross-examination he generally stated he spoke with the Borough's solicitor (1/15/20 N.T. p. 21), but on re-direct he could not recall any specific dates and admitted that most of the conversation did not have anything to do with the RTKL (Id., p. 22-23). Brenda Troup also confirmed that at least for a few of the requests she did not contact the Borough's contractors. (Ex. 26, p. 47, 51-52).
- h. Due to the Borough's failure to provide evidence that it had communicated with its contractor, Plaintiffs were forced to incur costs and fees to subpoena one of the Borough's contractor's employees, Mr. Kanish. The Borough, however, had the obligation to provide evidence it had sought responsive records and failed to provide any evidence of the Borough's efforts to meet those obligations.
- i. Further, under section 903, 65 P.S. § 67.903, the Borough was required to detail the specific reasons for the denying access, including citations to supporting legal authority. The Borough, however, did not respond to the initial requests, and did not make submissions to the OOR despite the OOR indicating it reached out to the Borough's open records officer on multiple occasions.
- j. In all but one of the Final Determinations in these enforcement actions, the Office of Open Records specifically identified that Section 1304 and 1305 of the RTKL could apply to the Borough's conduct:

- i. Exhibit 5, fn. 3;
  - ii. Exhibit 9, fn. 4;
  - iii. Exhibit 12, fn. 3;
  - iv. Exhibit 2 to Exhibit 19 fn. 1; and
  - v. Exhibit 5 to Exhibit 19, fn. 1
- k. Many of the defects in the Borough's compliance with its statutory obligations under the RTKL as described in this Order were explained to the Borough's Solicitor by an appeals officer for the Office of Open Records on August 15, 2019 (Exhibit 22). For example, the first time the Borough first provided an affidavit responding to the requests in these four consolidated cases was on February 5, 2020 (Exhibit 29), despite being told on August 15, 2019 (Exhibit 22) that affidavits were required to certify no further records exist.
- l. The Borough also received two notices from the Office of Open Records identifying that the Borough's conduct was deficient under the RTKL (See Exhibit 6 to Exhibit 19, the Complaint in 2019-1790). Despite receiving that letter from the OOR, dated October 28, 2019, the Borough continued to ignore its obligations under the RTKL in these cases.
- m. The Borough also received a letter dated November 14, 2019 from the Plaintiffs' counsel (Exhibit 4) outlining the items believed outstanding to three of the four Requests. The Borough as evidenced by its January 29, 2020 record production (Exhibit 28) certainly had many of these items but waited to provide them until Requester obtained an Order from this Court. At her December 2019 deposition, Deanna Shupe testified as to not having read the November 14, 2019 letter. (Exhibit 25, p. 12-13). The Borough's Solicitor even admitted at the deposition that for some reason he had not shared the letter with anyone at the Borough (Id. at p. 14)
- n. In addition, the Borough admitted or failed to deny, which is a deemed admission, most of the factual allegations in the Mandamus Complaint at 2019-1790 including Paragraphs 1-

37 and 42-47. Paragraph 37 alleged that the Borough had not complied with the OOR's final determinations in that case. The Borough expressly admitted Paragraph 37.

17. In addition, to the bad faith described above, this Court imposed a \$500 per day penalty for the Borough's failure to provide records as previously ordered by the Court. This \$11,000 in penalties from Paragraph 2(b) for non-disclosure of records also applies to many other records that the Borough is ordered to produce in the other paragraphs of this Order (7(d)(i) and 7(e)), which the Borough had previously been ordered to provide or verify do not exist. Plaintiffs may seek additional \$500 per day penalties for any other records the Borough later identifies and provides that were previously ordered to be provided.

18. In summary, the total sanctions and counsel fees awarded and due within seven (7) days includes:

- a. \$3,000 in penalties from Paragraph 2(a);
- b. \$11,000 in penalties from Paragraph 2(b);
- c. \$3,000 in penalties from Paragraph 4;
- d. \$1,500 in penalties from Paragraph 6;
- e. \$4,500 in penalties from Paragraph 8;
- f. \$3,000 in penalties from Paragraph 11; and
- g. \$28,265.58 in counsel fees and expenses from Paragraph 12.

**Thus, the total due is \$54,265.58** (\$26,000 in sanctions and \$28,265.58 in counsel fees and expenses).

19. A second compliance review hearing is scheduled for the \_\_\_\_ day of \_\_\_\_\_, 2020 at \_\_\_\_ a.m. / p.m. to review the Borough's compliance with the disclosures and other

terms of this Order. Further counsel fees under 65 P.S. § 67.1304(a)(1) and (c) and sanctions under 65 P.S. § 67.1305(a) may be awarded if the Borough fails to comply with this Order.

20. The above-captioned dockets remained consolidated for purposes of a hearing held on February 20, 2020 before the undersigned. The Prothonotary shall enter a copy of this Order on each of the above-captioned dockets.

BY THE COURT:

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

IN THE COURT OF COMMON PLEAS OF ARMSTRONG COUNTY

JANET AND SCOTT BRUNERMER,	:	
	:	
Plaintiffs/Petitioners,	:	
	:	
v.	:	No. 2019-1343-CIVIL
	:	No. 2019-1402-CIVIL
APOLLO BOROUGH,	:	No. 2019-1518-CIVIL
	:	No. 2019-1790-CIVIL
Defendant/Respondent.	:	

**List of Proposed Exhibits**

- 37. Grant Kanish Files
- 38. Emails provided in OOR Appeal 2020-0589
- 39. Updated Counsel Fees
- 40. Updated Counsel Fee Summary and June 2020 estimate
- 41. Emails between counsel on 5/11/2020 and 5/21/2020
- 42. Affidavit of R. Scott Brunermer
- 43. Affidavit of Zachary N. Gordon, Esquire

**APPENDIX 3**

May 20, 2019

R. Scott & Janet L. Brunermer  
514 Hoover Drive  
Apollo, Pa. 15613

RE: Change of Use/Occupancy – 719 N. Warren Avenue, Apollo, PA 15613

Mr. and Mrs. Brunermer,

This correspondence is in response to your request to obtain a UCC Building Permit for the above address in order to change the use group/occupancy. Your submission has been **denied** and I am returning your check and associated paperwork. This decision has been made since you have failed to do the following:

1. The application is incomplete. Under Commercial Project you are required to give a description, a use group, construction type (1B, 2B etc.), an occupant load, and the code used for design work.
2. The Municipal Approval form must be completed and signed by Apollo Borough.
3. There were not any "stamped" drawings submitted for the building.

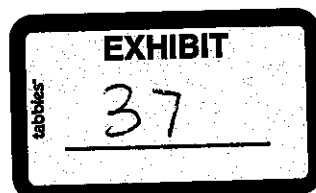
As the Building Code Official of Apollo Borough, I am formally denying permitting of this project at this time under Section 403.43 of the Pennsylvania Uniform Construction Code.

Should you have any additional questions or concerns regarding this matter, feel free to contact me.

Sincerely,

Grant L. Kanish, BCO  
PA West Business Unit Manager  
Bureau Veritas North America, Inc.

Cc: Apollo Borough  
Scott Andreassi, Esq.





Permit No. \_\_\_\_\_

# Bureau Veritas North America, Inc.

## PERMIT APPLICATION

For questions or to submit your paperwork, please contact the office nearest you  
(locations attached)

Township or Borough: APOLLO BOROUGH Date: 4-22-19

Work Site Address: 719 N. WARREN AVE, APOLLO PA 15613  
(street) (city) (state) (zip)

Owner/Applicant: ROBERT SCOTT & JANET LYNN BARNHART Phone: 724-506-2825

Mailing Address: 514 HOOVER DR, APOLLO PA 15613  
(street) (city) (state) (zip)

Contractor: \_\_\_\_\_ Phone: \_\_\_\_\_

Contractor Address: \_\_\_\_\_  
(street) (city) (state) (zip)

**TYPE OF WORK** (Please check either "Residential" or "Commercial" below and provide all information requested)

☐ Residential Project: Description \_\_\_\_\_ Cost \$ \_\_\_\_\_

New Bldg. Square Footage All Floors: \_\_\_\_\_ (not including garage)

Finished Basement Square Footage (if applicable) \_\_\_\_\_

Office Use Only

Use Group \_\_\_\_\_ Construction Type \_\_\_\_\_ Code Used \_\_\_\_\_

☒ Commercial Project: Description \_\_\_\_\_ Cost \$ 0

☐ New Building ☒ Existing Building New Bldg. Square Footage All Floors: \_\_\_\_\_

Use Group \_\_\_\_\_ Construction Type Joisted res. Occupancy Load \_\_\_\_\_ Code Used \_\_\_\_\_

I hereby certify that the proposed work is authorized by the owner of record and that I am or have been authorized to make this application as his/her authorized agent and we agree to conform to all applicable laws of this jurisdiction.

Print Name ROBERT SCOTT BARNHART

Signature Robert Scott Barnhart Date 4/22/19

OFFICE USE ONLY

Building Plan Review Date: \_\_\_\_\_

☐ Approved

☐ Not Approved

Plan Reviewer: \_\_\_\_\_

Permit Fee: \$ \_\_\_\_\_

**OVER**

## DIRECTION FORM

ADDRESS OF PROJECT 719 N. WARREN AVE. ARLING PA 15613  
BETWEEN N. 7TH ST AND N. 8TH ST  
(cross street) (cross street)

PLEASE PROVIDE DETAILED INSTRUCTIONS ON HOW TO GET TO THE CONSTRUCTION LOCATION:

See Attached

**TO BE INCLUDED WITH EVERY BUILDING PERMIT APPLICATION**



**A** 204 Butler Rd, Kittanning, PA 16201

**B** 719 N Warren Ave, Apollo, PA 15613

35 min , 19.0 mi

Light traffic (6 min delay)

Via PA-66, PA-66 ALT

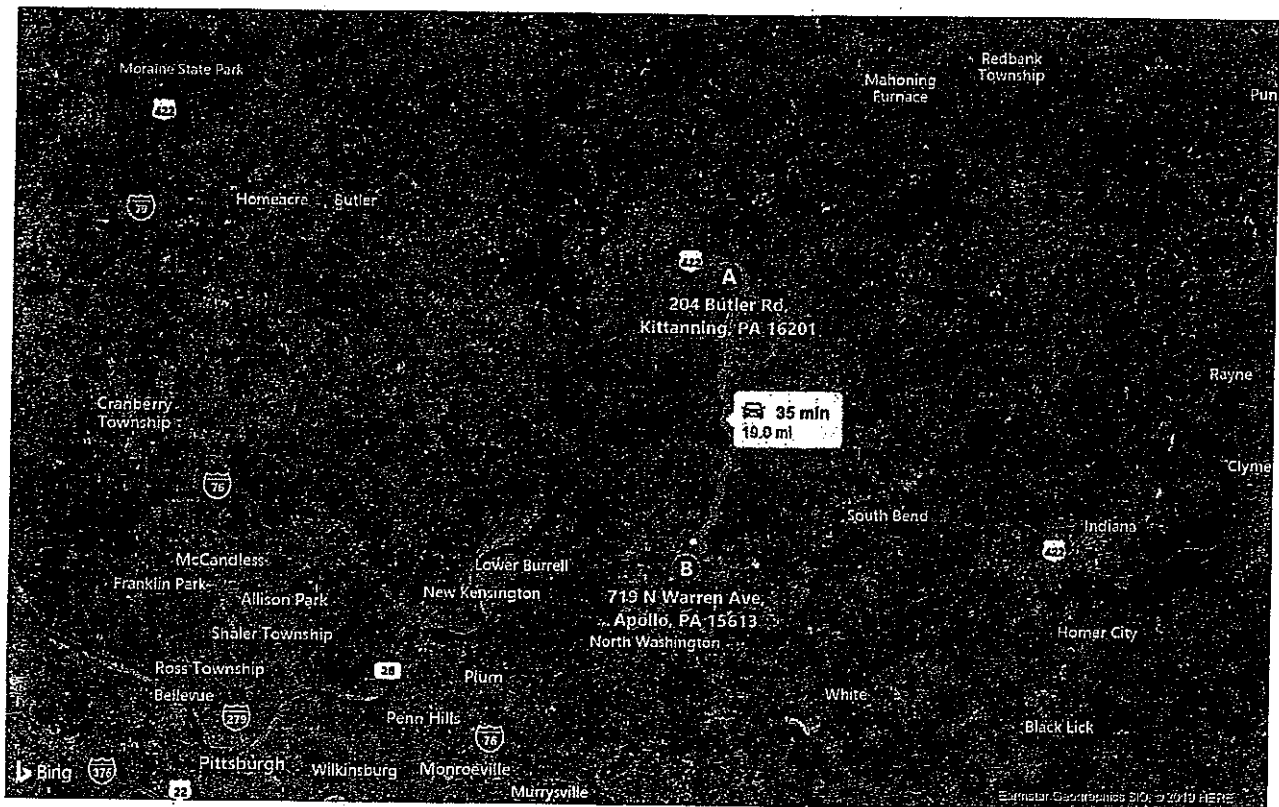
· Local roads

Perhaps you have had a difficult time locating our property and that is why you refuse to inspect us. We sincerely hope this map will help you to find the proper location.

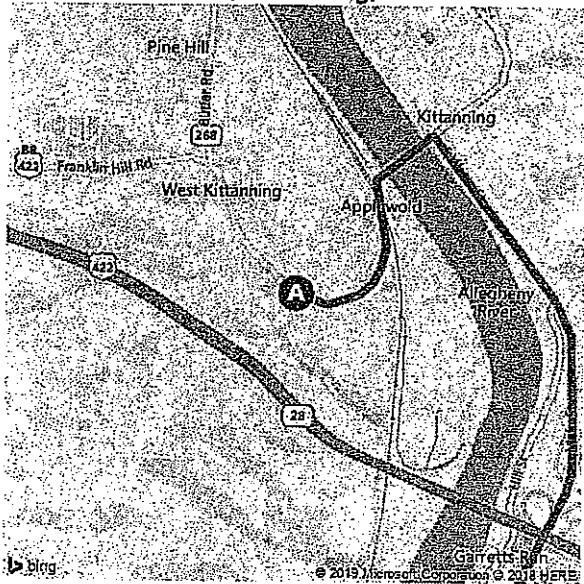
**A** 204 Butler Rd, Kittanning, PA 16201

↑	1. Depart <b>US-422 BR / Butler Rd</b> toward Arthur St	0.8 mi
↘	2. Turn <b>right</b> to stay on <b>US-422 BR / S Water St</b>	0.7 mi
↗	3. Bear <b>right</b> onto <b>Main St</b>	0.8 mi
↑	4. Keep <b>straight</b> onto <b>PA-66 S / Main St</b> Pass Sheetz in 2.2 mi	6.8 mi
↙	5. Turn <b>left</b> onto <b>PA-66 ALT</b>	7.8 mi
↙	6. Turn <b>left</b> onto <b>PA-66 / PA-56 / Lincoln St</b> Pass Sunoco in 1.3 mi	2.1 mi
Arrive at <b>PA-56 / PA-66 / N Warren Ave</b>		
7.	The last intersection is N 8th St If you reach N 7th St, you've gone too far	

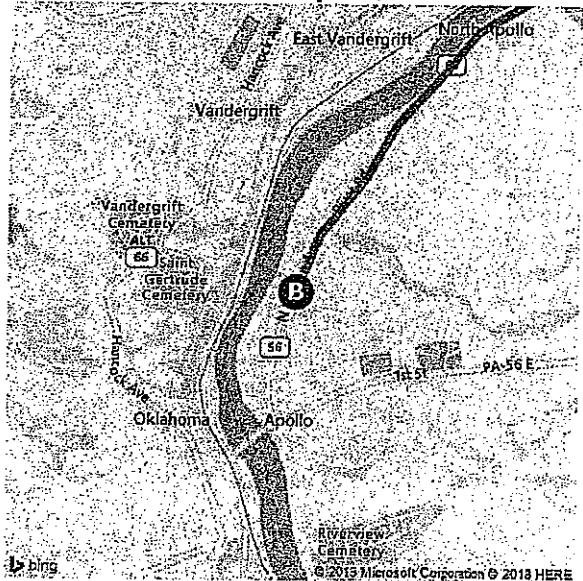
**B** 719 N Warren Ave, Apollo, PA 15613



**A 204 Butler Rd, Kittanning, PA 16201**



**B 719 N Warren Ave, Apollo, PA 15613**



These directions are subject to the Microsoft® Service Agreement and are for informational purposes only. No guarantee is made regarding their completeness or accuracy. Construction projects, traffic, or other events may cause actual conditions to differ from these results. Map and traffic data © 2019 HERE™.



**BUREAU  
VERITAS**

## **Bureau Veritas Office Locations - Pennsylvania**

<b>Western Pennsylvania</b>	<b>Eastern Pennsylvania</b>
<b>Armstrong Office</b>	<b>Broomall Office</b>
204 Butler Road, Suite 3	790A Parkway Drive
Kittanning, PA 16201	Broomall, PA 19008
P: 724.548.1414	P: 877.392.9445
F: 724.548.1403	F: 877.392.9444
<b>Brookville Office</b>	<b>Pocono Office</b>
1514 Route 28	105 Government Center Way Suite 101
Brookville, PA 15825	Pocono Pines, PA 18350
P: 814.849.2448	P: 570.894.2801
F: 814.849.0825	F: 570.894.2986
<b>Huntingdon Office</b>	<b>Wyoming Office</b>
10773 William Penn Highway, Suite D	184 Keiserville Road
Huntingdon, PA 16652	Tunkhannock, PA 18657
P: 814.643.3480	P: 570.836.7196
F: 814.643.3766	F: 570.836.5967
<b>Mifflin Office</b>	
821 Electric Avenue, Suite C	
Lewistown, PA 17044	
P: 717.242.0992	
F: 717.242.4391	

APOLLO TOWNSHIP/BOROUGH  
MUNICIPAL PRIOR APPROVALS

Parcel # \_\_\_\_\_  
Lot # \_\_\_\_\_

Applicant/Property Owner: ROBERT SCOTT & JANET LYNN BRUNERMER Phone: 724-506-2895 or 724-624-2716

Address: 514 Hoover Dr, Apollo, Westmoreland County, PA 15613

Contractor: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_

☐ Single Family Dwelling ☐ Multi-Family Dwelling ☐ Accessory Structure  
☐ Addition ☐ Trailer ☐ Trailer Replacement ☐ Temporary Trailer  
☒ Commercial Building ☐ Addition – Commercial Building

Description: Church Size: 2400 sq. feet

Construction Cost: 0 Plot Plan Attached? No Insurance Info. attached ~~Yes~~ NO

Location: 719 N Warren Ave., Apollo, Armstrong County, PA 15613

*I hereby certify that the proposed work is authorized by the owner of record and that I have been authorized to make this application as his authorized agent and we agree to conform to all applicable laws of this jurisdiction.*

Signature: \_\_\_\_\_ Date: 4/22/2019

**APPLICANT MUST HAVE TOWNSHIP, BOROUGH OR CITY COMPLETE THE FOLLOWING:**

Site Located Within Flood Plain? \_\_\_\_\_ Zoning Type \_\_\_\_\_

Type of Sewage: \_\_\_\_\_ (Approval Attached) Not Applicable

Type of Water: \_\_\_\_\_ (Approval Attached) Not Applicable

Road Occupancy Permit: \_\_\_\_\_ (Approval Attached) Not Applicable

Stormwater Management: \_\_\_\_\_ (Approval Attached) Not Applicable

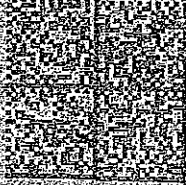
I hereby certify that this application is in compliance with all relevant ordinances of Township/Borough and therefore eligible for Municipal approval.

Date Approved/Issued: \_\_\_\_\_

Township/Borough Officer/Secretary: \_\_\_\_\_

9/7/07

PITTSBURGH  
FM 150  
10 APR 79  
FM 31



NEOPOST  
FIRST-CLASS MAIL  
\$000.65<sup>00</sup>  
04/22/2019 ZIP 15613  
042114805921

10.

BUREAU VERITAS  
204 BUTLER ROAD, SUITE 3  
KITTANNING PA 16201

FIRST CLASS MAIL

印印印印印





March 26, 2019

Jake Oresick, Esq.  
Greenan & Baczkowski, PC  
Town Square Professional Bldg.  
Suite 304  
3907 Old William Penn Highway  
Murrysville, Pa. 15688

**Re: *Commonwealth V. Brunermer***  
***No. CP-03-SA-0000075-2018***  
***Your File No. 18767***

Dear Mr. Oresick,

I am writing as a follow up to our telephone conversation of March 21 and your email letter regarding the same. After consulting with the Apollo Borough Zoning Officer, I would advise that while a single inspection can be done, it will be required for two separate purposes. The first would be for the vacancy inspection and the second would be for the Change of Use application inspection. In addition, and as noted in my letter to the Brunermers and during our telephone conversation, the vacancy inspection must be completed within sixty (60) days of the summary hearing, as per the agreement reached that day.

In addition, there appears to be an outstanding issue regarding the citation, fine and agreement reached separately last year. I'm advised by the Borough that an agreement was reached wherein the Brunermers would pay a fine of \$135.00 (\$35.00 for an inspection and \$100.00 for two "no shows" for inspections). This was for the vacancy inspection that was required for 2017/2018. Another vacancy inspection would then be necessary for 2018/2019. The vacancy inspections are necessary to avoid paying the required \$250 fee to the Borough for having an empty building.

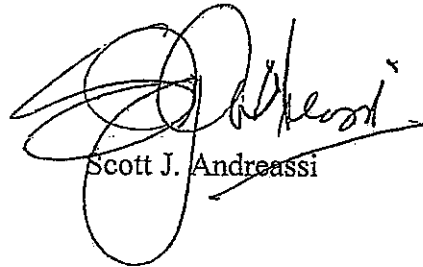
With regard to Bureau Veritas (BV), I am advised that the change in use request must be approved prior to the actual change of use. I am further advised that a representative from BV advised the Brunermers of this at the time they purchased the property. Finally, I am advised that a prior change of use request was made to BV by the Brunermers, and that request was denied. As this was a decision by BV, I cannot speculate as to why the request was denied.



With regard to the parking issue, I am advised that if the Brunermers intend to conduct a retail/manufacture operation at the site, changes to the current lot will be necessary. I will contact the Zoning Officer to determine what those changes would be.

Given the scope of the issues, it may be helpful for the parties (you, me, Apollo Borough and Bureau Veritas) to meet and discuss what is needed going forward. This may avoid any future misunderstandings or issues. Please let me know your thoughts on this. Thank you and I look forward to hearing from you.

Yours Very Truly,



Scott J. Andreassi

cc: Apollo Borough  
Brenda Troup, Zoning Officer  
Bureau Veritas



APOLLO BOROUGH, PENNSYLVANIA  
APOLLO BOROUGH, PENNSYLVANIA  
APOLLO BOROUGH, PENNSYLVANIA

APOLLO BOROUGH, PENNSYLVANIA

March 20, 2019

Janet L. and R. Scott Brunermer  
514 Hoover Drive  
Apollo, Pa. 15613

*Re: 719 North Warren Property*

Dear Janet and R. Scott Brunermer,

I am writing with regard to the above referenced property and as the solicitor for Apollo Borough. Specifically, I am writing with regard to the paperwork and check you had recently submitted to the Borough.

As provided to me by the Borough, the following paperwork and check was submitted:

- a. Bureau Veritas Permit Application
- b. Direction Form (blank)
- c. Apollo Borough Application For Zoning Or Building Permit. Hereafter referred to as the "Application".
- d. Check to Apollo Borough in the amount of \$90.00

After reviewing the material submitted, on behalf of the Borough, I would have the following questions:

- a. The \$90.00 check is made out to "Apollo Borough", however it is unclear what the check is for. The application fee for an Apollo building permit is \$75.00. If the check was intended for the Bureau Veritas application, it is made out incorrectly.
- b. It is unclear from the body of the Application to Apollo Borough what work is intended to be performed or where the work is intended to be performed. If the proposed work is interior only, the Application is not needed. If the proposed work is exterior, then the Borough would be involved. If the work is exterior, then in addition to the Application, the Borough would also need a description of the work and a plot diagram.
- c. If the work is involving improvements to the parking lot area, the Borough would be involved. Again, a description of the work would be needed as well

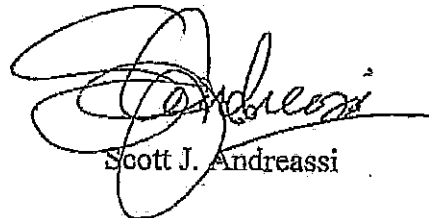
as a subdivision and land development application. In addition, the Borough Zoning permit would have to be submitted to address the parking lot area.

I would also note that the Application lists the business name as "SloppySoap, Inc.". In addition, the "description of use" indicates that the use will be "Retail Storefront facility to manufacture artisanal soap, shampoo, lotions". As I'm sure you are aware, this would be a change in the currently permitted use of the property and as such, would require that a "Change of Use" application be completed and filed with the Bureau Veritas along with the necessary fees. While the use proposed appears to be permitted within the Borough confines, the current permitted use for the property is "Assembly", therefore a change would be needed.

Per the agreement reached with your attorney on February 25, 2019, I would anticipate that a representative from the Bureau Veritas will be contacting you to conduct the agreed to vacancy inspection of the property. Per the agreement with your attorney, the vacancy inspection must be completed within sixty (60) days of the hearing date. As a courtesy, I will send a copy of this letter to your attorney also.

I look forward to hearing from you. Should you have any question, please feel free to contact me at 724-540-1161.

Yours Very Truly,

A handwritten signature in black ink, appearing to read "Scott J. Andreassi", with a large, stylized flourish above the name.

Scott J. Andreassi

cc: Brenda Troup, Zoning Officer  
Deana Shupe, Apollo Borough Manager  
Bureau Veritas



Size : 40.7 kb  
FROM BRENDA 719 N. WARREN AVE BRUNERMER  
contact  
to:  
Grant Kanish  
02/25/2019 12:08 PM  
Hide Details  
From: contact@thefishbowltoo.com  
To: Grant Kanish/USA/VERITAS@VERITAS

1 Attachment



VACANCY ORDINANCE INSPECTION REPORT.doc

Hi, Grant.

We just got out of court. These people are being difficult. They've sent the borough paperwork for registering, but have never allowed the inspection (like the one's we did together when the vacancy ordinance was first established) to get any sort of waiver. She hates me, she hates everyone in the borough and fees the borough is out to get her but it is only because she keeps digging the hole deeper and she's difficult to deal with. If you need more details on this, I can give you more, although most of it is headache-inducing and petty. I've had no contact with the owners professionally and a total of three words personally, "It's perfectly legal", when I told her it was perfectly legal for my delivery truck to park where it was, although she has given me a tremendous amount of personal harrassment being two doors down form my pet store. I can not tell you how relieved I am to NOT have to do this inspection!

You should know that she (Mrs. Brunermer) initially intended to open a consignment store, then there was talk of turning it back into a church and claims she is manufacturing soap and whatnot form the premise under her business "Sloppy Soap" and having mail delivered there. Water useage reports for 2018 was ZERO gallons. Jamie Johnston can confirm the water useage.

She had it for sale on Zillow back in October of 2018, but took it off the market. The asking price was 250,000. I have copy proof.

She wrote a letter dated months prior to the purchase of the property stating she had had her address changed to 719 N Warren and claimed she lived there. I have a copy of that letter as well.

You already know she has not applied for a change of occupancy for either a business or a residence.

Having said all that, I am including a copy of the form I use for inspections. It needs to be filled out of course, in order to be done the way everyone else has had it done. Of course, if you have any questions, please let me know.

We have 60 days to complete the inspection, Scott Andressi will be in touch. He has your number.

I'm sure you recall that the inspection can grant a waiver. About half way down, you will see the considerations for granting the waiver. I NEVER tell the owners that they are getting a waiver during the inspection. This form is only a consideration for waiver. Cindee and I used to verify together that the waiver was granted, but we've never had this type of situation before.

The options for waiver consideration are: (1) a 90 day waiver for in-process construction....but this building hasn't been touched in quiet a while. (2) A completed renovation intended for rental, in which case I would hand it to the rental inspector...but again, it has no occupancy permits for anything but being a church or (3) a year waiver IF...IF the owner shows a good-faith effort to sell the property. Again, she had "for sale" signs in the window for a bout a week last summer, but they've since been removed and then it appeared on Zillow last October and now...nothing.

I drive past this property every day of course, with all the snow, it is easy to see there is no activity into or out of the building. Chief Kier will also vouch for this information.

This property meets the definition of vacant property under our ordinance. We are trying to get her caught up from the inspections in January and again in February of 2018. They acknowledged the inspections, but just didn't show up. I was there and at our court hearing in November, she calimed that noone knocked on her door. My footprints were the only ones in the snow, She just is not allowing inspections.

They've bene explained the process for getting a waiver multiple times, they just won't comply nad now it sits as a vacant building that I'm not sure she can do anything with and she's now subject to paying the fees.

Yes, this is a bad one, but thank you so much for helping.

Inspection report attached. I will forward the vacancy ordinance.

Thanks again,

Brenda

# VACANCY ORDINANCE INSPECTION REPORT

DATE: \_\_\_\_\_ TIME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

OWNER: \_\_\_\_\_ CONTACT NUMBER: \_\_\_\_\_

OWNER REPRESENTATIVE PRESENT/RELATIONSHIP TO OWNER: \_\_\_\_\_

PROPERTY: (COMMERCIAL \_\_\_\_\_ \$40 RESIDENTIAL \_\_\_\_\_ \$35) \_\_\_\_\_ PAID

OPERABLE UTILITIES (PER OWNER/REPRESENTATIVE):

\_\_\_\_\_ HEAT SOURCE \_\_\_\_\_ SEWAGE \_\_\_\_\_ GARBAGE \_\_\_\_\_ WATER \_\_\_\_\_ ELECTRIC

APPEARANCE OF: OPERABLE KITCHEN \_\_\_\_\_ OPERABLE BATHROOM \_\_\_\_\_

\_\_\_\_\_ HABITABLE \_\_\_\_\_ NOT HABITABLE

\_\_\_\_\_ VACANT \_\_\_\_\_ ABANDONED

\_\_\_\_\_ IN-PROGRESS CONSTRUCTION

\_\_\_\_\_ INTENDED FOR RESALE

\_\_\_\_\_ LISTED WITH AGENCY \_\_\_\_\_ FOR SALE BY OWNER \_\_\_\_\_ PRICE

\_\_\_\_\_ INTENDED FOR RENTAL (OWNER TO REGISTER AS LANDLORD)

HAS \_\_\_\_\_ WILL \_\_\_\_\_

VACANT REGISTRATION FEE: \_\_\_\_\_ PAID \_\_\_\_\_ NOT PAID

OTHER (Y/N):

\_\_\_\_\_ WEEDS \_\_\_\_\_ GRAFFITI \_\_\_\_\_ VERMIN/INSECTS

\_\_\_\_\_ JUNK/GARBAGE/REFUSE/UNSANITARY CONDITIONS

\_\_\_\_\_ INDOORS \_\_\_\_\_ OUTDOORS

\_\_\_\_\_ POOL/SPA: \_\_\_\_\_ OPERABLE \_\_\_\_\_ INOPERABLE

\_\_\_\_\_ SECURE FROM ENTRY (TRESPASSERS)

\_\_\_\_\_ SECURE FROM ENTRY (ANIMALS)

\_\_\_\_\_ ROOF GOOD \_\_\_\_\_ FOUNDATION GOOD

\_\_\_\_\_ FIRE HAZARDS:

\_\_\_\_\_ ORDINARY COMBUSTIBLES

\_\_\_\_\_ OTHERWISE HAZARDOUS OR TOXIC \_\_\_\_\_

APPROXIMATE AMOUNT STORED \_\_\_\_\_

\_\_\_\_\_ THREAT TO NEIGHBORING PROPERTY

\_\_\_\_\_ NUISANCE ATTRACTANT

DETERMINATION:

\_\_\_\_\_ OWNER DID NOT APPEAR FOR INSPECTION

\_\_\_\_\_ ORDINANCE APPLIES \_\_\_\_\_ ORDINANCE DOES NOT APPLY

NOTES:

Janet L. & R. Scott Brunermer  
719 N. Warren Avenue  
Apollo, PA 15613

August 7, 2019

Bureau Veritas  
Armstrong Office  
204 Butler Road, Suite 3  
Kittanning, PA 16201

To Whom It May Concern:

Enclosed is our application for a "Change of Use" permit. The site plan drawing included is on an 8" x 11" letter sized sheet.

There have been no alterations made to the interior of the building, and none are planned. We have kept the original structure in tact and have only provided cosmetic changes, ie, insulated vinyl siding over the brickwork on the exterior. An ADA-compliant entrance was installed, and the building had an ADA-compliant ramp on the date of purchase. Four exterior windows were replaced to be energy compliant. There has been no alteration to the ingress/egress (except for the ADA-compliant door) of the building since our purchase.

The wall sections have 5/8" fireproof drywall over plaster/slat board, wood framing and a brick exterior covered with insulated vinyl siding. There are no firewalls. The use group will be Factory and/or Mercantile on the 1<sup>st</sup> floor, if we decide to open a storefront. The basement will be used as Storage with no combustible materials.

There are fire extinguishers located on both floors.

Although we did not intentionally pursue an energy code compliance path, we hired a licensed electrician to replace all of the lighting fixtures with energy efficient LED lighting on both floors. There was no central air conditioning unit at the time we purchased the building. In January 2018, a new furnace with a 96% AFUE and air conditioner with 13 SEER was installed.

We are including a letter dated March 20, 2019, from the Apollo Borough Solicitor, Scott Andreassi. We received this after completing the Occupancy Permit form, that is required by Bureau Veritas for Municipal Approval. It is the opinion of the Solicitor that we are in compliance for our projected use and occupancy of the building as none of the work has been on the exterior of the building, and it meets the Zoning Requirements of the Borough. There have been no changes to the parking area. If it is the opinion of Veritas that we must pass a "vacancy inspection" in order to be granted a change of use, the two clearly do not go hand-in-hand. No proof of vacancy has been provided to us by Apollo Borough. We occupy the building, and we have been seeking guidance from this organization for two years. As of August 6<sup>th</sup>, the Borough has not provided us with vacancy information regarding the prior owners, though it has been requested through the Office of Open Records.

All future correspondence, at this time, should come directly to us.

Regards,

Janet & Scott Brunermer

Murrysville Office  
Town Square Professional Building  
Suite 304  
3907 Old William Penn Highway  
Murrysville, PA 15668

**Creenan & Baczkowski, PC**  
ATTORNEYS

(724) 733-8832

www.cbattorneys.com

JAMES W. CREENAN  
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CHARLES R. CONWAY (OF COUNSEL)

McKeesport Office  
City Hall Building  
Suite 305  
502 Fifth Avenue  
McKeesport, PA 15132  
(412) 675-0940

WALTER F. BACZKOWSKI (1942-2017)  
ELIZABETH BAILEY (1920-2016)

Writer's Email:  
joresick@cbattorneys.com

April 9, 2019

Grant Kanish  
204 Butler Road  
Suite 3  
Kittanning, PA 16201

Re: Scott and Janet Brunermer  
Our File No. 18767

Dear Mr. Kanish:

As I expressed at our meeting this morning, I seek to identify all permits—and their underlying requirements—that the Brunermers must obtain to open their business at 719 North Warren Avenue, Apollo, PA 15613 (“the Property”). I appreciate your willingness to explain those requirements, and this letter is to confirm that my understanding of those requirements is correct. If my understanding is incorrect or incomplete, please reply with the correct information.

I understand that the requirements are as follows:

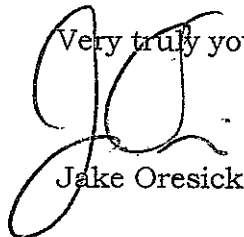
1. The Brunermers must submit to a vacancy inspection by Apollo Borough or a representative thereof.
  - a. If the Brunermers fail to submit to a vacancy inspection, Apollo Borough will not provide the requisite approval for other permits.
2. The Brunermers must obtain a state occupancy permit through Bureau Veritas.
  - a. The Brunermers should inquire as to whether the Property already has a state occupancy permit.
    - i. If yes, the Brunermers may use the Property for any use authorized by the existing permit.
      1. If the permit is for a use inconsistent with the Brunermers’ plans (e.g., assembly), the Brunermers must obtain approval for a change of use.
    - ii. If no, the Brunermers must obtain a state occupancy permit.
      1. This process is cumbersome, expensive, and would require the involvement of an architect or engineer.
3. If no existing state occupancy permit authorizes the Brunermers’ intended use of the Property, the Brunermers must obtain approval for a change of use through Bureau Veritas.



- a. Specific requirements cannot be identified until the Brunermers submit their change of use application identifying details related to the Property and their plans therefor.
  - i. If the Brunermers seek a commercial/retail use, changes to the parking lot would likely be required (e.g., at least one handicapped parking space).
4. Irrespective of the Brunermers intended use, Apollo Borough may impose additional parking requirements as outlined in Article 14 of the Zoning Ordinance.
5. All signage must comply with Apollo Borough requirements as outlined in Article 15 of the Zoning Ordinance and Ordinance No. 259-14 of 2013.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to be 'JO' with a stylized flourish underneath.

Jake Oresick

JSO/

cc: Scott Andreassi, Esquire  
Brenda Troupe  
Scott and Janet Brunermer



August 14, 2019



R. Scott & Janet L. Brunermer  
514 Hoover Drive  
Apollo, Pa. 15613

RE: Change of Use/Occupancy – 719 N. Warren Avenue, Apollo, PA 15613

Mr. and Mrs. Brunermer,

I am in receipt of your letter received via Certified Mail on Monday August 12, 2019.

I feel that you do not fully understand what is necessary to Change the Use/Occupancy of the Church building at the above referenced address. There are (3) extenuating circumstances that must be addressed to do so by both Apollo Borough and Bureau Veritas North America, Inc. I will try to clarify each of these in order of completion and who is responsible for each.

- **Apollo Borough Vacancy Ordinance** – The Ordinance is enforced by Apollo Borough and their Codes Officer Brenda Troup. Your initial inspection I believe was attempted to be performed by Ms. Troup and was met with controversy. Apollo Borough asked that my Codes Inspector/Zoning Officer Rick McMillen perform any subsequent inspections for this ordinance. To date, I cannot verify that this has taken place.
- **Apollo Borough Occupancy Inspection Ordinance** – This inspection is conducted per the Borough Ordinance and checklist at the time of ownership transfer. This inspection is currently performed by Bureau Veritas Inspector Rick McMillen and scheduled by the Borough. This inspection is to satisfy the Borough Ordinance and *should not* be considered as the Occupancy Inspection to satisfy The PA Uniform Construction regulations.
- **Change of Use/Occupancy** – This is conducted under the Pennsylvania Uniform Construction Code – Act 45. Your submission to Bureau Veritas in May 2019 was returned to you due to incompleteness. I have received your submission/application dated 8/7/19 and would like to explain the following:
  1. Even though you indicate “there are no alterations being made”, you are changing the Occupancy to an entirely different Use Group than the last known use (a church). Therefore certain aspects of the change must be met. I have explained to you on numerous occasions that you will need to consult with an engineer to develop plans for the new use even if you are not making any changes.
  2. You must receive approval from Apollo Borough and have a representative of the Borough sign the Bureau Veritas Municipal Prior Approval Form. (highlighted in Yellow)
  3. The Policy Guidelines for Commercial Plan Submittal for Change of Occupancy is incomplete. Each item needs to be checked or marked not applicable. The 5<sup>th</sup> item on the Checklist asks for an “Existing L&I Certificate of Occupancy”. This is necessary for BV to have knowledge if the structure was properly reviewed, permitted and inspected prior to the Uniform Construction Code. If not, it is deemed “uncertified” under the current Building Codes and the entire building would need drawn and stamped by a licensed design professional. See enclosed handout on Uncertified Buildings. If the building was constructed prior to April 27, 1927 it is deemed legally occupied per 403.28 of the UCC (see enclosure). Proof of construction is required.

4. The Paragraph highlighted in Pink does not apply in this situation. An example that would apply to this paragraph would be: "If the building housed the Apollo First Church of God and St. Paul's Catholic Church purchased it for the same use without any changes, BV could issue a new certificate to the new owner without requiring plans if the structure has a legal Certificate of Occupancy or was built before April 27, 1927".

In closing, I would like to apologize for all of the confusion regarding this project. I believe I made it clear at the meeting with the real estate agent and yourself what would be necessary to legally change the Use/Occupancy of the building. At this time, I am again returning your submission and check. Please carefully review this letter and all of the references supplied before re-submitting.

Sincerely,


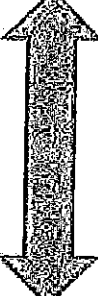
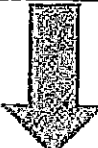
A handwritten signature in black ink, appearing to read 'Grant L. Kanish', with a large, stylized 'G' and 'K'.

Grant L. Kanish, BCO  
PA West Business Unit Manager  
Bureau Veritas North America, Inc.

Cc: Apollo Borough  
Scott Andreassi, Esq.

***Does your building have a legal Certificate of Occupancy? If not, it is considered an "Uncertified Building"***

**FOR BUILDINGS BUILT PRIOR TO APRIL 9, 2004 YOU WILL NEED TO CONTACT THE PENNSYLVANIA DEPARTMENT OF LABOR AND INDUSTRY @ 717-787-3806, SELECT OPTION 1, AND THEN OPTION 5 TO REQUEST RECORDS FOR YOUR BUILDING INCLUDING ANY PLANS, INSPECTION RECORDS AND DOCUMENTS ISSUED.**

	<p><b>§ 403.28. Uncertified buildings.</b></p> <p>(a) Under section 902(b)(6) of the act (35 P. S. § 7210.902(b)(6)), an uncertified building that was <u>built before April 27, 1927</u>, is deemed to be legally occupied until the owner proposes to renovate, add an addition, alter or change the occupancy of the building. The renovation, addition, alteration or change in occupancy must comply with the Uniform Construction Code.</p>
<p><b>April 27, 1927</b></p> 	<p>(3) Accessibility requirements are applicable as follows:</p> <p>(i) If construction of an uncertified building began <u>before September 1, 1965</u>, accessibility requirements will not be imposed by the Department.</p>
	<p>(3) Accessibility requirements are applicable as follows:</p> <p>(ii) If construction of a <u>building began after August 31, 1965, and before February 18, 1989</u>, and if the building is a State-owned building, a restaurant or a retail commercial establishment, the building must have at least one accessible main entrance, an accessible route from the accessible entrance to any public spaces on the same level as the accessible entrance and, if toilet rooms are provided, the building must have at least one toilet room for each sex or a unisex toilet room complying with the accessibility requirements of the "International Building Code."</p>
<p><b>Sept. 1, 1965</b></p> <p><b>Feb. 18, 1989</b></p> 	<p>(3) Accessibility requirements are applicable as follows:</p> <p>(iii) If construction of the building <u>began after February 17, 1989</u>, all accessibility requirements of the "International Building Code" shall be met.</p>

With the passing of Act 36 and Effective January 23, 2018, a building owner or his/her agent may obtain a legal Certificate of Occupancy from the Building Code Official by providing proof that the structure meets any one of the following paths:

- 1.) Section 902 (c) of Act 45 The Pennsylvania Uniform Construction Code
- 2.) The latest version of the International Existing Building Code
- 3.) 2015 International Building Code

May 20, 2019

R. Scott & Janet L. Brunermer  
514 Hoover Drive  
Apollo, Pa. 15613

RE: Change of Use/Occupancy – 719 N. Warren Avenue, Apollo, PA 15613

Mr. and Mrs. Brunermer,

This correspondence is in response to your request to obtain a UCC Building Permit for the above address in order to change the use group/occupancy. Your submission has been denied and I am returning your check and associated paperwork. This decision has been made since you have failed to do the following:

1. The application is incomplete. Under Commercial Project you are required to give a description, a use group, construction type (1B, 2B etc.), an occupant load, and the code used for design work.
2. The Municipal Approval form must be completed and signed by Apollo Borough.
3. There were not any "stamped" drawings submitted for the building.

As the Building Code Official of Apollo Borough, I am formally denying permitting of this project at this time under Section 403.43 of the Pennsylvania Uniform Construction Code.

Should you have any additional questions or concerns regarding this matter, feel free to contact me.

Sincerely,

Grant L. Kanish, BCO  
PA West Business Unit Manager  
Bureau Veritas North America, Inc.

Cc: Apollo Borough  
Scott Andreassi, Esq.

Janet L. & R. Scott Brunermer  
719 N. Warren Avenue  
Apollo, PA 15613

August 7, 2019

Bureau Veritas  
Armstrong Office  
204 Butler Road, Suite 3  
Kittanning, PA 16201

To Whom It May Concern:

Enclosed is our application for a "Change of Use" permit. The site plan drawing included is on an 8" x 11" letter sized sheet.

There have been no alterations made to the interior of the building, and none are planned. We have kept the original structure in tact and have only provided cosmetic changes, ie, insulated vinyl siding over the brickwork on the exterior. An ADA-compliant entrance was installed, and the building had an ADA-compliant ramp on the date of purchase. Four exterior windows were replaced to be energy compliant. There has been no alteration to the ingress/egress (except for the ADA-compliant door) of the building since our purchase.

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We are including a letter dated March 20, 2019, from the Apollo Borough Solicitor, Scott Andreassi. We received this after completing the Occupancy Permit form, that is required by Bureau Veritas for Municipal Approval. It is the opinion of the Solicitor that we are in compliance for our projected use and occupancy of the building as none of the work has been on the exterior of the building, and it meets the Zoning Requirements of the Borough. There have been no changes to the parking area. If it is the opinion of Veritas that we must pass a "vacancy inspection" in order to be granted a change of use, the two clearly do not go hand-in-hand. No proof of vacancy has been provided to us by Apollo Borough. We occupy the building, and we have been seeking guidance from this organization for two years. As of August 6<sup>th</sup>, the Borough has not provided us with vacancy information regarding the prior owners, though it has been requested through the Office of Open Records.

All future correspondence, at this time, should come directly to us.

Regards,

Janet & Scott Brunermer



March 20, 2019

Janet L. and R. Scott Brunermer  
514 Hoover Drive  
Apollo, Pa. 15613

*Re: 719 North Warren Property*

Dear Janet and R. Scott Brunermer,

I am writing with regard to the above referenced property and as the solicitor for Apollo Borough. Specifically, I am writing with regard to the paperwork and check you had recently submitted to the Borough.

As provided to me by the Borough, the following paperwork and check was submitted:

- a. Bureau Veritas Permit Application
- b. Direction Form (blank)
- c. Apollo Borough Application For Zoning Or Building Permit. Hereafter referred to as the "Application".
- d. Check to Apollo Borough in the amount of \$90.00

After reviewing the material submitted, on behalf of the Borough, I would have the following questions:

- a. The \$90.00 check is made out to "Apollo Borough", however it is unclear what the check is for. The application fee for an Apollo building permit is \$75.00. If the check was intended for the Bureau Veritas application, it is made out incorrectly.
- b. It is unclear from the body of the Application to Apollo Borough what work is intended to be performed or where the work is intended to be performed. If the proposed work is interior only, the Application is not needed. If the proposed work is exterior, then the Borough would be involved. If the work is exterior, then in addition to the Application, the Borough would also need a description of the work and a plot diagram.
- c. If the work is involving improvements to the parking lot area, the Borough would be involved. Again, a description of the work would be needed as well

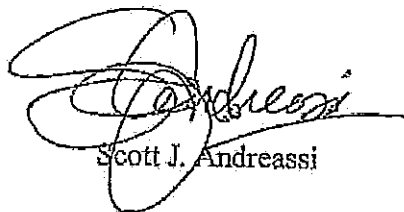
as a subdivision and land development application. In addition, the Borough Zoning permit would have to be submitted to address the parking lot area.

I would also note that the Application lists the business name as "SloppySoap, Inc.". In addition, the "description of use" indicates that the use will be "Retail Storefront facility to manufacture artisanal soap, shampoo, lotions". As I'm sure you are aware, this would be a change in the currently permitted use of the property and as such, would require that a "Change of Use" application be completed and filed with the Bureau Veritas along with the necessary fees. While the use proposed appears to be permitted within the Borough confines, the current permitted use for the property is "Assembly", therefore a change would be needed.

Per the agreement reached with your attorney on February 25, 2019, I would anticipate that a representative from the Bureau Veritas will be contacting you to conduct the agreed to vacancy inspection of the property. Per the agreement with your attorney, the vacancy inspection must be completed within sixty (60) days of the hearing date. As a courtesy, I will send a copy of this letter to your attorney also.

I look forward to hearing from you. Should you have any question, please feel free to contact me at 724-540-1161.

Yours Very Truly,



Scott J. Andreassi

cc: Brenda Troup, Zoning Officer  
Deana Shupe, Apollo Borough Manager  
Bureau Veritas



Permit No. \_\_\_\_\_

# Bureau Veritas North America, Inc.

## PERMIT APPLICATION

For questions or to submit your paperwork, please contact the office nearest you  
(locations attached)

Township or Borough: APOLLO BOROUGH Date: 8-7-19

Work Site Address: 719 N WARREN AVE APOLLO PA 15613  
(street) (city) (state) (zip)

Owner/Applicant: JANET L + R. SCOTT BRUNERMER Phone: 724-506-2895  
724-624-2716

Mailing Address: 719 N. WARREN AVE APOLLO PA 15613  
(street) (city) (state) (zip)

Contractor: There are no alterations being made Phone: \_\_\_\_\_

Contractor Address: \_\_\_\_\_  
(street) (city) (state) (zip)

**TYPE OF WORK** (Please check either "Residential" or "Commercial" below and provide all information requested)

☐ Residential Project: Description \_\_\_\_\_ Cost \$ \_\_\_\_\_

New Bldg. Square Footage All Floors: \_\_\_\_\_ (not including garage)

Finished Basement Square Footage (if applicable) \_\_\_\_\_

Office Use Only

Use Group \_\_\_\_\_ Construction Type \_\_\_\_\_ Code Used \_\_\_\_\_

☒ Commercial Project: Description CHANGE USE TO PROPOSED SFP MAKING STUDIO Cost \$ \_\_\_\_\_

☐ New Building ☒ Existing Building New Bldg. Square Footage All Floors: 2,850

Use Group MFI Construction Type \_\_\_\_\_ Occupancy Load 15 - Code Used 2015 IBC  
BASEMENT

I hereby certify that the proposed work is authorized by the owner of record and that I am or have been authorized to make this application as his/her authorized agent and we agree to conform to all applicable laws of this jurisdiction.

Print Name R. SCOTT BRUNERMER

Signature R. Scott Brunermer Date 8-7-19

### OFFICE USE ONLY

Building Plan Review Date: \_\_\_\_\_ ☐ Approved ☐ Not Approved

Plan Reviewer: \_\_\_\_\_ Permit Fee: \$ \_\_\_\_\_ OVER

## DIRECTION FORM

ADDRESS OF PROJECT 719 W. Urban Ave, Apollo PA 15613

BETWEEN \_\_\_\_\_ AND \_\_\_\_\_  
(cross street) (cross street)

PLEASE PROVIDE DETAILED INSTRUCTIONS ON HOW TO GET TO THE CONSTRUCTION LOCATION:

Please see attached map.

TO BE INCLUDED WITH EVERY BUILDING PERMIT APPLICATION

bing maps

**A** 204 Butler Rd Ste 1, Kittanning, PA 16201

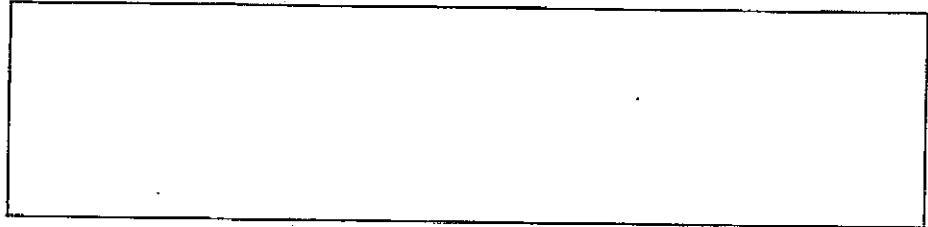
**B** Sloppy Soap Inc, 719 N Warren Ave, Apollo, PA 15613

37 min , 19.0 mi

Moderate traffic (8 min delay)

Via PA-66, PA-66 ALT

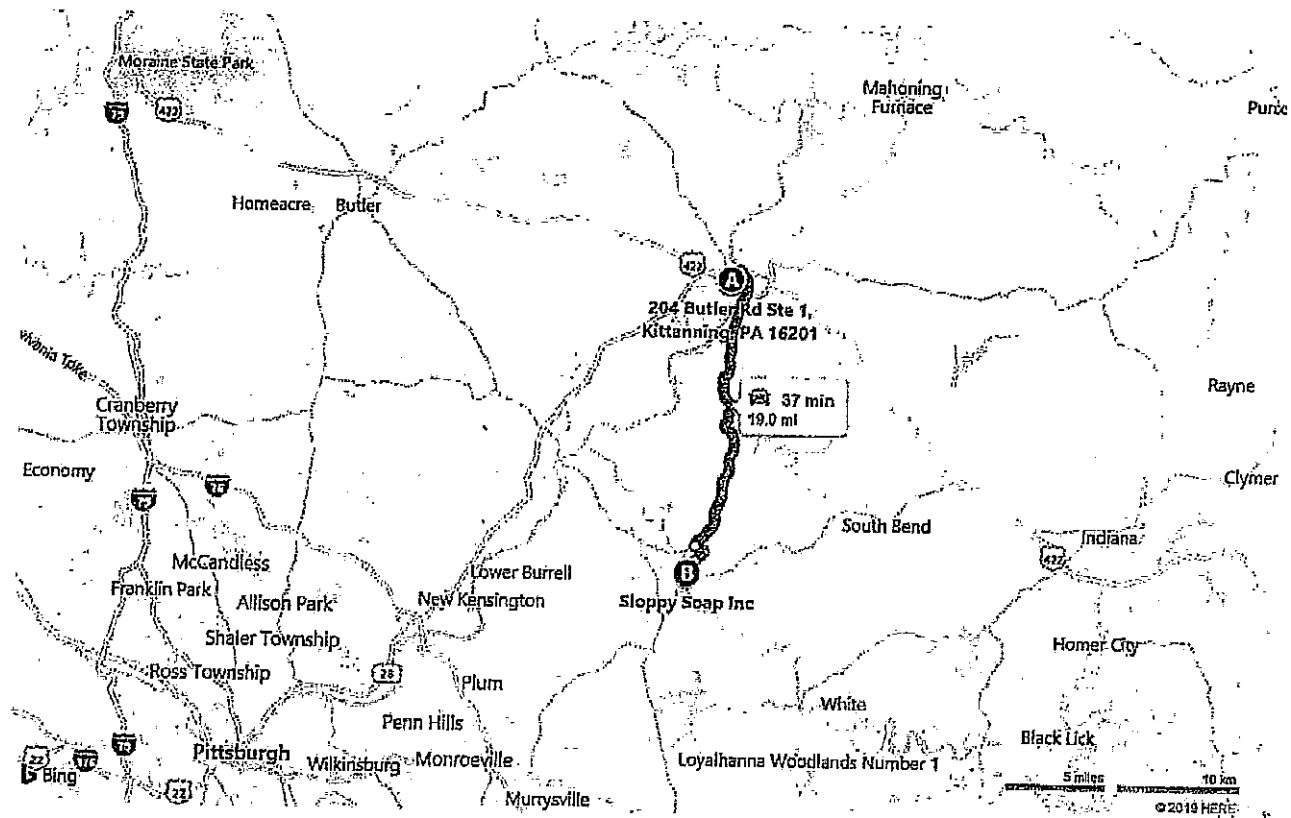
· Local roads



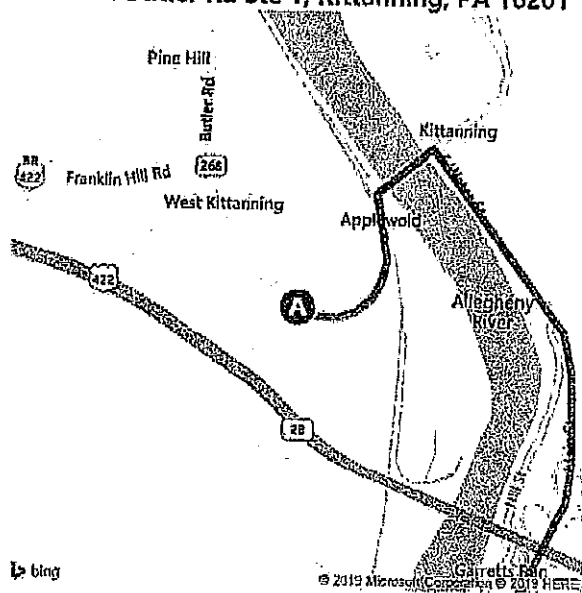
**A** 204 Butler Rd Ste 1, Kittanning, PA 16201

↑	1. Head southeast on <b>US-422 BR / Butler Rd</b> toward Linde Rd	0.8 mi
↘	2. Turn <b>right</b> to stay on <b>US-422 BR / S Water St</b>	0.7 mi
↘	3. Bear <b>right</b> onto Main St	0.8 mi
↑	4. Keep <b>straight</b> onto <b>PA-66 S / Main St</b> Pass Sheetz in 2.2 mi	6.8 mi
↶	5. Turn <b>left</b> onto <b>PA-66 ALT</b>	7.8 mi
↶	6. Turn <b>left</b> onto <b>PA-66 / PA-56 / Lincoln St</b> Pass Sunoco in 1.3 mi	2.1 mi
Arrive at <b>PA-56 / PA-66 / N Warren Ave</b>		
7.	The last intersection is N 8th St If you reach N 7th St, you've gone too far	

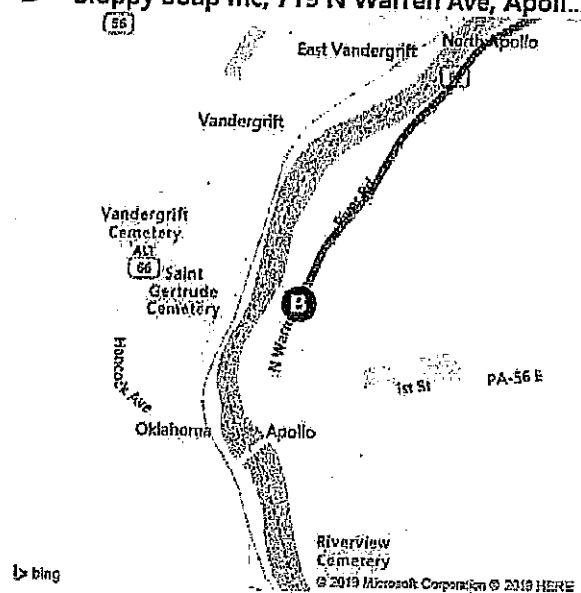
**B** Sloppy Soap Inc



#### A 204 Butler Rd Ste 1, Kittanning, PA 16201



#### B Sloppy Soap Inc, 719 N Warren Ave, Apollo



These directions are subject to the Microsoft® Service Agreement and are for informational purposes only. No guarantee is made regarding their completeness or accuracy. Construction projects, traffic, or other events may cause actual conditions to differ from these results. Map and traffic data © 2019 HERE™.

Apollo TOWNSHIP/BOROUGH  
MUNICIPAL PRIOR APPROVALS

Parcel #  
Lot # 01-227.07-01-74

Applicant/Property Owner: R. Scott & Janet L. Brunermer Phone: 724-506-2895

Address: 719 N. Warren Ave., Apollo, PA 15613

Contractor: R. Scott & Janet L. Brunermer Phone: 724-624-2716

Address: 719 N. Warren Ave., Apollo, PA 15613

☐ Single Family Dwelling ☐ Multi-Family Dwelling ☐ Accessory Structure  
☐ Addition ☐ Trailer ☐ Trailer Replacement ☐ Temporary Trailer  
☒ Commercial Building ☐ Addition – Commercial Building

Description: Former church; proposed soap studio & shop Size: 2,850 sq. feet

Construction Cost: Plot Plan Attached? Y Insurance Info. attached Y

Location: 719 N. Warren Ave., Apollo, PA 15613

*I hereby certify that the proposed work is authorized by the owner of record and that I have been authorized to make this application as his authorized agent and we agree to conform to all applicable laws of this jurisdiction.*

Signature: Date:

**APPLICANT MUST HAVE TOWNSHIP, BOROUGH OR CITY COMPLETE THE FOLLOWING:**

Site Located Within Flood Plain? No Zoning Type BT with Town Center Overlay

Type of Sewage: Public (Approval Attached) Not Applicable

Type of Water: Public (Approval Attached) Not Applicable

Road Occupancy Permit: (Approval Attached) Not Applicable

Stormwater Management: (Approval Attached) Not Applicable

I hereby certify that this application is in compliance with all relevant ordinances of Township/Borough and therefore eligible for Municipal approval.

Date Approved/Issued:

Township/Borough Officer/Secretary:

9/7/07

**POLICY GUIDELINES for COMMERCIAL PLAN SUBMITTAL REQUIREMENTS for  
ALTERATIONS, RENOVATIONS, SMALL ADDITIONS OR CHANGE OF OCCUPANCY TO  
EXISTING BUILDINGS**

**As required by Bureau Veritas North America, Inc.**

Drawings must include all information on this form. Each item should be checked off and this form must be returned with drawings.

- ☐ Permit Application.
- ☐ Local Municipal Approval
- ☐ Two copies of approved site plan.
- ☐ Two full sets of Building Plans. Plans must be in ink, drawn to scale
- ☐ Existing L&I Certificate of Occupancy (if unavailable, plans of the entire building must be submitted and a new Certificate will be issued by Bureau Veritas).
- ☐ Building Plans must include all applicable information contained below:

☐ 1. Drawings must contain a contact person (name, address and telephone number) and designate code used for design so that any questions raised in the plan review may be expeditiously addressed. Drawings must include all portions of the building affected by any change of use or alteration project. Provide code compliance path (ie: IBC Chapter 34 or existing building code). Designate level of work as per code.

☐ 2. An unlicensed person may submit plans for alterations if there is no compensation involved and there are no change of use, structural or egress exit changes. When stamped plans are required, each sheet of the submission plan must be sealed by a Pennsylvania Registered Architect or Engineer.

☐ 3. Plans must be submitted on paper not less than 15" by 24" in size and drawn to a scale of not less than 1/8" equals one foot. The following information (if applicable to project) must be shown on submitted plans:

- ☐ a. All floor plans including basement (both existing floor plan and revisions must be included). Provide overview layout and detail of all structural elements.
- ☐ b. Elevations of all sides of the building (existing buildings may substitute photographs of all sides).
- ☐ c. Typical wall-section to indicate type of construction. Designate type of construction and use group for all portions of building on plan.
- ☐ d. Designate all fire walls and separations.
- ☐ e. All stairways, stair towers, ramps, fire escapes, etc.
- ☐ f. Direction of swing for all doors and the type of fire door assemblies where required by regulation.
- ☐ g. Emergency lighting systems, fire alarm systems, or fire extinguishing apparatus shall be completely shown on plans or with the drawings submitted before approval of the building is obtained.
- ☐ h. Dimensions of all areas and rooms of building. Designate occupant load for each room and entire building. Indicate building means of egress, exit arrangement and sizes, corridors, doors, stairs, etc.
- ☐ i. For all projects that contain plumbing, electric, mechanical or fire system installation or alteration, a detail and scope of work for each discipline must be provided.
- ☐ j. Exit signs and means of egress lighting, including power supply.
- ☐ k. Handicapped accessibility provisions.
- ☐ l. Provide energy code compliance path (example: Comcheck)

(OVER)

Fee Schedule:

There is a minimum charge of \$50.00 for a change of occupancy permit that does not include any alterations. Change of occupancy permit fees will be calculated at a rate of \$50.00 per man-hour of time accrued. Alterations and renovations will be calculated in accordance with the Bureau Veritas alteration/renovation fee schedule.

Note: An accessibility variance, if needed or requested, must be submitted to the Department of Labor and Industry Industrial Board. Under UCC Law, no accessibility variance can be granted locally.

CERTIFICATION/AFFIDAVIT FORM

Building Address 719 N. WARREN AVE., APOLLO, PA 15613  
Building Owner Name JANET L. & R. SCOTT BRUNERMER  
Owner Address 719 N. WARREN AVE., APOLLO, PA 15613  
Intended Use of Building SOAP MAKING STUDIO  
Previous Use of Building CHURCH- ASSEMBLY  
Type of Construction ~~Full~~ MASONRY VENEER No. of Stories 1 w/ 1 Basement

The undersigned will observe the construction of the above work:

Name JANET & SCOTT BRUNERMER Title OWNERS

Address 719 N. WARREN AVE., APOLLO PA 15613

Phone 724-506-2895 or 724-624-2716

Signature R. Scott Brunermer

The undersigned hereby certifies that he/she has prepared the plans and specifications for the above work in accordance with the provisions of the Pennsylvania Uniform Construction Code and the Architects and Engineers Laws of the Commonwealth.

Signature of Architect or Engineer \_\_\_\_\_

Address \_\_\_\_\_ Date \_\_\_\_\_

The undersigned hereby certifies that he/she has obtained the building owners permission to prepare and oversee the construction of the above project.

Signature There are no structural or alterations.

Address \_\_\_\_\_ Date \_\_\_\_\_

THIS COMPLETED FORM MUST BE TURNED IN WITH PLANS

**Aa. GARRETT ROOFING and HEATING**  
*Plumbing and Air Conditioning*  
WAREHOUSE: BRACKENRIDGE, PENNSYLVANIA

OFFICE: 782 MYERS DRIVE, NEW KENSINGTON, PA 15068

**PHONE: 724-224-2900**

Shiloh Community Church  
9 N. WARREN AVE  
Apollo Pa

BILL TO (OR JOB NO.)

719 N. WARREN AVE

**BILLING ADDRESS**

Apollo PA

CITY 01010 STATE 01010

## SERVICE REPORT

**CUST. TELEPHONE:**

## DYE TEST

Passed

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JAN 14 1968  
JAN 14 1968

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## NAVY SERVICES.

2017

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**SERVICE-**  
**SATISFACTORILY**  
**COMPLETED**

**INVOICE**  
**No.**

No.

**JOB ADDRESS**

CITY

412

STATE

### MATERIAL USED

STATE ZIP

AMOUNT

MODEL

SER. NO.

## MATERIAL

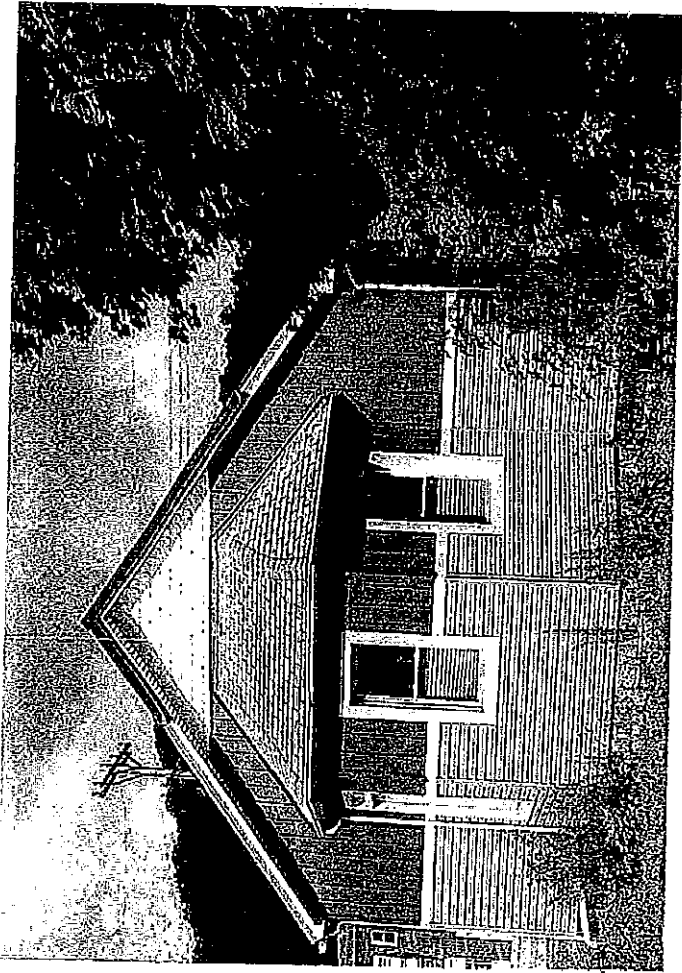
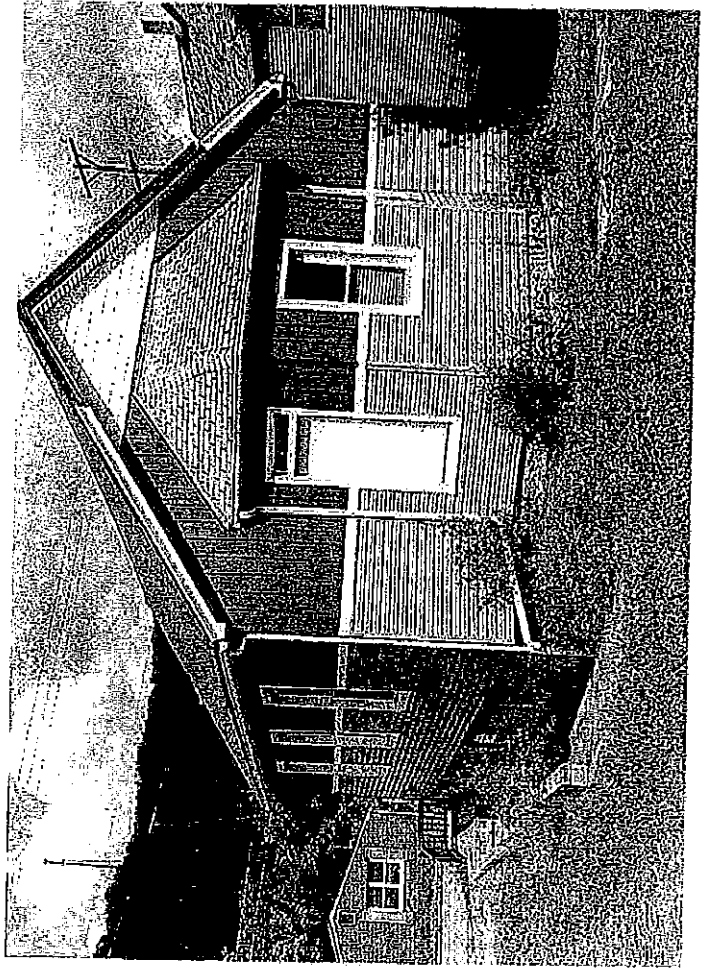
**LABOR**

**PLEASE PAY SERVICE MAN**

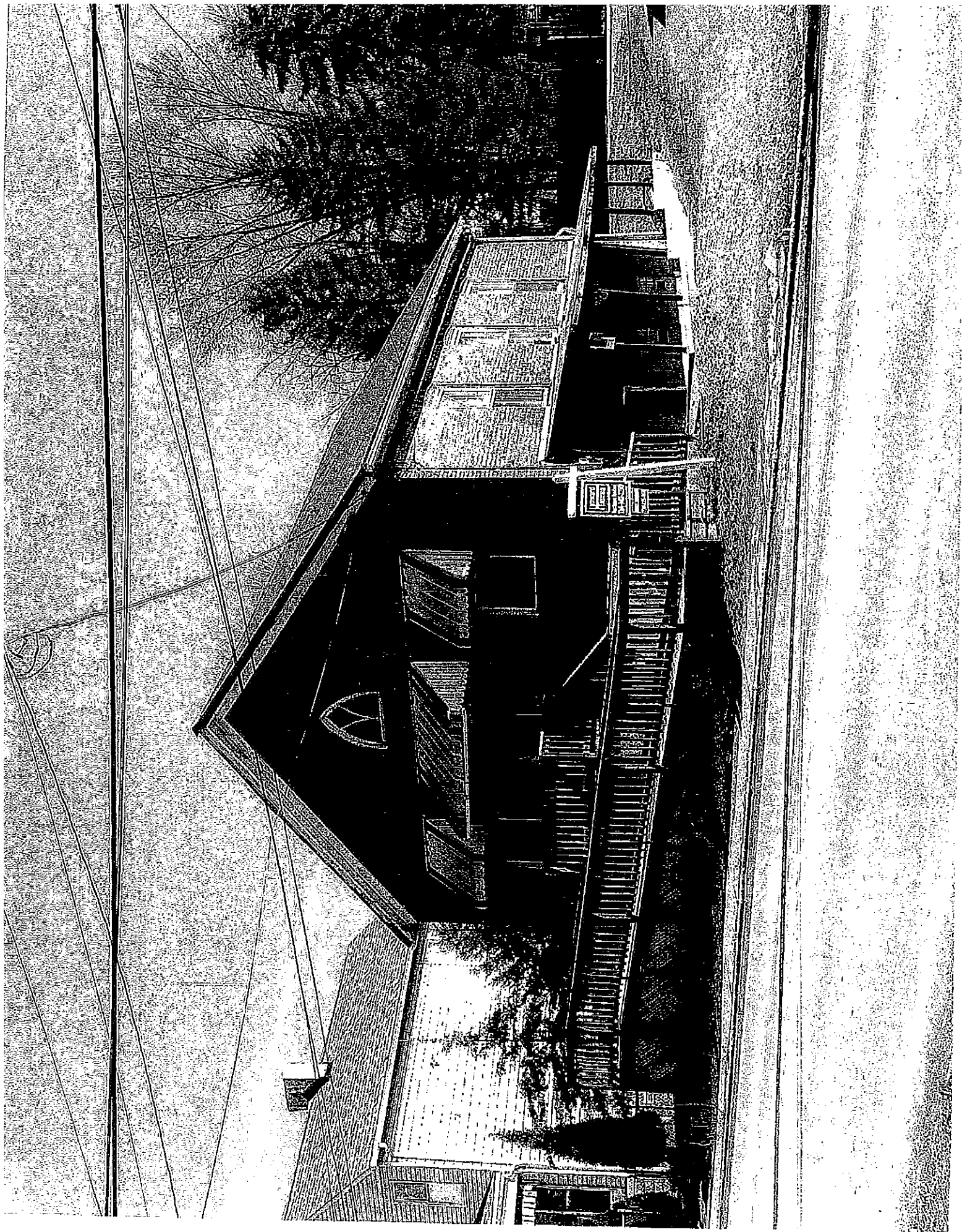
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DELA YEDIPAYMENT AMOUNT





1-110705 0 1-2011





August 14, 2019



R. Scott & Janet L. Brunermer  
514 Hoover Drive  
Apollo, Pa. 15613

RE: Change of Use/Occupancy – 719 N. Warren Avenue, Apollo, PA 15613

Mr. and Mrs. Brunermer,

I am in receipt of your letter received via Certified Mail on Monday August 12, 2019.

I feel that you do not fully understand what is necessary to Change the Use/Occupancy of the Church building at the above referenced address. There are (3) extenuating circumstances that must be addressed to do so by both Apollo Borough and Bureau Veritas North America, Inc. I will try to clarify each of these in order of completion and who is responsible for each.

- **Apollo Borough Vacancy Ordinance** – The Ordinance is enforced by Apollo Borough and their Codes Officer Brenda Troup. Your initial inspection I believe was attempted to be performed by Ms. Troup and was met with controversy. Apollo Borough asked that my Codes Inspector/Zoning Officer Rick McMillen perform any subsequent inspections for this ordinance. To date, I cannot verify that this has taken place.
- **Apollo Borough Occupancy Inspection Ordinance** – This inspection is conducted per the Borough Ordinance and checklist at the time of ownership transfer. This inspection is currently performed by Bureau Veritas Inspector Rick McMillen and scheduled by the Borough. This inspection is to satisfy the Borough Ordinance and *should not* be considered as the Occupancy Inspection to satisfy The PA Uniform Construction regulations.
- **Change of Use/Occupancy** – This is conducted under the Pennsylvania Uniform Construction Code – Act 45. Your submission to Bureau Veritas in May 2019 was returned to you due to incompleteness. I have received your submission/application dated 8/7/19 and would like to explain the following:

1. Even though you indicate “there are no alterations being made”, you are changing the Occupancy to an entirely different Use Group than the last known use (a church). Therefore certain aspects of the change must be met. I have explained to you on numerous occasions that you will need to consult with an engineer to develop plans for the new use even if you are not making any changes.
2. You must receive approval from Apollo Borough and have a representative of the Borough sign the Bureau Veritas Municipal Prior Approval Form. (highlighted in Yellow)
3. The Policy Guidelines for Commercial Plan Submittal for Change of Occupancy is incomplete. Each item needs to be checked or marked not applicable. The 5<sup>th</sup> item on the Checklist asks for an “Existing L&I Certificate of Occupancy”. This is necessary for BV to have knowledge if the structure was properly reviewed, permitted and inspected prior to the Uniform Construction Code. If not, it is deemed “uncertified” under the current Building Codes and the entire building would need drawn and stamped by a licensed design professional. See enclosed handout on Uncertified Buildings. If the building was constructed prior to April 27, 1927 it is deemed legally occupied per 403.28 of the UCC (see enclosure). Proof of construction is required.

4. The Paragraph highlighted in Pink does not apply in this situation. An example that would apply to this paragraph would be: "If the building housed the Apollo First Church of God and St. Paul's Catholic Church purchased it for the same use without any changes, BV could issue a new certificate to the new owner without requiring plans if the structure has a legal Certificate of Occupancy or was built before April 27, 1927".

In closing, I would like to apologize for all of the confusion regarding this project. I believe I made it clear at the meeting with the real estate agent and yourself what would be necessary to legally change the Use/Occupancy of the building. At this time, I am again returning your submission and check. Please carefully review this letter and all of the references supplied before re-submitting.

Sincerely,

A handwritten signature in black ink, appearing to read 'Grant L. Kanish', written over a horizontal line.

Grant L. Kanish, BCO  
PA West Business Unit Manager  
Bureau Veritas North America, Inc.

Cc: Apollo Borough  
Scott Andreassi, Esq.

**Does your building have a legal Certificate of Occupancy? If not, it is considered an "Uncertified Building"**

**FOR BUILDINGS BUILT PRIOR TO APRIL 9, 2004 YOU WILL NEED TO CONTACT THE PENNSYLVANIA DEPARTMENT OF LABOR AND INDUSTRY @ 717-787-3806, SELECT OPTION 1, AND THEN OPTION 5 TO REQUEST RECORDS FOR YOUR BUILDING INCLUDING ANY PLANS, INSPECTION RECORDS AND DOCUMENTS ISSUED.**

**§ 403.28. Uncertified buildings.**

(a) Under section 902(b)(6) of the act (35 P. S. § 7210.902(b)(6)), an uncertified building that was built before April 27, 1927, is deemed to be legally occupied until the owner proposes to renovate, add an addition, alter or change the occupancy of the building. The renovation, addition, alteration or change in occupancy must comply with the Uniform Construction Code.

**April 27, 1927**



**Sept. 1, 1965**

(3) Accessibility requirements are applicable as follows:

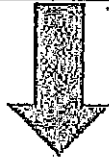
(i) If construction of an uncertified building began before September 1, 1965, accessibility requirements will not be imposed by the Department.



**Feb. 18, 1989**

(3) Accessibility requirements are applicable as follows:

(ii) If construction of a building began after August 31, 1965, and before February 18, 1989, and if the building is a State-owned building, a restaurant or a retail commercial establishment, the building must have at least one accessible main entrance, an accessible route from the accessible entrance to any public spaces on the same level as the accessible entrance and, if toilet rooms are provided, the building must have at least one toilet room for each sex or a unisex toilet room complying with the accessibility requirements of the "International Building Code."



(3) Accessibility requirements are applicable as follows:

(iii) If construction of the building began after February 17, 1989, all accessibility requirements of the "International Building Code" shall be met.

With the passing of Act 36 and Effective January 23, 2018, a building owner or his/her agent may obtain a legal Certificate of Occupancy from the Building Code Official by providing proof that the structure meets any one of the following paths:

- 1.) Section 902 (c) of Act 45 The Pennsylvania Uniform Construction Code
- 2.) The latest version of the International Existing Building Code
- 3.) 2015 International Building Code

May 20, 2019

R. Scott & Janet L. Brunermer  
514 Hoover Drive  
Apollo, Pa. 15613

RE: Change of Use/Occupancy — 719 N. Warren Avenue, Apollo, PA 15613

Mr. and Mrs. Brunermer,

This correspondence is in response to your request to obtain a UCC Building Permit for the above address in order to change the use group/occupancy. Your submission has been denied and I am returning your check and associated paperwork. This decision has been made since you have failed to do the following:

1. The application is incomplete. Under Commercial Project you are required to give a description, a use group, construction type (1B, 2B etc.), an occupant load, and the code used for design work.
2. The Municipal Approval form must be completed and signed by Apollo Borough.
3. There were not any "stamped" drawings submitted for the building.

As the Building Code Official of Apollo Borough, I am formally denying permitting of this project at this time under Section 403.43 of the Pennsylvania Uniform Construction Code.

Should you have any additional questions or concerns regarding this matter, feel free to contact me.

Sincerely,

Grant L. Kanish, BCO  
PA West Business Unit Manager  
Bureau Veritas North America, Inc.

Cc: Apollo Borough  
Scott Andreassi, Esq.

Janet L. & R. Scott Brunermer  
719 N. Warren Avenue  
Apollo, PA 15613

August 7, 2019

Bureau Veritas  
Armstrong Office  
204 Butler Road, Suite 3  
Kittanning, PA 16201

To Whom It May Concern:

Enclosed is our application for a "Change of Use" permit. The site plan drawing included is on an 8" x 11" letter sized sheet.

There have been no alterations made to the interior of the building, and none are planned. We have kept the original structure in tact and have only provided cosmetic changes, ie, insulated vinyl siding over the brickwork on the exterior. An ADA-compliant entrance was installed, and the building had an ADA-compliant ramp on the date of purchase. Four exterior windows were replaced to be energy compliant. There has been no alteration to the ingress/egress (except for the ADA-compliant door) of the building since our purchase.

The wall sections have 5/8" fireproof drywall over plaster/slat board, wood framing and a brick exterior covered with insulated vinyl siding. There are no firewalls. The use group will be Factory and/or Mercantile on the 1<sup>st</sup> floor, if we decide to open a storefront. The basement will be used as Storage with no combustible materials.

There are fire extinguishers located on both floors.

Although we did not intentionally pursue an energy code compliance path, we hired a licensed electrician to replace all of the lighting fixtures with energy efficient LED lighting on both floors. There was no central air conditioning unit at the time we purchased the building. In January 2018, a new furnace with a 96% AFUE and air conditioner with 13 SEER was installed.

We are including a letter dated March 20, 2019, from the Apollo Borough Solicitor, Scott Andreassi. We received this after completing the Occupancy Permit form, that is required by Bureau Veritas for Municipal Approval. It is the opinion of the Solicitor that we are in compliance for our projected use and occupancy of the building as none of the work has been on the exterior of the building, and it meets the Zoning Requirements of the Borough. There have been no changes to the parking area. If it is the opinion of Veritas that we must pass a "vacancy inspection" in order to be granted a change of use, the two clearly do not go hand-in-hand. No proof of vacancy has been provided to us by Apollo Borough. We occupy the building, and we have been seeking guidance from this organization for two years. As of August 6<sup>th</sup>, the Borough has not provided us with vacancy information regarding the prior owners, though it has been requested through the Office of Open Records.

All future correspondence, at this time, should come directly to us.

Regards,

Janet & Scott Brunermer



March 20, 2019

Janet L. and R. Scott Brunermer  
514 Hoover Drive  
Apollo, Pa. 15613

*Re: 719 North Warren Property*

Dear Janet and R. Scott Brunermer,

I am writing with regard to the above referenced property and as the solicitor for Apollo Borough. Specifically, I am writing with regard to the paperwork and check you had recently submitted to the Borough.

As provided to me by the Borough, the following paperwork and check was submitted:

- a. Bureau Veritas Permit Application
- b. Direction Form (blank)
- c. Apollo Borough Application For Zoning Or Building Permit. Hereafter referred to as the "Application".
- d. Check to Apollo Borough in the amount of \$90.00

After reviewing the material submitted, on behalf of the Borough, I would have the following questions:

- a. The \$90.00 check is made out to "Apollo Borough", however it is unclear what the check is for. The application fee for an Apollo building permit is \$75.00. If the check was intended for the Bureau Veritas application, it is made out incorrectly.
- b. It is unclear from the body of the Application to Apollo Borough what work is intended to be performed or where the work is intended to be performed. If the proposed work is interior only, the Application is not needed. If the proposed work is exterior, then the Borough would be involved. If the work is exterior, then in addition to the Application, the Borough would also need a description of the work and a plot diagram.
- c. If the work is involving improvements to the parking lot area, the Borough would be involved. Again, a description of the work would be needed as well



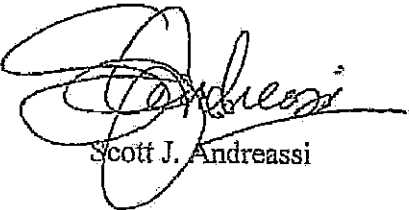
as a subdivision and land development application. In addition, the Borough Zoning permit would have to be submitted to address the parking lot area.

I would also note that the Application lists the business name as "SloppySoap, Inc.". In addition, the "description of use" indicates that the use will be "Retail Storefront facility to manufacture artisanal soap, shampoo, lotions". As I'm sure you are aware, this would be a change in the currently permitted use of the property and as such, would require that a "Change of Use" application be completed and filed with the Bureau Veritas along with the necessary fees. While the use proposed appears to be permitted within the Borough confines, the current permitted use for the property is "Assembly", therefore a change would be needed.

Per the agreement reached with your attorney on February 25, 2019, I would anticipate that a representative from the Bureau Veritas will be contacting you to conduct the agreed to vacancy inspection of the property. Per the agreement with your attorney, the vacancy inspection must be completed within sixty (60) days of the hearing date. As a courtesy, I will send a copy of this letter to your attorney also.

I look forward to hearing from you. Should you have any question, please feel free to contact me at 724-540-1161.

Yours Very Truly,



Scott J. Andreassi

cc: Brenda Troup, Zoning Officer  
Deana Shupe, Apollo Borough Manager  
Bureau Veritas

Permit No. \_\_\_\_\_

**Bureau Veritas North America, Inc.**

**PERMIT APPLICATION**

For questions or to submit your paperwork, please contact the office nearest you  
(locations attached)

Township or Borough: APOLLO BOROUGH Date: 8-7-19

Work Site Address: 719 N. WARREN AVE APOLLO PA 15613  
(street) (city) (state) (zip)

Owner/Applicant: JANET L + R. SCOTT BRUNERMER Phone: 724-506-2895  
724-624-2716

Mailing Address: 719 N. WARREN AVE APOLLO PA 15613  
(street) (city) (state) (zip)

Contractor: There are no alterations being made Phone: \_\_\_\_\_

Contractor Address: \_\_\_\_\_  
(street) (city) (state) (zip)

**TYPE OF WORK** (Please check either "Residential" or "Commercial" below and provide all information requested)

☐ Residential Project: Description \_\_\_\_\_ Cost \$ \_\_\_\_\_

New Bldg. Square Footage All Floors: \_\_\_\_\_ (not including garage)

Finished Basement Square Footage (if applicable) \_\_\_\_\_

Office Use Only

Use Group \_\_\_\_\_ Construction Type \_\_\_\_\_ Code Used \_\_\_\_\_

☒ Commercial Project: Description CHANGE USE TO PROPOSED SHIP MAKING STUDIO Cost \$ \_\_\_\_\_

☐ New Building ☒ Existing Building New Bldg. Square Footage All Floors: 2,850  
25-1st FL

Use Group M.F.I Construction Type \_\_\_\_\_ Occupancy Load 15 Code Used 2015 IBC  
BASEMENT

I hereby certify that the proposed work is authorized by the owner of record and that I am or have been authorized to make this application as his/her authorized agent and we agree to conform to all applicable laws of this jurisdiction.

Print Name R. SCOTT BRUNERMER

Signature R. Scott Brunermer Date 8-7-19

**OFFICE USE ONLY**

Building Plan Review Date: \_\_\_\_\_

☐ Approved

☐ Not Approved

Plan Reviewer: \_\_\_\_\_

Permit Fee: \$ \_\_\_\_\_

OVER

## DIRECTION FORM

ADDRESS OF PROJECT 719 N. Warner Ave, Apollo PA 15613

BETWEEN \_\_\_\_\_ AND \_\_\_\_\_  
(cross street) (cross street)

PLEASE PROVIDE DETAILED INSTRUCTIONS ON HOW TO GET TO THE CONSTRUCTION LOCATION:

Please see attached map.

TO BE INCLUDED WITH EVERY BUILDING PERMIT APPLICATION

bing maps

**A** 204 Butler Rd Ste 1, Kittanning, PA 16201

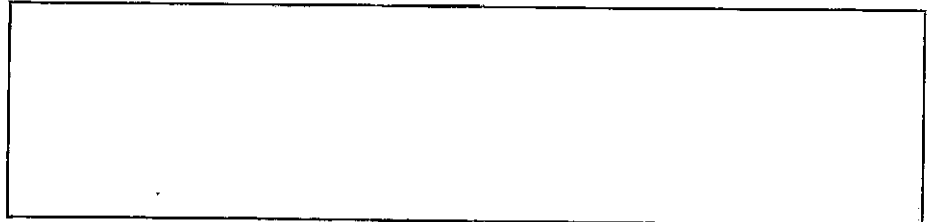
37 min, 19.0 mi

**B** Sloppy Soap Inc, 719 N Warren Ave, Apollo, PA 15613

Moderate traffic (8 min delay)

Via PA-66, PA-66 ALT

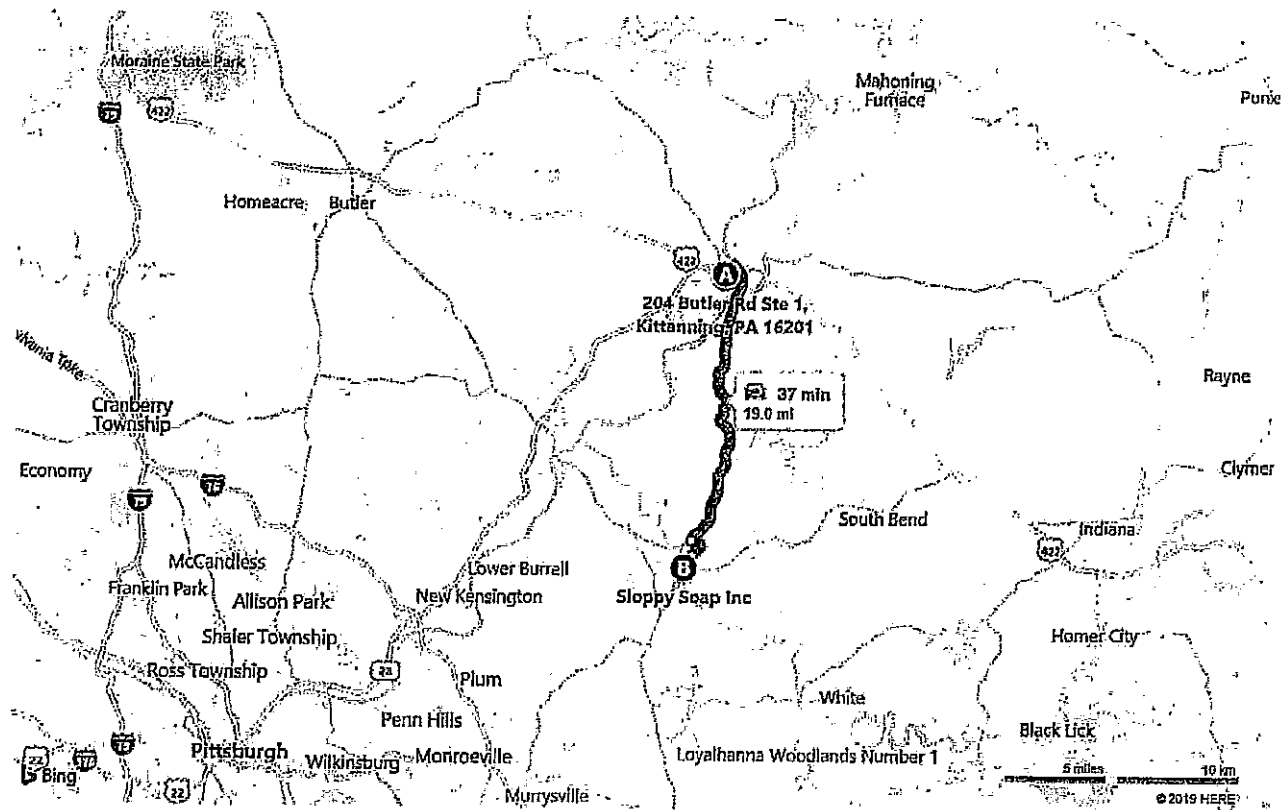
• Local roads



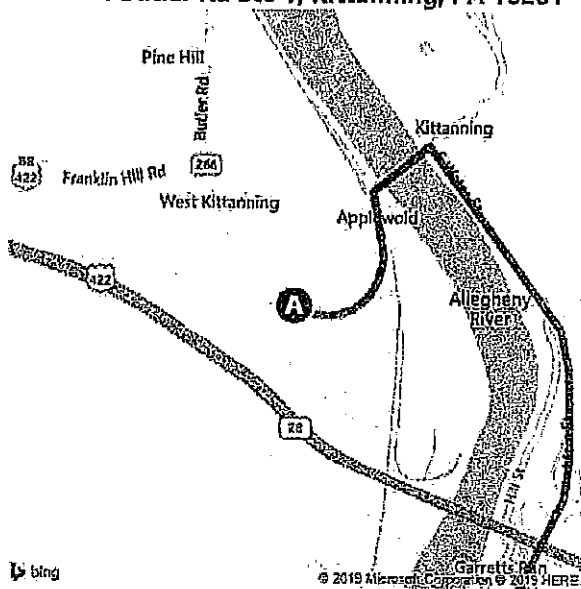
**A** 204 Butler Rd Ste 1, Kittanning, PA 16201

↑	1. Head southeast on <b>US-422 BR / Butler Rd</b> toward Linde Rd	0.8 mi
↘	2. Turn <b>right</b> to stay on <b>US-422 BR / S Water St</b>	0.7 mi
↗	3. Bear <b>right</b> onto <b>Main St</b>	0.8 mi
↑	4. Keep <b>straight</b> onto <b>PA-66 S / Main St</b> Pass Sheetz in 2.2 mi	6.8 mi
↙	5. Turn <b>left</b> onto <b>PA-66 ALT</b>	7.8 mi
↙	6. Turn <b>left</b> onto <b>PA-66 / PA-56 / Lincoln St</b> Pass Sunoco in 1.3 mi	2.1 mi
	7. Arrive at <b>PA-56 / PA-66 / N Warren Ave</b> The last intersection is N 8th St If you reach N 7th St, you've gone too far	

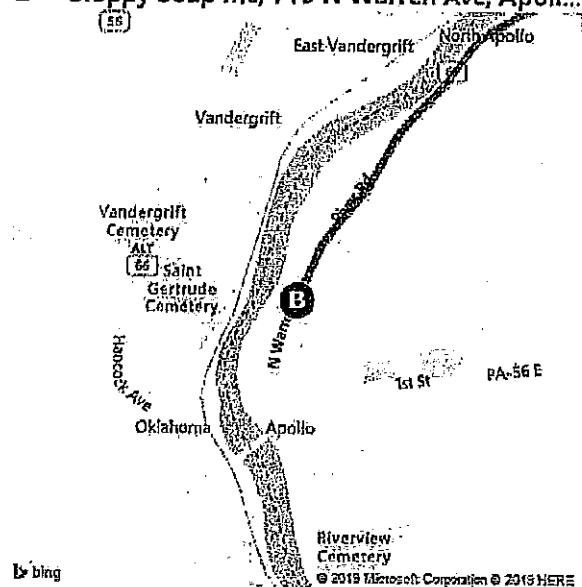
**B** Sloppy Soap Inc



**A** 204 Butler Rd Ste 1, Kittanning, PA 16201



**B** Sloppy Soap Inc, 719 N Warren Ave, Apollo, PA 15601



These directions are subject to the Microsoft® Service Agreement and are for informational purposes only. No guarantee is made regarding their completeness or accuracy. Construction projects, traffic, or other events may cause actual conditions to differ from these results. Map and traffic data © 2019 HERE®.

Apollo  
TOWNSHIP/BOROUGH  
MUNICIPAL PRIOR APPROVALS

Parcel #  
Lot # 01-227.07-01-74

Applicant/Property Owner: R. Scott & Janet L. Brunermer Phone: 724-506-2895

Address: 719 N. Warren Ave., Apollo, PA 15613

Contractor: R. Scott & Janet L. Brunermer Phone: 724-624-2716

Address: 719 N. Warren Ave., Apollo, PA 15613

☐ Single Family Dwelling ☐ Multi-Family Dwelling ☐ Accessory Structure  
☐ Addition ☐ Trailer ☐ Trailer Replacement ☐ Temporary Trailer  
☒ Commercial Building ☐ Addition - Commercial Building

Description: Former church; proposed soap studio & shop Size: 2,850 sq. feet

Construction Cost: Plot Plan Attached? Y Insurance Info. attached Y

Location: 719 N. Warren Ave., Apollo, PA 15613

*I hereby certify that the proposed work is authorized by the owner of record and that I have been authorized to make this application as his authorized agent and we agree to conform to all applicable laws of this jurisdiction.*

Signature: Date:

**APPLICANT MUST HAVE TOWNSHIP, BOROUGH OR CITY COMPLETE THE FOLLOWING:**

Site Located Within Flood Plain? No Zoning Type BT with Town Center Overlay

Type of Sewage: Public (Approval Attached) Not Applicable

Type of Water: Public (Approval Attached) Not Applicable

Road Occupancy Permit: (Approval Attached) Not Applicable

Stormwater Management: (Approval Attached) Not Applicable

I hereby certify that this application is in compliance with all relevant ordinances of Township/Borough and therefore eligible for Municipal approval.

Date Approved/Issued:

Township/Borough Officer/Secretary:

9/7/07

**POLICY GUIDELINES for COMMERCIAL PLAN SUBMITTAL REQUIREMENTS for  
ALTERATIONS, RENOVATIONS, SMALL ADDITIONS OR CHANGE OF OCCUPANCY TO  
EXISTING BUILDINGS**

**As required by Bureau Veritas North America, Inc.**

Drawings must include all information on this form. Each item should be checked off and this form must be returned with drawings.

- ☐ Permit Application.
- ☐ Local Municipal Approval
- ☐ Two copies of approved site plan.
- ☐ Two full sets of Building Plans. Plans must be in ink, drawn to scale
- ☐ Existing L&I Certificate of Occupancy (if unavailable, plans of the entire building must be submitted and a new Certificate will be issued by Bureau Veritas).
- ☐ Building Plans must include all applicable information contained below:

☐ 1. Drawings must contain a contact person (name, address and telephone number) and designate code used for design so that any questions raised in the plan review may be expeditiously addressed. Drawings must include all portions of the building affected by any change of use or alteration project. Provide code compliance path (ie: IBC Chapter 34 or existing building code). Designate level of work as per code.

☐ 2. An unlicensed person may submit plans for alterations if there is no compensation involved and there are no change of use, structural or egress exit changes. When stamped plans are required, each sheet of the submission plan must be sealed by a Pennsylvania Registered Architect or Engineer.

☐ 3. Plans must be submitted on paper not less than 15" by 24" in size and drawn to a scale of not less than 1/8" equals one foot. The following information (if applicable to project) must be shown on submitted plans:

☐ a. All floor plans including basement (both existing floor plan and revisions must be included). Provide overview layout and detail of all structural elements.

☐ b. Elevations of all sides of the building (existing buildings may substitute photographs of all sides).

☐ c. Typical wall-section to indicate type of construction. Designate type of construction and use group for all portions of building on plan.

☐ d. Designate all fire walls and separations.

☐ e. All stairways, stair towers, ramps, fire escapes, etc.

☐ f. Direction of swing for all doors and the type of fire door assemblies where required by regulation.

☐ g. Emergency lighting systems, fire alarm systems, or fire extinguishing apparatus shall be completely shown on plans or with the drawings submitted before approval of the building is obtained.

☐ h. Dimensions of all areas and rooms of building. Designate occupant load for each room and entire building. Indicate building means of egress, exit arrangement and sizes, corridors, doors, stairs, etc.

☐ i. For all projects that contain plumbing, electric, mechanical or fire system installation or alteration, a detail and scope of work for each discipline must be provided.

☐ j. Exit signs and means of egress lighting, including power supply.

☐ k. Handicapped accessibility provisions.

☐ l. Provide energy code compliance path (example: Comcheck)

(OVER)

Fee Schedule:

There is a minimum charge of \$50.00 for a change of occupancy permit that does not include any alterations. Change of occupancy permit fees will be calculated at a rate of \$50.00 per man-hour of time accrued. Alterations and renovations will be calculated in accordance with the Bureau Veritas alteration/renovation fee schedule.

Note: An accessibility variance, if needed or requested, must be submitted to the Department of Labor and Industry Industrial Board. Under UCC Law, no accessibility variance can be granted locally.

CERTIFICATION/AFFIDAVIT FORM

Building Address 719 N. WARREN AVE., APOLLO, PA 15613  
Building Owner Name JANET L. + R. SCOTT BRUNERMER  
Owner Address 719 N. WARREN AVE., APOLLO, PA 15613  
Intended Use of Building SOAP MAKING STUDIO  
Previous Use of Building CHURCH- ASSEMBLY  
Type of Construction ~~Frame~~ MASONRY VENEER No. of Stories 1 w/ 1 Basement

The undersigned will observe the construction of the above work:

Name JANET + SCOTT BRUNERMER Title OWNERS  
Address 719 N. WARREN AVE., APOLLO PA 15613  
Phone 724-506-2895 or 724-624-2716  
Signature R. Scott Brunermer

The undersigned hereby certifies that he/she has prepared the plans and specifications for the above work in accordance with the provisions of the Pennsylvania Uniform Construction Code and the Architects and Engineers Laws of the Commonwealth.

Signature of Architect or Engineer \_\_\_\_\_

Address \_\_\_\_\_ Date \_\_\_\_\_

The undersigned hereby certifies that he/she has obtained the building owners permission to prepare and oversee the construction of the above project.

Signature There are no structural or alterations.

Address \_\_\_\_\_ Date \_\_\_\_\_

THIS COMPLETED FORM MUST BE TURNED IN WITH PLANS



**Aa. GARRETT ROOFING and HEATING**  
*Plumbing and Air Conditioning*  
WAREHOUSE: BRACKENRIDGE, PENNSYLVANIA

OFFICE: 782 MYERS DRIVE, NEW KENSINGTON, PA 15068

PHONE: 724-224-2900

**PHONE: 724-224-2900**

Shiloh Community Church  
719 N. WARREN AVE  
Apollo PA

719 N. WARREN AVE

719 N. WARREN AVE	DATE
12-11-68	JOB ADDRESS

STATE \_\_\_\_\_ ZIP \_\_\_\_\_ CITY \_\_\_\_\_

**JAMES H. BECK**

# SERVICE REPORT

DYE TEST

PASSED

QAD (10/11)  
CASH # 1438  
CASH # 501

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**SERVICE  
MAN**

2102

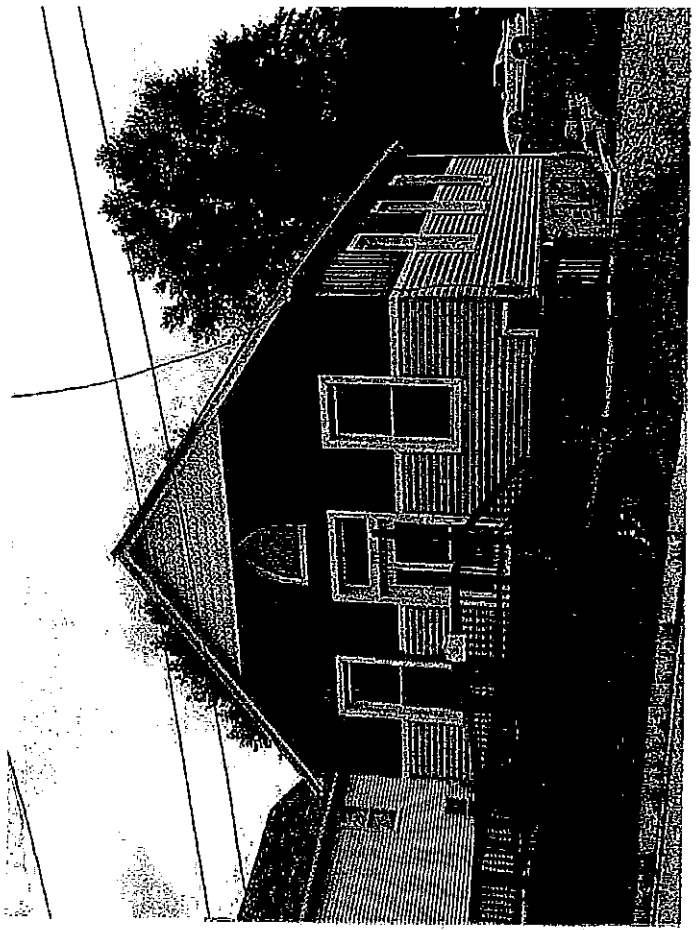
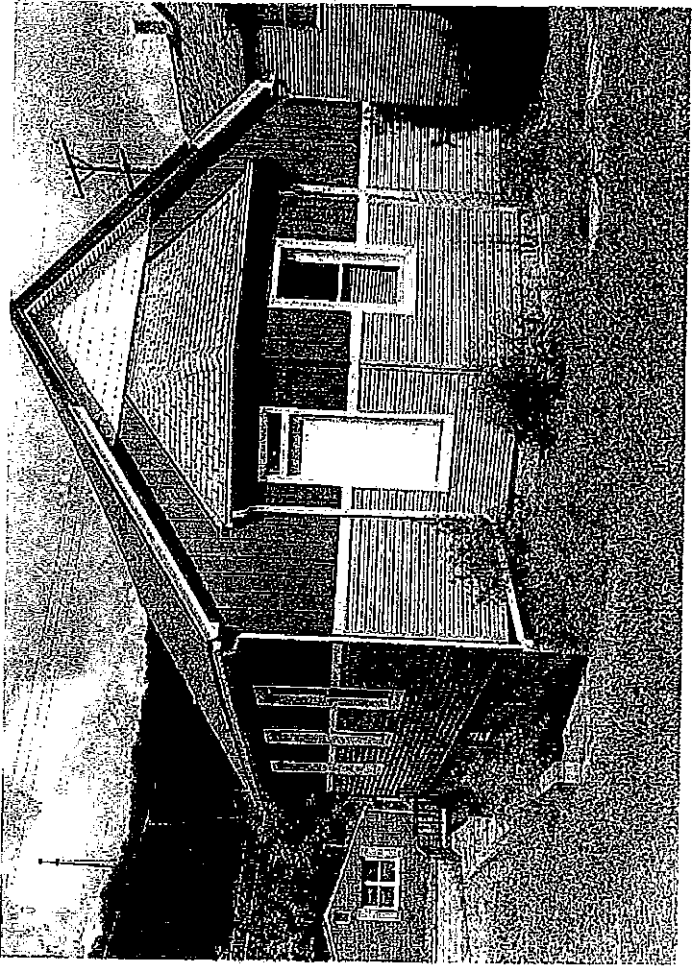
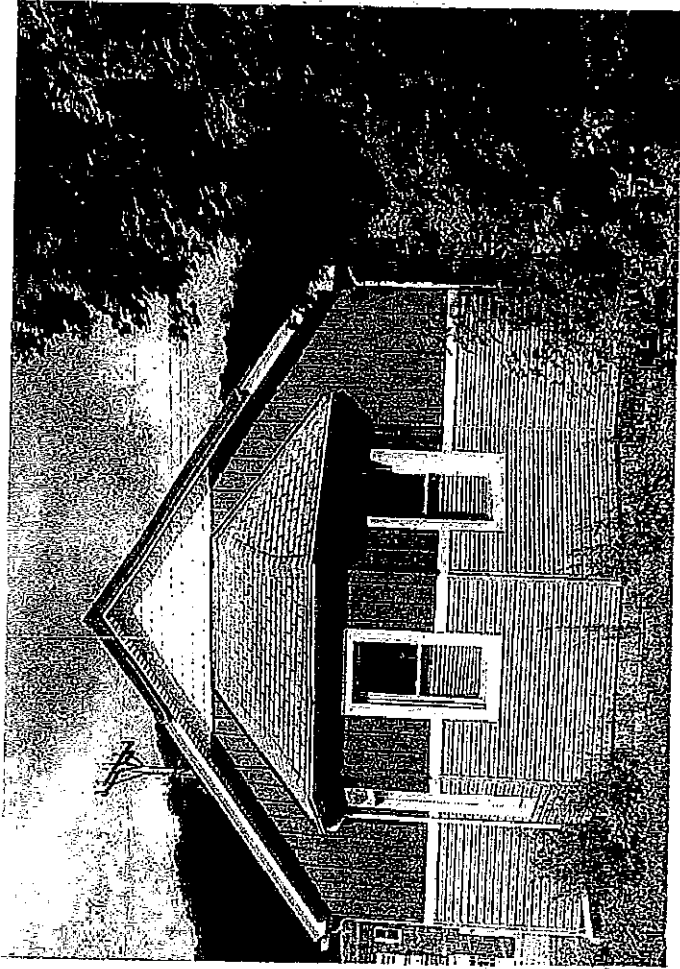
**SERVICE-  
SATISFACTORILY  
COMPLETED**

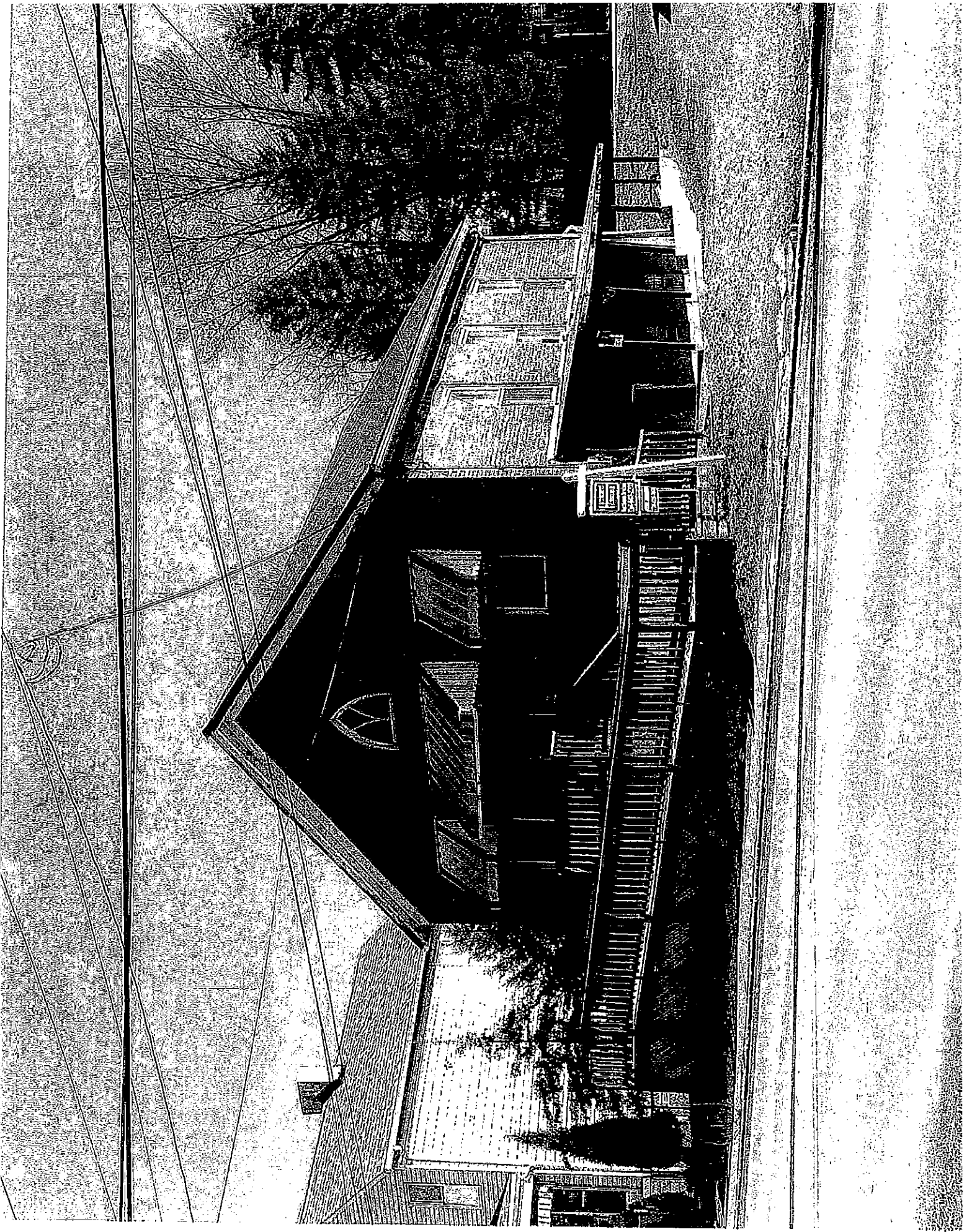
**PLEASE PAY SERVICE MAN**

121	3
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**PLEASE PAY ME TODAY**

Notes 6-7-2017







# BOROUGH OF APOLLO

P. O. Box 306

Apollo, PA 15613

Phone: 724-478-4201 Fax: 724-478-4923

boroughmanager@apollopa.org

TEMPORARY

## CERTIFICATE OF USE

Number: 040517-1

Date Issued: 4/5/17

The following building or structure has been inspected and found to be compliant with Local Codes - 2009 IPMC.

Building/Structure Address: 717 & 719 N. WARREN AVE.

Municipality: APOLLO BOROUGH

County: ARMSTRONG

Permitted Use: COMMERCIAL

Owner: SHILOH COMMUNITY BAPTIST CHURCH

Address:

City:

State:

Zip:

Phone: 724-826-1944

Tenant:

Address:

City:

State:

Zip:

Phone:

Date of Inspection:

Code Enforcement Officer

### FOR OFFICIAL USE ONLY

Zoning District:

FIRST INSPECTION: PASS OR FAIL DATE:

SECOND INSPECTION: PASS OR FAIL DATE:

FEE PAID: CHECK#: CASH:

FEE RECEIVED BY: DATE:

CODE ENFORCEMENT OFFICER:

Comments: DESCRIPTION OF REAL ESTATE AGENT WILL REQUIRE A UCC CHANGE OF  
OCCUPANCY PERMIT - CONTACT BUREAU VERITAS @ 724-548-1414

TEMPORARY OCCUPANCY PERMIT ISSUED: YES



NO



Kenneth Lemandorush

Robert [Signature]: 4-6-17  
Janet Burnham 6 April 17

Scott and Janet Brunermer  
719 N. Warren Ave.  
Apollo, PA 15613

August 19, 2019

Ms. Deanna Shupe, Borough Manager  
Apollo Borough  
PO Box 306  
Apollo, PA 15613

Dear Ms. Shupe;

In March 2019, Janet and I mailed to Apollo Borough a Zoning or Building Permit, and for a completion of the "Municipal Prior Approvals" form. These were returned to us, as well as our check for \$90, by Solicitor Scott Andreassi. In his explanation, Mr. Andreassi, stated,

a. The \$90.00 check is made out to "Apollo Borough", however it is unclear what the check is for. The application fee for an Apollo Borough Permit is \$75.00. If the check was intended for the Bureau Veritas application, it is made out incorrectly.

- We wrote the check to Apollo Borough in the amount of \$90.00 based on two reasons. Cynthia McDermott advised us that all paperwork and applications were to be submitted to the Borough, and that they would forward necessary information onto Bureau Veritas. However, instead of allowing us to turn in our paperwork in April 2017 and June 2017, she advised us to contact Bureau Veritas. When we reached out to Bureau Veritas in September 2017 and October 2017, they stated they would not inspect our building unless we had an engineer draw up plans for an ADA-compliant bathroom. Our building was built in 1915, and Mr. Kanish and Mr. Frawley should have known that because our building was built prior to 1927, we would be exempt from such rules.<sup>1</sup> In the March 22, 2018 Council Minutes, it was reported that Ms. McDermott and Mr. Kanish proposed a new occupancy checklist, which we never received when we requested it from Ms. McDermott in person, or from the Borough in a Right-to-Know request. In the June 28, 2018 Council Meeting Minutes it was noted that the fee had increased to \$90.00 for the occupancy inspection fee.

b. It is unclear from the body of the Application to Apollo Borough what work is intended to be performed or where the work is intended to be performed. If the proposed work is interior only, the Application is not needed. If the proposed work is exterior, then the Borough would not be involved. If the work is exterior, then in addition to the Application, the Borough would also need a description of the work and a plot diagram.

- All the work to date has involved renovations of the interior of the building, and the application of vinyl siding over the existing brickwork.

SEE LETTER FROM 8/7/19  
FOR UCC VIOLATIONS SINCE  
PURCHASE (ATTACHED)

<sup>1</sup> PA Code § 403.28 (3)(i): If construction of an uncertified building began before September 1, 1965, accessibility requirements will not be imposed by the Department.

c. If the work is involving improvements to the parking lot area, the Borough would be involved. Again, a description of the work would be needed as well as a subdivision and land development application. In addition, the Borough Zoning Permit would have to be submitted to address the parking lot.

- **We haven't made any improvements to the parking lot. According to the Apollo Zoning Ordinance, our building does not contain the square footage required under the Ordinance, nor is it open the public, nor do we have employees at the current time.**

Mr. Andreassi continues, "While the use proposed appears to be permitted within the Borough confines, the current permitted use for the property is "Assembly", therefore a change would be needed.

- **As far as Occupancy of the building goes, we are good to go on that front as well, though no one ever told us that until Mr. Andreassi addressed the issue. We are not operating outside of the scope of the Apollo Zoning Ordinance**

Ultimately, the "Municipal Prior Approvals" form was returned to us incomplete.

In May 2019, we requested an inspection of Bureau Veritas to inspect our building for a UCC Change and mailed to him, the forms he stated at the time were required in order for him to inspect. However, there were forms required by Bureau Veritas that were not supplied by Mr. Kanish on at least two requests from our attorneys. He returned our application and stated to our attorney that we were "misguided". Unfortunately, we have spent more than two years being misguided by Bureau Veritas and Apollo Borough.

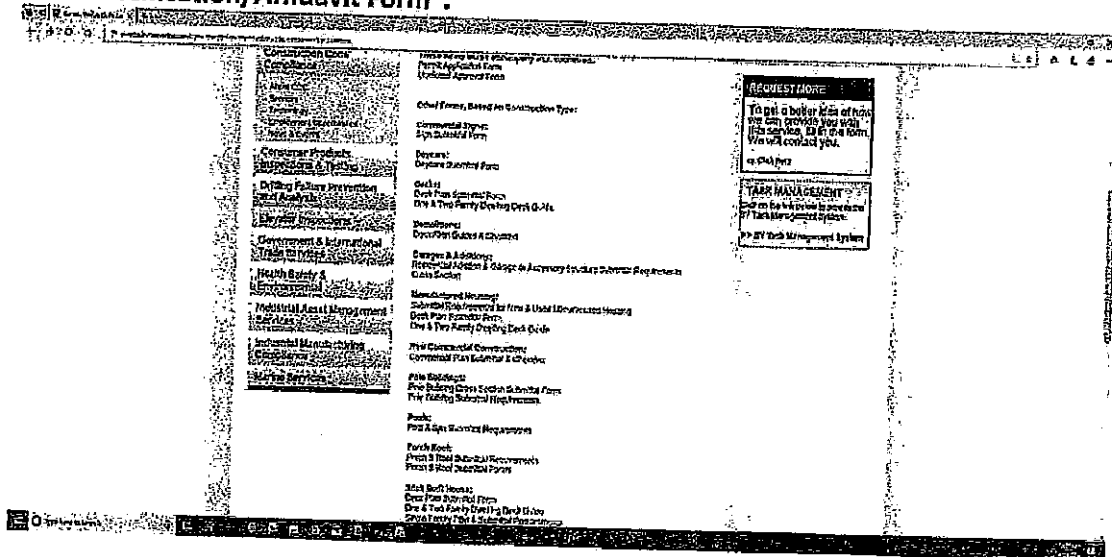
On August 12, 2018, Bureau Veritas ("BV") received a second application from us. On August 19<sup>th</sup>, we received yet another rejection letter.

Mr. Grant Kanish, representing Bureau Veritas, in his letter to us stated:

- **Apollo Borough Occupancy Inspection Ordinance**—This inspection is conducted per the Borough Ordinance and checklist at the time of ownership transfer. This inspection is currently performed by BV Inspector Rick McMillen and scheduled by the Borough. This inspection is to satisfy the Borough Ordinance and *should not* be considered as the Occupancy Inspection to satisfy the PA Uniform Construction changes.
- **A copy of this inspection was requested in a Right-to-Know request dated June 11, 2019. To date, Apollo Borough has not provided this documentation. What we do know from Denise Lewandowski, our buyer's agent, is that Mr. Kanish was at the property on April 5, 2017, and that he conveyed to Ms. Lewandowski, "This building is never going to pass an inspection." We have no copy of the above inspection. We have no evidence that Mr. Kanish entered the building that day and developed or completed a checklist prior to our purchase.**
- **Does Mr. Kanish know something about the building that he has not shared with us, or our real estate agent, upon our purchasing of the building? Is Mr. Kanish waiting for a casualty of some kind to ensue before he shares his belief of why this property will never pass an inspection?**

- **Change of Use/Occupancy** – This is conducted under the Pennsylvania Uniform Construction Code-Act 45. Your submission to Bureau Veritas in May 2019 was returned to you due to incompleteness. I have received you(r) submission application dated 8/7/2019 and would like to explain the following:

This is very curious. The forms that were mailed to Bureau Veritas on May 2019, were the exact same forms Mr. Kanish provided Steven R. Matvey, Esq., on October 8, 2018, and to Jake Oresick, Esq., in April 2019. It should also be noted that the forms titled "Municipal Approval Forms" and "Bureau Veritas Permit Application" are the only two forms available to the public on the BV website. I took this screencap on April 30, 2019. At no time, had we received a copy of the "Policy Guidelines for Commercial Plan Submittal" and "Certification/Affidavit Form".



1. "I have explained to you on numerous occasions that you will need to consult with an engineer to develop plans for the new use even if you are not making any changes."
- We are in agreement with Mr. Kanish on this issue. However, this started out as a need for drawings of an ADA-Compliant bathroom. Then it turned into stamped engineered drawing of an ADA-Compliant bathroom. It then turned into a stamped certified engineered drawing of an ADA-Compliant bathroom. Finally, it became the need for a stamped engineered floorplan.
2. You must receive approval from Apollo Borough and have a representative of the Borough sign the Bureau Veritas Municipal Prior Approval Form.
- This form was remitted to the Borough and was returned unsigned. Mr. Andreassi addressed this March 2019 letter to us, and a copy of Mr. Andreassi's letter was included with our "Change of Use" application to BV. This form, along with a copy of our site plan, will be remitted to the Borough along with this letter.

OMISSION  
N BV'S PART  
HERE WAS ANOTHER  
COMMERCIAL FORM  
AVAILABLE THAT COULD  
BE USED. IT WAS  
MORE DETAILED.



### 3. "Existing L&I Certificate of Occupancy"

- Considering the combined years of experience that you collectively have (including past leaders and contractors of the Borough), regarding items such as change of use and how that pertains to Apollo Borough, you should know that this is a futile request. Considering the fact that Apollo Borough "Opted In" from regulation regarding the PA Department of Labor and Industry, it is Apollo Borough's responsibility to maintain these records. We contacted the Department of Labor and Industry in October 2017 searching for this mysterious L&I Number, because Mr. Kanish required it. The Department of Labor and Industry was contacted again on August 12, 2019. The Department of Labor and Industry searched for this L&I number and again discovered that only five buildings held this number. Borough Manager, Cynthia McDermott, was contacted by us via e-mail on February 8, 2018, via e-mail, regarding the L&I number, and she explained, "We tried to find one with the state when the borough was looking into that church on Pennsylvania Avenue and they did not have one. These church buildings are so old they would probably be hand written records." The Borough accepts responsibility for maintaining these Occupancy records when they "Opt In" from L&I. A copy of our Occupancy Permit and/or L&I number was requested in a Right-to-Know request dated August 14, 2019. There has been no response.

Finally, in Mr. Kanish's letter, dated August 14, 2019, he states "I believe I made it clear at the meeting with the real estate agent and yourself what would be necessary to legally change the Use/Occupancy of the building."

- There was never a meeting held between our real estate agent and ourselves and Mr. Kanish to understand what is necessary legally, to change the occupancy and use of the building, nor have we ever personally met with Mr. Kanish on any occasion. We wouldn't know Mr. Kanish if we passed him on the street. SEE ATTACHED APOLLO BOROUGH CERTIFICATE OF USE

Finally in Mr. Kanish's letter, dated August 14, 2019, bullet point one:

DATED 4/6/17  
SIGNED BY ALL

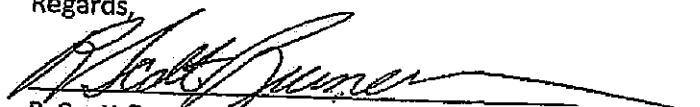
- Apollo Borough Vacancy Ordinance—The Ordinance is enforced by their Zoning Officer Brenda Troup.

If anyone from the Borough and Bureau Veritas had been clear with us since April 6, 2017, the date we purchased the Shiloh Baptist Church, does anyone legitimately believe that we would be at the point where we have, to date, been declared vacant, appeared in court five times, and will meet again in Superior Court? On April 10, 2019, there was a roundtable discussion with Jake Oresick, Esq. The Apollo Borough Zoning Officer, Brenda Troup, represented that "even if you (Janet) are acquitted of the summary vacancy charge, the Borough will still consider you non-compliant with the vacancy ordinance and refuse to approve your applications for Certificates of Occupancy and Change of Use Permits". If that's the Borough's attitude, there just isn't much to add there. We have made every effort to comply with all of the Ordinances.



Enclosed, please find a copy of our request for a Municipal Prior Approvals form.

Regards,

  
R. Scott Bruner

  
Janet L. Bruner

Cc: Scott Andreassi, Esq.  
Grant L. Kanish, BCO



**CHARLTONLaw**  
*we've got this*

April 22, 2020

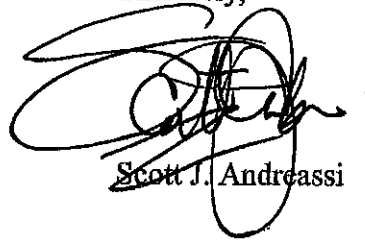
Zachary Gordon, Esq.  
Del Sole, Cavanaugh and Stroyd, LLC  
Three PPG Place, Suite 600  
Pittsburgh, Pa. 15222

**Re: Brunermer RTK Appeal at No. 2020-0589**

Dear Mr. Gordon

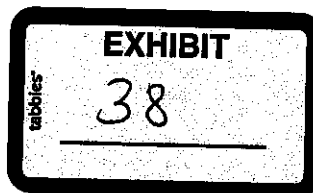
Per our email discussion of April 21, 2020, please find enclosed the hard copies of the emails between myself and Mr. Grant Kanish. Per your request, I am forwarding a copy to Mr. and Mrs. Brunermer.

Sincerely,



Scott J. Andreassi

cc: Borough of Apollo  
Scott and Janet Brunermer  
Ryan W. Liggitt, Appeals Officer



## Grant Kanish

---

**From:** Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>  
**Sent:** Wednesday, April 24, 2019 2:13 PM  
**To:** Grant Kanish  
**Subject:** FW: In re Brunermer - occupancy inspection checklist

Good Afternoon Grant,

The Brunermer's attorney sent the following. Can you help me out with this? Thanks.

Scott

Scott J. Andreassi, Esq.  
Charlton Law  
617 S. Pike Road  
Sarver, PA 16055  
724-540-1161  
[www.charltonlawyers.com](http://www.charltonlawyers.com)



**From:** Brenda Troup <[rechhaben@gmail.com](mailto:rechhaben@gmail.com)>  
**Sent:** Wednesday, April 24, 2019 1:48 PM  
**To:** Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>  
**Subject:** Re: In re Brunermer - occupancy inspection checklist

This would come from Grant kanish.

On Tue, Apr 23, 2019, 17:19 Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)> wrote:

Please advise. Thanks.

Sent from my iPhone

Begin forwarded message:

**From:** Jake Oresick <[joresick@cbattorneys.com](mailto:joresick@cbattorneys.com)>  
**Date:** April 23, 2019 at 4:12:40 PM EDT  
**To:** Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>  
**Subject:** In re Brunermer - occupancy inspection checklist

Scott,

Please find the attached Borough council meeting minutes and specifically see the highlighted portion referencing an occupancy inspection checklist. The Brunermers have mentioned that they've sought but never received a copy of this checklist. Would you be able to provide it?

Jake Oresick, Esquire

Greenan & Baczkowski, PC

Town Square Professional Building, Suite 304

3907 Old William Penn Highway

Murrysville, PA 15668

(724) 733-8832

(724) 733-8834 (Fax)

[joresick@cbattorneys.com](mailto:joresick@cbattorneys.com)

[www.cbattorneys.com](http://www.cbattorneys.com)

## Grant Kanish

---

**From:** Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>  
**Sent:** Tuesday, September 17, 2019 1:15 PM  
**To:** Grant Kanish  
**Cc:** [boroughmanager@apollopa.org](mailto:boroughmanager@apollopa.org)  
**Subject:** Fwd: Municipal Prior Approvals Form  
**Attachments:** Fifth Request Municipal Approval Form.pdf; ATT00001.htm

Any sea what they're talking about? Thanks.

Scott  
Sent from my iPhone

Begin forwarded message:

**From:** Scott Brunermer <[scott@ksloandirect.com](mailto:scott@ksloandirect.com)>  
**Date:** September 17, 2019 at 1:00:44 PM EDT  
**To:** 'Apollo Borough Manager' <[boroughmanager@apollopa.org](mailto:boroughmanager@apollopa.org)>, <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>, <[Sloppysoap@windstream.net](mailto:Sloppysoap@windstream.net)>  
**Cc:** <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Subject:** Municipal Prior Approvals Form

Good afternoon,

I thought I would take the time, again, to re-type our application for a Bureau Veritas "Municipal Prior Approval" Form. Perhaps, on the first 4 attempts, I typed something incorrectly that may have led to some confusion about this request? The property in question is located at 719 North Warren Avenue, Apollo, PA. I am attaching a copy of our most recent tax bill, so that there are no mistakes being made, as to the proper parcel number. I am, again, attaching a copy of the plot plan, drawn by certified architect, David Lowry of Riverside Architecture, located in Oakmont, PA. I have highlighted exact location of the property.

Thank you for your attention in this matter.

Regards,  
Scott Brunermer



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## Grant Kanish

---

**From:** Scott Andreassi <scott@charltonlawyers.com>  
**Sent:** Wednesday, April 24, 2019 2:57 PM  
**To:** Grant Kanish  
**Subject:** RE: In re Scott and Janet Brunermer

Perfect. Thank you.

Scott J. Andreassi, Esq.  
Charlton Law  
617 S. Pike Road  
Sarver, PA 16055  
724-540-1161  
[www.charltonlawyers.com](http://www.charltonlawyers.com)



**From:** Grant Kanish <grant.kanish@bureauveritas.com>  
**Sent:** Wednesday, April 24, 2019 2:40 PM  
**To:** Jake Oresick <joresick@cbattorneys.com>  
**Cc:** Scott Andreassi <scott@charltonlawyers.com>  
**Subject:** RE: In re Scott and Janet Brunermer

Attorney Oresick,

I just received a permit application and an "unsigned" municipal approval from the Brunermer's dated 4/22/19 along with a check for \$90.00.

Please do not take this as disrespectful, but they continue to be misguided. I believe I made it clear in our meeting and with the subsequent phone calls and emails I cannot make it any clearer. Your clients must do the following.

1. Satisfy the Borough's Vacant Building Ordinance.
2. Submit to the Borough the proposed use of the building to make sure it meets the Zoning Ordinance and any other "municipal regulations" they may have.
3. Submit to me a Change of Use/Occupancy application, Municipal Approval (signed by Apollo Borough), the submittal checklist and associated drawings in order to use the building for anything else other than an Assembly. (as we discussed, if built before April 1927, a legal Certificate of Occupancy is not required but proof of the date of construction must be supplied)
4. Once submitted and reviewed/approved by the Plan Reviewers, a UCC Building permit will be issued.
5. Your clients will be required to pay for and pick up the permit in my Kittanning Office. (Fee to be determined)
6. Your clients will contact the office at least 24 hours in advance for any inspections that will be required for the Change of Use/Occupancy.
7. Once completed to the plans, a new Certificate of Occupancy will be issued by me (BCO of Apollo Borough) for the new use group.

All of the necessary forms are attached and must be completed and submitted with (2) sets of drawings as described in the submittal checklist.

Thank You!

Grant L. Kanish  
PA West Business Unit Manager  
204 Butler Road - Suite 3  
Kittanning, PA 16201  
[grant.kanish@us.bureauveritas.com](mailto:grant.kanish@us.bureauveritas.com)  
Office - 724-548-1414  
Mobile - 724-812-6283

---

**From:** Jake Oresick [<mailto:joresick@cbattorneys.com>]  
**Sent:** Saturday, April 20, 2019 12:05 PM  
**To:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Cc:** Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>  
**Subject:** RE: In re Scott and Janet Brunermer

Grant,

I understand it's from a different organization, but does the attached checklist comport with BV's requirements?

Jake Oresick, Esquire  
Greenan & Baczowski, PC  
Town Square Professional Building, Suite 304  
3907 Old William Penn Highway  
Murrysville, PA 15668  
(724) 733-8832  
(724) 733-8834 (Fax)  
[joresick@cbattorneys.com](mailto:joresick@cbattorneys.com)  
[www.cbattorneys.com](http://www.cbattorneys.com)

---

**From:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Sent:** Friday, April 19, 2019 8:48 PM  
**To:** Jake Oresick <[joresick@cbattorneys.com](mailto:joresick@cbattorneys.com)>  
**Cc:** Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>  
**Subject:** Re: In re Scott and Janet Brunermer

Yes it will require a change of use/occupancy permit.

[www.us.bureauveritas.com/cc](http://www.us.bureauveritas.com/cc)

Or Google search Bureau Veritas forms.

Get [Outlook for iOS](#)

---

**From:** Jake Oresick <[joresick@cbattorneys.com](mailto:joresick@cbattorneys.com)>  
**Sent:** Friday, April 19, 2019 5:18:27 PM  
**To:** Grant Kanish  
**Cc:** Scott Andreassi  
**Subject:** RE: In re Scott and Janet Brunermer

**Cc:** Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>

**Subject:** In re Scott and Janet Brunermer

Dear Mr. Kanish,

Please find the attached letter and advise of any corrections or omissions.

Jake Oresick, Esquire  
Greenan & Baczkowski, PC  
Town Square Professional Building, Suite 304  
3907 Old William Penn Highway  
Murrysville, PA 15668  
(724) 733-8832  
(724) 733-8834 (Fax)  
[joresick@cbattorneys.com](mailto:joresick@cbattorneys.com)  
[www.cbattorneys.com](http://www.cbattorneys.com)

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<http://disclaimer.bureauveritas.com>



## Scott Andreassi

---

**From:** Scott Andreassi  
**Sent:** Thursday, September 5, 2019 10:12 AM  
**To:** 'Grant Kanish'  
**Subject:** FW: Apollo - Municipal Approval Form  
**Attachments:** Brunermer Response to Kanich Rejection of COU Application.docx

Good Morning Grant,

I'm not sure what Mr. Brunermer is talking about in his email. Any light you can shed on this? Thanks.

Scott

Scott J. Andreassi, Esq.  
Charlton Law  
617 S. Pike Road  
Sarver, PA 16055  
724-540-1161  
[www.charltonlawyers.com](http://www.charltonlawyers.com)



---

**From:** scott@ksloandirect.com <scott@ksloandirect.com>  
**Sent:** Wednesday, September 4, 2019 10:36 PM  
**To:** Apollo Borough Manager <boroughmanager@apollopa.org>; Scott Andreassi <scott@charltonlawyers.com>; grant.kanish@bureauveritas.com  
**Cc:** sloppysoap@windstream.net  
**Subject:** Apollo - Municipal Approval Form

To all of the parties involved:

It has been two weeks since we remitted our Municipal Prior Approval Form that is required by Bureau Veritas to perform a "Change of Use" inspection. There has been no response from Apollo Borough. Can you – Apollo Borough – give us a time frame as to when the form will be completed? We have submitted a site plan, and completed all of the documentation required by Apollo Borough to be granted a Municipal Prior Approval Form.

I am attaching a copy of the request made on August 19, 2019.

Regards,  
Scott Brunermer



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## Scott Andreassi

---

**From:** Scott Andreassi  
**Sent:** Tuesday, September 17, 2019 1:15 PM  
**To:** grant.kanish@bureauveritas.com  
**Cc:** boroughmanager@apollopa.org  
**Subject:** Fwd: Municipal Prior Approvals Form  
**Attachments:** Fifth Request Municipal Approval Form.pdf; ATT00001.htm

Any sea what they're talking about? Thanks.

Scott  
Sent from my iPhone

Begin forwarded message:

**From:** Scott Brunermer <[scott@ksloandirect.com](mailto:scott@ksloandirect.com)>  
**Date:** September 17, 2019 at 1:00:44 PM EDT  
**To:** 'Apollo Borough Manager' <[boroughmanager@apollopa.org](mailto:boroughmanager@apollopa.org)>, <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>, <[Sloppysoap@windstream.net](mailto:Sloppysoap@windstream.net)>  
**Cc:** <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Subject:** Municipal Prior Approvals Form

Good afternoon,

I thought I would take the time, again, to re-type our application for a Bureau Veritas "Municipal Prior Approval" Form. Perhaps, on the first 4 attempts, I typed something incorrectly that may have led to some confusion about this request? The property in question is located at 719 North Warren Avenue, Apollo, PA. I am attaching a copy of our most recent tax bill, so that there are no mistakes being made, as to the proper parcel number. I am, again, attaching a copy of the plot plan, drawn by certified architect, David Lowry of Riverside Architecture, located in Oakmont, PA. I have highlighted exact location of the property.

Thank you for your attention in this matter.

Regards,  
Scott Brunermer



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## Grant Kanish

---

**From:** Scott Andreassi <scott@charltonlawyers.com>  
**Sent:** Thursday, November 14, 2019 10:13 AM  
**To:** Grant Kanish; Rich Craft  
**Subject:** Brunermers

Good Morning Grant,

The Brunermers are requesting a copy of "meeting minutes or letter to the Pa. Dept. of Labor and Industry that the Borough has chosen to "opt-in" from the Dept. of Labor and Industry". Would you have any idea as to what that means?. Thank you.

Scott

Scott J. Andreassi, Esq.  
Charlton Law  
617 S. Pike Road  
Sarver, PA 16055  
724-540-1161  
[www.charltonlawyers.com](http://www.charltonlawyers.com)



## Grant Kanish

---

**From:** Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>  
**Sent:** Thursday, November 14, 2019 11:51 AM  
**To:** Grant Kanish  
**Subject:** RE: Brunermers

Thank you very much. Appreciate it.

Scott J. Andreassi, Esq.  
Charlton Law  
617 S. Pike Road  
Sarver, PA 16055  
724-540-1161  
[www.charltonlawyers.com](http://www.charltonlawyers.com)



---

**From:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Sent:** Thursday, November 14, 2019 11:50 AM  
**To:** Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>; Rich Craft <[rcraft@olsencraft.com](mailto:rcraft@olsencraft.com)>  
**Subject:** RE: Brunermers

Scott,

In 2004, Apollo Borough elected to "opt-out" of the PA UCC and have L&I do all of the Commercial work and allow its residents to choose a "Third Party" from the approved list in Harrisburg for their area for Residential work. In August 2014, Apollo Borough changed their minds and decided to "opt-in" to the UCC and join the Armstrong UCC Group which was contracted with Bureau Veritas and myself as the BCO to enforce all aspects of construction locally.

I contacted Brigid Beatty with ACPD and obtained all of the documents for your review. (attached)

Let me know if you would like to discuss this further by phone. Sometimes it's too much to explain in an email.

Grant L. Kanish  
PA West Business Unit Manager  
204 Butler Road - Suite 3  
Kittanning, PA 16201  
[grant.kanish@us.bureauveritas.com](mailto:grant.kanish@us.bureauveritas.com)  
Office - 724-548-1414  
Mobile - 724-812-6283

---

**From:** Scott Andreassi [<mailto:scott@charltonlawyers.com>]  
**Sent:** Thursday, November 14, 2019 10:13 AM

**To:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>; Rich Craft <[rcraft@olsencraft.com](mailto:rcraft@olsencraft.com)>

**Subject:** Brunermers

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Scott

**Scott J. Andreassi, Esq.**

**Charlton Law**

**617 S. Pike Road**

**Sarver, PA 16055**

**724-540-1161**

**[www.charltonlawyers.com](http://www.charltonlawyers.com)**



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<http://disclaimer.bureauveritas.com>

## Grant Kanish

---

**From:** Grant Kanish  
**Sent:** Monday, December 02, 2019 12:57 PM  
**To:** Scott Andreassi  
**Subject:** RE: Brunermers

Scott,

Thanks for the well wishes of a wonderful Thanksgiving. ....It was very nice and a welcomed break from work!

I am available on the 13<sup>th</sup> (so far the entire day is open) but the 17<sup>th</sup>, I have a hearing at Jamie Owen's Office at 1:15pm.

I am questioning my role in a deposition for the Open Records request. I understand I am the appointed BCO for Apollo Borough, but there has never been a formal request from Apollo Borough to me to provide any records. Keep me in the loop!

Also, if they requested any Commercial records, the municipality has the right to "prohibit release" under Section 403.85 (e) of the UCC.

### **§ 403.85. Release, retention and sharing of commercial construction records.**

(a) A building code official shall keep records of all applications received, permits issued, reviewed building plans and specifications, certificates issued, fees collected, reports of inspections, notices and orders issued for all commercial buildings and structures under the Uniform Construction Code. A building code official shall retain these records as long as the related building, structure or equipment remains in existence.

(b) A building code official shall reproduce records kept in an electronic format to a hard-copy format upon request. A building code official may charge for the reproduction costs.

(c) A municipality that discontinues enforcing the Uniform Construction Code shall keep records of previous Uniform Construction Code enforcement. A municipality shall make these records available to the Department.

(d) The Department will make its records available to a municipality that elects to enforce the Uniform Construction Code under section 501 of the act (35 P. S. § 7210.501).

(e) The Department, a municipality and a third-party agency acting on behalf of a municipality may prohibit release of applications received, building plans and specifications, inspection reports and similar documents to the public under the act of June 21, 1957 (P. L. 390, No. 212) known as the Right-to-Know Law (65 P. S. § § 66.1—66.9). The Department, the municipality or the third-party agency may release these documents to the building owner of record, the permit holder, the design professional of record or a third party authorized by the building owner in writing to receive the documents upon presentation of valid identification.

(f) The Department, a municipality and a third-party agency acting on behalf of a municipality may release any document obtained under this chapter to the following:

(1) The Department.

- (2) The Department of General Services.
- (3) Law enforcement or emergency response entities.
- (4) Federal, State or local health entities.

#### **Cross References**

This section cited in 34 Pa. Code § 403.102 (relating to municipalities electing to enforce the Uniform Construction Code).

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[grant.kanish@us.bureauveritas.com](mailto:grant.kanish@us.bureauveritas.com)  
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Mobile – 724-812-6283

---

**From:** Scott Andreassi [mailto:[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)]  
**Sent:** Monday, December 02, 2019 10:07 AM  
**To:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Subject:** Brunermers

Good Morning Grant,

Hope you had a wonderful Thanksgiving. The latest attorney for the Brunermers has proposed doing depositions prior to the hearing on January 15. The hearing is limited to the allegations that the Borough has failed to provide information under the Pa. Open Records Law (Right To Know). He is proposing either December 13 or December 17. The deposition would be held at a convenient location, preferably in Apollo. I would anticipated approximated 1 to 1 ½ hours for each deposition. We will prepare prior to the deposition. Obviously, as you are not an employee of the Borough, you could object to the deposition and force the attorney to file a subpoena. Given the course this matter has taken, it may be helpful to make it clear to the attorney that no one has attempted to keep information from the Brunermers.

Please let me know if either of these dates work for you. Thank you.

Scott

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*we've got this.*



**From:** Scott Andreassi [mailto:[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)]  
**Sent:** Tuesday, December 03, 2019 10:07 AM  
**To:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Subject:** Brunermers

Good Morning Grant,

The Brunermers are requesting a copy of the "Occupancy Inspection Checklist" passed by council on 3/22/18. The meeting minutes reference your name and BV (along with Cindee McDermott) as being the authors of the document. Would you happen to have a copy of it? Thanks.

Scott

**Scott J. Andreassi, Esq.**  
**Charlton Law**  
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724-540-1161  
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## **Grant Kanish**

---

**From:** Scott Andreassi <scott@charltonlawyers.com>  
**Sent:** Tuesday, December 03, 2019 11:13 AM  
**To:** Grant Kanish  
**Subject:** RE: Brunermers

Thank you. The meeting minutes that Brunermers refer to reads as follows:

"A new occupancy inspection checklist was proposed by Cindee McDermott and the BCO at Bureau Veritas, Grant Kanish. After discussion, a motion was made by Ashley Stiffy and seconded by Nancy Walker, to approve the form as proposed with a couple minor changes suggested by the borough manager. Motion passed unanimously."

That's what I found so far.

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---

**From:** Grant Kanish <grant.kanish@bureauveritas.com>  
**Sent:** Tuesday, December 3, 2019 11:08 AM  
**To:** Scott Andreassi <scott@charltonlawyers.com>  
**Subject:** RE: Brunermers

Scott,

Attached is the "occupancy" checklist the borough uses to satisfy their ordinance. Again, I am not sure in what order the Borough schedules inspections (occupancy vs. vacancy) but they have yet to be approved on either to my knowledge. Once they do get these done then I can take over for the UCC Change of Use/Occupancy permitting and inspections.

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[grant.kanish@us.bureauveritas.com](mailto:grant.kanish@us.bureauveritas.com)  
Office - 724-548-1414  
Mobile - 724-812-6283

**From:** Scott Andreassi [<mailto:scott@charltonlawyers.com>]

**Sent:** Tuesday, December 03, 2019 10:07 AM

**To:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>

**Subject:** Brunermers

Good Morning Grant,

The Brunermers are requesting a copy of the "Occupancy Inspection Checklist" passed by council on 3/22/18. The meeting minutes reference your name and BV (along with Cindee McDermott) as being the authors of the document. Would you happen to have a copy of it? Thanks.

Scott

**Scott J. Andreassi, Esq.**

**Charlton Law**

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Can you help my understand what they are asking for and if we (or BV) would have such records? Thank you.

Scott

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## Grant Kanish

---

**From:** Scott Andreassi <scott@charltonlawyers.com>  
**Sent:** Friday, December 06, 2019 2:41 PM  
**To:** Grant Kanish  
**Subject:** RE: Brunermer

Thank you. Have a great weekend.

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---

**From:** Grant Kanish <grant.kanish@bureauveritas.com>  
**Sent:** Friday, December 6, 2019 2:36 PM  
**To:** Scott Andreassi <scott@charltonlawyers.com>  
**Subject:** RE: Brunermer

Scott,

Attached is the complete correspondence from 5/20/19 lead off by my letter. As you will see, the submission was incomplete and without any drawings or proof when the building was built

Calling this "vague" would be complimentary.

Grant L. Kanish  
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[grant.kanish@us.bureauveritas.com](mailto:grant.kanish@us.bureauveritas.com)  
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Mobile - 724-812-6283

---

**From:** Scott Andreassi [<mailto:scott@charltonlawyers.com>]  
**Sent:** Friday, December 06, 2019 1:55 PM  
**To:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Subject:** RE: Brunermer

Not a problem, thank you.

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**From:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Sent:** Friday, December 6, 2019 1:54 PM  
**To:** Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>  
**Subject:** RE: Brunermer

If you can wait about 30 minutes.....I'm kind of in the middle of something.

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[grant.kanish@us.bureauveritas.com](mailto:grant.kanish@us.bureauveritas.com)  
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**From:** Scott Andreassi [<mailto:scott@charltonlawyers.com>]  
**Sent:** Friday, December 06, 2019 1:52 PM  
**To:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Subject:** RE: Brunermer

Would it be too voluminous to send me a copy?

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**From:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Sent:** Friday, December 6, 2019 1:51 PM

**To:** Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>  
**Subject:** RE: Brunermer

I have copies of all of the documents submitted.

Grant L. Kanish  
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---

**From:** Scott Andreassi [<mailto:scott@charltonlawyers.com>]  
**Sent:** Friday, December 06, 2019 1:50 PM  
**To:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Subject:** RE: Brunermer

Thank you very much. Do you still have the actual application?

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---

**From:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Sent:** Friday, December 6, 2019 1:27 PM  
**To:** Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>  
**Subject:** RE: Brunermer

Scott,

Hope this finds you ready for the weekend!

I am not sure of the actual date received, but the attached letter dated May 20, 2019 was sent denying the Brunermer's application for the reasons stated in the letter. I am not sure why they are requesting a copy of a "review" when the submission was incomplete and I could not determine for what "Use Group" they were applying for and the fact that there were not any drawings to review.

Puzzling?

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[grant.kanish@us.bureauveritas.com](mailto:grant.kanish@us.bureauveritas.com)  
Office - 724-548-1414  
Mobile - 724-812-6283

---

**From:** Scott Andreassi [<mailto:scott@charltonlawyers.com>]  
**Sent:** Friday, December 06, 2019 10:54 AM  
**To:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Subject:** Brunermer

Good Morning Grant,

The Brunermers are seeking "a copy of the review performed by code reviewer, Grant Kanish performed on June 19, 2019 for the First United Church of Christ Building located at 212 S. Second St., Apollo PA". Is there such a review or document? Thanks.

Scott

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## Grant Kanish

---

**From:** Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>  
**Sent:** Monday, December 09, 2019 12:14 PM  
**To:** Grant Kanish  
**Subject:** RE: Brunermers

That's what I thought. Had the Borough proceeded with the gift of the building, I'm sure you would have been involved. Thank you.

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---

**From:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Sent:** Monday, December 9, 2019 12:09 PM  
**To:** Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>  
**Subject:** RE: Brunermers

After looking at the address, that is not the Brunermer's. I believe that is for the Church the Borough was looking into receiving as a gift. I am not sure of the date but I did meet with the head of the Congregation and Engineers representing the Borough and explained the Change of Use/Occupancy procedures. There were no documents or notes that I presented.

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---

**From:** Scott Andreassi [<mailto:scott@charltonlawyers.com>]  
**Sent:** Monday, December 09, 2019 12:05 PM  
**To:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Subject:** Brunermers

Grant,

Was the following performed by BV?

"A copy of the review performed by the code reviewer, Grant Kanish performed on June 19, 2019 for the First United Church of Christ Building located at 212 S. Second St., Apollo, PA".

Thanks,

Scott

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## Scott Andreassi

---

**From:** Scott Andreassi  
**Sent:** Monday, December 9, 2019 12:46 PM  
**To:** 'Grant Kanish'  
**Subject:** Brunermers

Grant,

You are absolutely correct. The one request was for the Church building that the Borough anticipated being gifted for use as a Borough building. That never occurred, therefore you would not have completed any review.

I believe he wants to depose you regarding the change of use for the 719 N. Warren Ave. property that the Brunermers own and is the subject of the ongoing vacancy dispute with the Borough. Other than detail why the change hasn't been granted, I'm not sure what you would add to the process.

Scott

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**CHARLTON!** Law  
attorneys

## Grant Kanish

---

**From:** Scott Andreassi <scott@charltonlawyers.com>  
**Sent:** Thursday, December 19, 2019 11:30 AM  
**To:** Grant Kanish  
**Subject:** RE: Brunermers

Thank you. That was my impression as well, but wanted to check with you for clarification/education. I have Deanna checking to make sure nothing was requested or received.

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---

**From:** Grant Kanish <grant.kanish@bureauveritas.com>  
**Sent:** Thursday, December 19, 2019 11:28 AM  
**To:** Scott Andreassi <scott@charltonlawyers.com>  
**Subject:** Re: Brunermers

They are looking for any records for the building that may have been in L&I's possession prior to the Boroughs opting in that would have been turned over to the Borough. In my experience L&I only releases copies of those documents upon request. I doubt the borough ever requested any. In fact I believe I gave the Brunermer's the number in Harrisburg to look for any documents.

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---

**From:** Scott Andreassi <scott@charltonlawyers.com>  
**Sent:** Thursday, December 19, 2019 10:39:23 AM  
**To:** Grant Kanish <grant.kanish@bureauveritas.com>  
**Subject:** Brunermers

Good Morning Grant,

Hope this note finds you well. The Brunermers have filed a Right To Know request seeking the following:

"A copy of records transferred from the Pennsylvania Department of Labor and Industry, to Apollo Borough, in the form Labor and Industry case numbers, files, and or Occupancy Certificates, after Apollo Borough "opted-in" from the Department of Labor and Industry with the election to enforce "Act 45 of 1999".

Can you help my understand what they are asking for and if we (or BV) would have such records? Thank you.

Scott

**Scott J. Andreassi, Esq.**

**Charlton Law**

**617 S. Pike Road**

**Sarver, PA 16055**

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## **Scott Andreassi**

---

**From:** Grant Kanish <grant.kanish@bureauveritas.com>  
**Sent:** Tuesday, January 28, 2020 2:36 PM  
**To:** Scott Andreassi  
**Subject:** RE: Rick McMillen

Scott

Locally, I do not have the requested documents. He was hired because I knew of his background. He would have had to submit a resume on the "open hire" website that BV has for hiring new employees.

Hope this answers your question.

Given the fact that the Brunermer's are always asking for documents and we seem to be on the "Defense" is it time to maybe go on "Offense" with the statements in their documentation that they performed changes to the building without proper permitting and the fact that they advertised it as a house on Zillow at an asking price of \$225,000 which constitutes a Change of Use or Occupancy? Seems to me if they were cited for these violations maybe this could go away.

Your thoughts.

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Mobile - 724-812-6283

**From:** Scott Andreassi [mailto:[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)]  
**Sent:** Tuesday, January 28, 2020 2:00 PM  
**To:** Grant Kanish <grant.kanish@bureauveritas.com>  
**Subject:** Rick McMillen

Good Afternoon Grant,

Does BV have a CV or resume for Rick? Thanks.

Scott J. Andreassi, Esq.  
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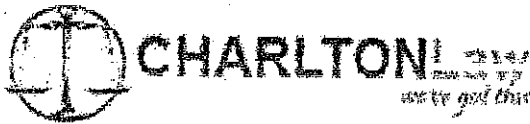
## **Scott Andreassi**

---

**From:** Scott Andreassi  
**Sent:** Wednesday, January 29, 2020 10:58 AM  
**To:** 'Grant Kanish'  
**Subject:** RE: Brunermer

Can't blame you my friend. Appreciate the information, as always.

Scott J. Andreassi, Esq.  
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**From:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Sent:** Wednesday, January 29, 2020 10:47 AM  
**To:** Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>  
**Subject:** Re: Brunermer

The boroughs change of use requirements are the UCC requirements.

Scott,

I am getting fed up with all of their stupid questions. I have told them time and again what they need to do. I don't understand why we do this for over 150 municipalities and in 2019 issued over 1700 permits and they are by far being the most difficult. I have better things to do with my time.

Sorry.....Just venting!!!!

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---

**From:** Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>  
**Sent:** Wednesday, January 29, 2020 10:35:36 AM  
**To:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Subject:** Brunermer

One more question — the Brunermers asked for the Borough's "change of use requirements". I originally responded that the "change of use requirements would be dependent upon the current permitted use and the use that the applicant wishes to change to". Is that an accurate description or are there actual change of use requirements that BV uses on behalf of the Borough? Thanks.



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## Scott Andreassi

---

**From:** Scott Andreassi  
**Sent:** Thursday, January 30, 2020 9:09 PM  
**To:** Grant Kanish  
**Cc:** Apollo Borough Manager  
**Subject:** Fwd: Municipal Approval Form  
**Attachments:** MUNICIPAL+APPROVAL+FORM - 6th try.pdf; ATT00001.htm

From the Brunermers. I'm sure the Borough will want some assistance replying. Thank you.

Sent from my iPhone

Begin forwarded message:

**From:** "sloppysoap@windstream.net" <sloppysoap@windstream.net>  
**Date:** January 30, 2020 at 8:54:50 PM EST  
**To:** "boroughmanager@apollopa.org" <boroughmanager@apollopa.org>, Scott Andreassi <scott@charltonlawyers.com>  
**Cc:** "grant.kanish@bureauveritas.com" <grant.kanish@bureauveritas.com>  
**Subject:** Municipal Approval Form

Dear Mrs. Shupe,

On January 14, 2020, I remitted to Bureau Veritas, an updated request for a change of use permit and inspection. At this time, Bureau Veritas has received architecturally drawn floorplans and site plans. Those drawings are currently being updated as BV has requested a few minor changes. Please note, that at no time over the last 3 years, were we told, by Apollo Borough or Bureau Veritas, that there were additional fees to be incurred for a "Preliminary" Plan review report. We received our first copy of the Construction & Service fee schedule, from Mr. Grant Kanish on January 27, 2020.

All of the fines and fees for the vacancy charges were addressed on September 24, 2019, with the Armstrong County Commonwealth Court.

Per the requirements of Bureau Veritas, we need a Prior Municipal Approval Form, from Apollo Borough in order to receive a Change of Use. A copy of that form is attached.

Regards,  
Scott Brunermer

SloppySoap Inc.  
Life is tough. Lather it up!

Hope this finds you ready for the weekend!

I am not sure of the actual date received, but the attached letter dated May 20, 2019 was sent denying the Brunermer's application for the reasons stated in the letter. I am not sure why they are requesting a copy of a "review" when the submission was incomplete and I could not determine for what "Use Group" they were applying for and the fact that there were not any drawings to review.

Puzzling?

Grant L. Kanish  
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[grant.kanish@us.bureauveritas.com](mailto:grant.kanish@us.bureauveritas.com)  
Office - 724-548-1414  
Mobile - 724-812-6283

---

**From:** Scott Andreassi [<mailto:scott@charltonlawyers.com>]  
**Sent:** Friday, December 06, 2019 10:54 AM  
**To:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Subject:** Brunermer

Good Morning Grant,

The Brunermers are seeking "a copy of the review performed by code reviewer, Grant Kanish performed on June 19, 2019 for the First United Church of Christ Building located at 212 S. Second St., Apollo PA". Is there such a review or document? Thanks.

Scott

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**CHARLTON** LAW  
WE ARE THE JUSTICE

**From:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Sent:** Friday, December 6, 2019 1:51 PM  
**To:** Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>  
**Subject:** RE: Brunermer

I have copies of all of the documents submitted.

Grant L. Kanish  
PA West Business Unit Manager  
204 Butler Road – Suite 3  
Kittanning, PA 16201  
[grant.kanish@us.bureauveritas.com](mailto:grant.kanish@us.bureauveritas.com)  
Office – 724-548-1414  
Mobile – 724-812-6283

**From:** Scott Andreassi [<mailto:scott@charltonlawyers.com>]  
**Sent:** Friday, December 06, 2019 1:50 PM  
**To:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Subject:** RE: Brunermer

Thank you very much. Do you still have the actual application?

Scott J. Andreassi, Esq.  
Charlton Law  
617 S. Pike Road  
Sarver, PA 16055  
724-540-1161  
[www.charltonlawyers.com](http://www.charltonlawyers.com)



**CHARLTON** LAW  
WE ARE THE JUSTICE

**From:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Sent:** Friday, December 6, 2019 1:27 PM  
**To:** Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>  
**Subject:** RE: Brunermer

Scott,

## Scott Andreassi

---

**From:** Scott Andreassi  
**Sent:** Friday, December 6, 2019 1:55 PM  
**To:** 'Grant Kanish'  
**Subject:** RE: Brunermer

Not a problem, thank you.

Scott J. Andreassi, Esq.  
Charlton Law  
617 S. Pike Road  
Sarver, PA 16055  
724-540-1161  
[www.charltonlawyers.com](http://www.charltonlawyers.com)



---

**From:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Sent:** Friday, December 6, 2019 1:54 PM  
**To:** Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>  
**Subject:** RE: Brunermer

If you can wait about 30 minutes.....I'm kind of in the middle of something.

Grant L. Kanish  
PA West Business Unit Manager  
204 Butler Road - Suite 3  
Kittanning, PA 16201  
[grant.kanish@us.bureauveritas.com](mailto:grant.kanish@us.bureauveritas.com)  
Office - 724-548-1414  
Mobile - 724-812-6283

---

**From:** Scott Andreassi [<mailto:scott@charltonlawyers.com>]  
**Sent:** Friday, December 06, 2019 1:52 PM  
**To:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Subject:** RE: Brunermer

Would it be too voluminous to send me a copy?

Scott J. Andreassi, Esq.  
Charlton Law  
617 S. Pike Road  
Sarver, PA 16055  
724-540-1161

**From:** Scott Andreassi [mailto:[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)]  
**Sent:** Tuesday, December 03, 2019 10:07 AM  
**To:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Subject:** Brunermers

Good Morning Grant,

The Brunermers are requesting a copy of the "Occupancy Inspection Checklist" passed by council on 3/22/18. The meeting minutes reference your name and BV (along with Cindee McDermott) as being the authors of the document. Would you happen to have a copy of it? Thanks.

Scott

**Scott J. Andreassi, Esq.**  
Charlton Law  
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Sarver, PA 16055  
724-540-1161  
[www.charltonlawyers.com](http://www.charltonlawyers.com)



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## Scott Andreassi

---

**From:** Scott Andreassi  
**Sent:** Tuesday, December 3, 2019 11:13 AM  
**To:** 'Grant Kanish'  
**Subject:** RE: Brunermers

Thank you. The meeting minutes that Brunermers refer to reads as follows:

"A new occupancy inspection checklist was proposed by Cindee McDermott and the BCO at Bureau Veritas, Grant Kanish. After discussion, a motion was made by Ashley Stiffy and seconded by Nancy Walker, to approve the form as proposed with a couple minor changes suggested by the borough manager. Motion passed unanimously."

That's what I found so far.

Scott J. Andreassi, Esq.  
Charlton Law  
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724-540-1161  
[www.charltonlawyers.com](http://www.charltonlawyers.com)



**From:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Sent:** Tuesday, December 3, 2019 11:08 AM  
**To:** Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>  
**Subject:** RE: Brunermers

Scott,

Attached is the "occupancy" checklist the borough uses to satisfy their ordinance. Again, I am not sure in what order the Borough schedules inspections (occupancy vs. vacancy) but they have yet to be approved on either to my knowledge. Once they do get these done then I can take over for the UCC Change of Use/Occupancy permitting and inspections.

Grant L. Kanish  
PA West Business Unit Manager  
204 Butler Road - Suite 3  
Kittanning, PA 16201  
[grant.kanish@us.bureauveritas.com](mailto:grant.kanish@us.bureauveritas.com)  
Office - 724-548-1414  
Mobile - 724-812-6283

## Scott Andreassi

---

**From:** Scott Andreassi  
**Sent:** Monday, December 2, 2019 10:07 AM  
**To:** 'Grant Kanish'  
**Subject:** Brunermers

Good Morning Grant,

Hope you had a wonderful Thanksgiving. The latest attorney for the Brunermers has proposed doing depositions prior to the hearing on January 15. The hearing is limited to the allegations that the Borough has failed to provide information under the Pa. Open Records Law (Right To Know). He is proposing either December 13 or December 17. The deposition would be held at a convenient location, preferably in Apollo. I would anticipated approximated 1 to 1 ½ hours for each deposition. We will prepare prior to the deposition. Obviously, as you are not an employee of the Borough, you could object to the deposition and force the attorney to file a subpoena. Given the course this matter has taken, it may be helpful to make it clear to the attorney that no one has attempted to keep information from the Brunermers.

Please let me know if either of these dates work for you. Thank you.

Scott

Scott J. Andreassi, Esq.  
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Sarver, PA 16055  
724-540-1161  
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**To:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>; Rich Craft <[rcraft@olsencraft.com](mailto:rcraft@olsencraft.com)>  
**Subject:** Brunermers

Good Morning Grant,

The Brunermers are requesting a copy of "meeting minutes or letter to the Pa. Dept. of Labor and Industry that the Borough has chosen to "opt-in" from the Dept. of Labor and Industry". Would you have any idea as to what that means?. Thank you.

Scott

**Scott J. Andreassi, Esq.**  
**Charlton Law**  
**617 S. Pike Road**  
**Sarver, PA 16055**  
**724-540-1161**  
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## Scott Andreassi

---

**From:** Scott Andreassi  
**Sent:** Thursday, November 14, 2019 11:51 AM  
**To:** 'Grant Kanish'  
**Subject:** RE: Brunermers

Thank you very much. Appreciate it.

Scott J. Andreassi, Esq.  
Charlton Law  
617 S. Pike Road  
Sarver, PA 16055  
724-540-1161  
[www.charltonlawyers.com](http://www.charltonlawyers.com)



---

**From:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Sent:** Thursday, November 14, 2019 11:50 AM  
**To:** Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>; Rich Craft <[rcraft@olsencraft.com](mailto:rcraft@olsencraft.com)>  
**Subject:** RE: Brunermers

Scott,

In 2004, Apollo Borough elected to "opt-out" of the PA UCC and have L&I do all of the Commercial work and allow its residents to choose a "Third Party" from the approved list in Harrisburg for their area for Residential work. In August 2014, Apollo Borough changed their minds and decided to "opt-in" to the UCC and join the Armstrong UCC Group which was contracted with Bureau Veritas and myself as the BCO to enforce all aspects of construction locally.

I contacted Brigid Beatty with ACPD and obtained all of the documents for your review. (attached)

Let me know if you would like to discuss this further by phone. Sometimes it's too much to explain in an email.

Grant L. Kanish  
PA West Business Unit Manager  
204 Butler Road - Suite 3  
Kittanning, PA 16201  
[grant.kanish@us.bureauveritas.com](mailto:grant.kanish@us.bureauveritas.com)  
Office - 724-548-1414  
Mobile - 724-812-6283

**From:** Scott Andreassi [<mailto:scott@charltonlawyers.com>]  
**Sent:** Thursday, November 14, 2019 10:13 AM

**Scott Andreassi**

---

**From:** Scott Andreassi  
**Sent:** Tuesday, September 17, 2019 2:14 PM  
**To:** 'Grant Kanish'  
**Subject:** Brunermers

Thanks for the call. I do have some questions. I will try and call you later today of that's ok.

Scott J. Andreassi, Esq.  
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Sarver, PA 16055  
724-540-1161  
[www.charltonlawyers.com](http://www.charltonlawyers.com)



**CHARLTON** *Law*  
write and file

## Scott Andreassi

---

**From:** Scott Andreassi  
**Sent:** Tuesday, September 17, 2019 1:22 PM  
**To:** 'Grant Kanish'  
**Cc:** 'Apollo Borough Manager'  
**Subject:** FW: Municipal Prior Approvals Form  
**Attachments:** Fifth Request Municipal Approval Form.pdf

Grant,

Isn't this trying to get "through the back door" what they couldn't get you to approve? Doesn't this have to go to BV before the Borough can act? Thanks.

Scott

Scott J. Andreassi, Esq.  
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617 S. Pike Road  
Sarver, PA 16055  
724-540-1161  
[www.charltonlawyers.com](http://www.charltonlawyers.com)



**CHARLTON**Law  
attorneys at law

---

**From:** Scott Brunermer <[scott@ksloandirect.com](mailto:scott@ksloandirect.com)>  
**Sent:** Tuesday, September 17, 2019 1:01 PM  
**To:** 'Apollo Borough Manager' <[boroughmanager@apollopa.org](mailto:boroughmanager@apollopa.org)>; Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>;  
Sloppysoap@windstream.net  
**Cc:** [grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)  
**Subject:** Municipal Prior Approvals Form

Good afternoon,

I thought I would take the time, again, to re-type our application for a Bureau Veritas "Municipal Prior Approval" Form. Perhaps, on the first 4 attempts, I typed something incorrectly that may have led to some confusion about this request? The property in question is located at 719 North Warren Avenue, Apollo, PA. I am attaching a copy of our most recent tax bill, so that there are no mistakes being made, as to the proper parcel number. I am, again, attaching a copy of the plot plan, drawn by certified architect, David Lowry of Riverside Architecture, located in Oakmont, PA. I have highlighted exact location of the property.

Thank you for your attention in this matter.

Regards,  
Scott Brunermer

I'm not sure what Mr. Brunermer is talking about in his email. Any light you can shed on this? Thanks.

Scott

**Scott J. Andreassi, Esq.**  
**Charlton Law**  
**617 S. Pike Road**  
**Sarver, PA 16055**  
**724-540-1161**  
[www.charltonlawyers.com](http://www.charltonlawyers.com)



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---

**From:** [scott@ksloandirect.com](mailto:scott@ksloandirect.com) <[scott@ksloandirect.com](mailto:scott@ksloandirect.com)>  
**Sent:** Wednesday, September 4, 2019 10:36 PM  
**To:** Apollo Borough Manager <[boroughmanager@apollopa.org](mailto:boroughmanager@apollopa.org)>; Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>;  
[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)  
**Cc:** [sloppysoap@windstream.net](mailto:sloppysoap@windstream.net)  
**Subject:** Apollo - Municipal Approval Form

To all of the parties involved:

It has been two weeks since we remitted our Municipal Prior Approval Form that is required by Bureau Veritas to perform a "Change of Use" inspection. There has been no response from Apollo Borough. Can you – Apollo Borough – give us a time frame as to when the form will be completed? We have submitted a site plan, and completed all of the documentation required by Apollo Borough to be granted a Municipal Prior Approval Form.

I am attaching a copy of the request made on August 19, 2019.

Regards,  
Scott Brunermer



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**Scott Andreassi**

---

**From:** Scott Andreassi  
**Sent:** Friday, September 6, 2019 10:07 AM  
**To:** 'Grant Kanish'  
**Subject:** RE: Apollo - Municipal Approval Form

I'm in the office. Call at your convenience.  
724-540-1161

Scott J. Andreassi, Esq.  
Charlton Law  
617 S. Pike Road  
Sarver, PA 16055  
724-540-1161  
[www.charltonlawyers.com](http://www.charltonlawyers.com)



---

**From:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Sent:** Thursday, September 5, 2019 12:04 PM  
**To:** Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>  
**Subject:** RE: Apollo - Municipal Approval Form

Scott,

I have tried to call you a couple of times on this subject. Please give me a call @ 724-812-6283 when you have some time.

Thank You

Grant L. Kanish  
PA West Business Unit Manager  
204 Butler Road - Suite 3  
Kittanning, PA 16201  
[grant.kanish@us.bureauveritas.com](mailto:grant.kanish@us.bureauveritas.com)  
Office - 724-548-1414  
Mobile - 724-812-6283

---

**From:** Scott Andreassi [<mailto:scott@charltonlawyers.com>]  
**Sent:** Thursday, September 05, 2019 10:12 AM  
**To:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Subject:** FW: Apollo - Municipal Approval Form

Good Morning Grant,

**Cc:** Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>

**Subject:** In re Scott and Janet Brunermer

Dear Mr. Kanish,

Please find the attached letter and advise of any corrections or omissions.

Jake Oresick, Esquire  
Greenan & Baczkowski, PC  
Town Square Professional Building, Suite 304  
3907 Old William Penn Highway  
Murrysville, PA 15668  
(724) 733-8832  
(724) 733-8834 (Fax)  
[joresick@cbattorneys.com](mailto:joresick@cbattorneys.com)  
[www.cbattorneys.com](http://www.cbattorneys.com)

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## Scott Andreassi

---

**From:** Scott Andreassi  
**Sent:** Wednesday, April 24, 2019 2:57 PM  
**To:** 'Grant Kanish'  
**Subject:** RE: In re Scott and Janet Brunermer

Perfect. Thank you.

**Scott J. Andreassi, Esq.**  
**Charlton Law**  
**617 S. Pike Road**  
**Sarver, PA 16055**  
**724-540-1161**  
[www.charltonlawyers.com](http://www.charltonlawyers.com)



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---

**From:** Grant Kanish <grant.kanish@bureauveritas.com>  
**Sent:** Wednesday, April 24, 2019 2:40 PM  
**To:** Jake Oresick <joresick@cbattorneys.com>  
**Cc:** Scott Andreassi <scott@charltonlawyers.com>  
**Subject:** RE: In re Scott and Janet Brunermer

Attorney Oresick,

I just received a permit application and an "unsigned" municipal approval from the Brunermer's dated 4/22/19 along with a check for \$90.00.

Please do not take this as disrespectful, but they continue to be misguided. I believe I made it clear in our meeting and with the subsequent phone calls and emails I cannot make it any clearer. Your clients must do the following.

1. Satisfy the Borough's Vacant Building Ordinance.
2. Submit to the Borough the proposed use of the building to make sure it meets the Zoning Ordinance and any other "municipal regulations" they may have.
3. Submit to me a Change of Use/Occupancy application, Municipal Approval (signed by Apollo Borough), the submittal checklist and associated drawings in order to use the building for anything else other than an Assembly. (as we discussed, if built before April 1927, a legal Certificate of Occupancy is not required but proof of the date of construction must be supplied)
4. Once submitted and reviewed/approved by the Plan Reviewers, a UCC Building permit will be issued.
5. Your clients will be required to pay for and pick up the permit in my Kittanning Office. (Fee to be determined)
6. Your clients will contact the office at least 24 hours in advance for any inspections that will be required for the Change of Use/Occupancy.
7. Once completed to the plans, a new Certificate of Occupancy will be issued by me (BCO of Apollo Borough) for the new use group.



Grant L. Kanish  
PA West Business Unit Manager  
204 Butler Road - Suite 3  
Kittanning, PA 16201  
[grant.kanish@us.bureauveritas.com](mailto:grant.kanish@us.bureauveritas.com)  
Office - 724-548-1414  
Mobile - 724-812-6283

---

**From:** Scott Andreassi [<mailto:scott@charltonlawyers.com>]  
**Sent:** Thursday, January 02, 2020 12:59 PM  
**To:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Subject:** Brunermer

Good Afternoon Grant,

Hope this note finds you well. Please let me know if you would have some time to meet and review your file for 719 N. Warren Ave. on Monday or Tuesday of next week. Thanks.

Scott

Scott J. Andreassi, Esq.  
Charlton Law  
617 S. Pike Road  
Sarver, PA 16055  
724-540-1161  
[www.charltonlawyers.com](http://www.charltonlawyers.com)

<image001.jpg>

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## Scott Andreassi

---

**From:** Scott Andreassi  
**Sent:** Thursday, January 2, 2020 2:50 PM  
**To:** Grant Kanish  
**Subject:** Re: Brunermer

Thank you. I'll see you there.

Sent from my iPhone

On Jan 2, 2020, at 2:11 PM, Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)> wrote:

My office is available or we can meet anywhere that is convenient for you. I am used to travelling. I have the 6<sup>th</sup> on my schedule at 10:00. Just let me know if you want me to come to you.

Grant L. Kanish  
PA West Business Unit Manager  
204 Butler Road – Suite 3  
Kittanning, PA 16201  
[grant.kanish@us.bureauveritas.com](mailto:grant.kanish@us.bureauveritas.com)  
Office – 724-548-1414  
Mobile – 724-812-6283

---

**From:** Scott Andreassi [<mailto:scott@charltonlawyers.com>]  
**Sent:** Thursday, January 02, 2020 2:00 PM  
**To:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Subject:** RE: Brunermer

I assume your office would be more convenient. How about the 6<sup>th</sup> at 10:00?

Scott J. Andreassi, Esq.  
Charlton Law  
617 S. Pike Road  
Sarver, PA 16055  
724-540-1161  
[www.charltonlawyers.com](http://www.charltonlawyers.com)

<image001.jpg>

---

**From:** Grant Kanish <[grant.kanish@bureauveritas.com](mailto:grant.kanish@bureauveritas.com)>  
**Sent:** Thursday, January 2, 2020 1:48 PM  
**To:** Scott Andreassi <[scott@charltonlawyers.com](mailto:scott@charltonlawyers.com)>  
**Subject:** RE: Brunermer

Right now, both the 6<sup>th</sup> and the 7<sup>th</sup> are open for me. Please give me a date, time and location.

## Scott Andreassi

---

**From:** Grant Kanish <grant.kanish@bureauveritas.com>  
**Sent:** Wednesday, January 29, 2020 10:47 AM  
**To:** Scott Andreassi  
**Subject:** Re: Brunermer

The boroughs change of use requirements are the UCC requirements.

Scott,

I am getting fed up with all of their stupid questions. I have told them time and again what they need to do. I don't understand why we do this for over 150 municipalities and in 2019 issued over 1700 permits and they are by far being the most difficult. I have better things to do with my time.

Sorry.....Just venting!!!!

Get Outlook for iOS

---

**From:** Scott Andreassi <scott@charltonlawyers.com>  
**Sent:** Wednesday, January 29, 2020 10:35:36 AM  
**To:** Grant Kanish <grant.kanish@bureauveritas.com>  
**Subject:** Brunermer

One more question – the Brunermers asked for the Borough's "change of use requirements". I originally responded that the "change of use requirements would be dependent upon the current permitted use and the use that the applicant wishes to change to". Is that an accurate description or are there actual change of use requirements that BV uses on behalf of the Borough? Thanks.

Scott J. Andreassi, Esq.  
Charlton Law  
617 S. Pike Road  
Sarver, PA 16055  
724-540-1161  
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## Scott Andreassi

---

**From:** Scott Andreassi  
**Sent:** Thursday, January 30, 2020 9:09 PM  
**To:** Grant Kanish  
**Cc:** Apollo Borough Manager  
**Subject:** Fwd: Municipal Approval Form  
**Attachments:** MUNICIPAL+APPROVAL+FORM - 6th try.pdf; ATT00001.htm

From the Brunermers. I'm sure the Borough will want some assistance replying. Thank you.

Sent from my iPhone

Begin forwarded message:

**From:** "sloppysoap@windstream.net" <sloppysoap@windstream.net>  
**Date:** January 30, 2020 at 8:54:50 PM EST  
**To:** "boroughmanager@apollopa.org" <boroughmanager@apollopa.org>, Scott Andreassi <scott@charltonlawyers.com>  
**Cc:** "grant.kanish@bureauveritas.com" <grant.kanish@bureauveritas.com>  
**Subject:** Municipal Approval Form

Dear Mrs. Shupe,

On January 14, 2020, I remitted to Bureau Veritas, an updated request for a change of use permit and inspection. At this time, Bureau Veritas has received architecturally drawn floorplans and site plans. Those drawings are currently being updated as BV has requested a few minor changes. Please note, that at no time over the last 3 years, were we told, by Apollo Borough or Bureau Veritas, that there were additional fees to be incurred for a "Preliminary" Plan review report. We received our first copy of the Construction & Service fee schedule, from Mr. Grant Kanish on January 27, 2020.

All of the fines and fees for the vacancy charges were addressed on September 24, 2019, with the Armstrong County Commonwealth Court.

Per the requirements of Bureau Veritas, we need a Prior Municipal Approval Form, from Apollo Borough in order to receive a Change of Use. A copy of that form is attached.

Regards,  
Scott Brunermer

SloppySoap Inc.  
Life is tough. Lather it up!

## Scott Andreassi

---

**From:** Scott Andreassi  
**Sent:** Tuesday, January 28, 2020 2:00 PM  
**To:** 'Grant Kanish'  
**Subject:** Rick McMillen

Good Afternoon Grant,

Does BV have a CV or resume for Rick? Thanks.

Scott J. Andreassi, Esq.  
Charlton Law  
617 S. Pike Road  
Sarver, PA 16055  
724-540-1161  
[www.charltonlawyers.com](http://www.charltonlawyers.com)



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**Del Sole Cavanaugh Stroyd LLC**

Three PPG Place, Suite 600  
Pittsburgh, PA 15222  
412-261-2393

Invoice submitted to:  
Scott and Janet Brunermer  
514 Hoover Drive  
Apollo, PA 15613

EIN #56-2337482

C/O: Janet & Scott Brunermer

March 10, 2020

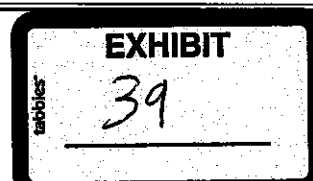
In Reference To: **RTKL - Apollo Borough**  
**2019- 01343, 01402 , and 01518**

Invoice No: 20970

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
2/4/2020	ZNG Review emails from opposing counsel on documents provided and email same to clients	0.10 250.00/hr	25.00
2/5/2020	ZNG Review emails from Borough and clients regarding affidavits and other records	0.10 250.00/hr	25.00
2/15/2020	ZNG Review letter, affidavit, and documents from opposing counsel to prepare for hearing and email opposing counsel regarding items missing	0.60 250.00/hr	150.00
2/16/2020	ZNG Research counsel fees under the RTKL	0.40 250.00/hr	100.00
2/17/2020	ZNG RTKL counsel fee research and prepare for hearing by reviewing documents from Borough, deposition transcripts, and court transcripts. Revise summary chart of RTKL requests	4.70 250.00/hr	1,175.00
2/18/2020	ZNG Review deposition transcripts, draft proposed order, prepare for hearing	4.80 250.00/hr	1,200.00
2/19/2020	ZNG Revised proposed order, prepare for hearing	1.90 250.00/hr	475.00
2/20/2020	ZNG Prepare for and attend hearing in Armstrong County and discuss narrowing issues with clients and opposing counsel	7.90 250.00/hr	1,975.00
	ZNG Emails with clients regarding next steps for cases after Court hearing	0.20 250.00/hr	50.00
2/21/2020	ZNG Review Kanish file and compare it to outstanding item summary and prior exhibits to determine what records were not provided and emails with clients regarding those issues and discussing how to proceed	1.10 250.00/hr	275.00

Del Sole Cavanaugh Stroyd LLC



**Del Sole Cavanaugh Stroyd LLC**

Three PPG Place, Suite 600  
Pittsburgh, PA 15222  
412-261-2393

Scott and Janet Brunermer

Page 2

Bill Date: 3/10/2020

	<u>Hrs/Rate</u>	<u>Amount</u>
2/22/2020 ZNG Email Borough Counsel regarding the Kanish file	0.10 250.00/hr	25.00
2/27/2020 ZNG Email with opposing counsel and client regarding stipulation over Kanish file and discuss with clients whether to proceed with a Motion over records disclosed in Kanish file	0.30 250.00/hr	75.00
2/29/2020 ZNG Draft Motion for Sanctions and Other Relief regarding Bureau Veritas document production	0.70 250.00/hr	175.00
For professional services rendered	22.90	\$5,725.00

## Additional Charges :

	<u>Qty/Pric</u>	
2/29/2020 E101 Copying	319	79.75
Copying cost for the month of February	0.25	
E110 Out-of-town travel	84	48.30
Mileage to/from Armstrong County for hearing	0.58	
E124 Other expenses	1	109.00
Service of Subpoeas on Grant Kanish	109.00	
Total costs		\$237.05
Total amount of this bill		\$5,962.05
Previous balance		\$5,511.83
<b>Balance due</b>		<b>\$11,473.88</b>
Previous balance of Retainer Funds		\$2,000.00
New balance of Retainer Funds		\$2,000.00

**Del Sole Cavanaugh Stroyd LLC**

Three PPG Place, Suite 600

Pittsburgh, PA 15222

412-261-2393

Scott and Janet Brunermer

Page 3

Bill Date: 3/10/2020

*In Reference To:* **RTKL - Apollo Borough  
4th Complaint**

Invoice No:

	<u>Amount</u>
Previous balance	\$300.00
<b>Balance due</b>	<b>\$300.00</b>



# Del Sole Cavanaugh Stroyd LLC

Three PPG Place, Suite 600  
Pittsburgh, PA 15222  
412-261-2393

Invoice submitted to:  
Scott and Janet Brunermer

EIN  
#56-2337482

514 Hoover Drive  
Apollo, PA 15613

C/O: Janet & Scott Brunermer

April 9, 2020

In Reference To: **RTKL - Apollo Borough**  
**2019- 01343, 01402 , and 01518**

Invoice No: 21018

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
3/2/2020 ZNG Draft Motion for Sanctions	0.70 250.00/hr	175.00
ZNG Draft Motions for Sanctions and Other Relief and review file to determine appropriate exhibits for same, draft letter to opposing counsel regarding Motion and email clients regarding Motion	2.10 250.00/hr	525.00
3/3/2020 ZNG Email opposing counsel regarding Motion for Sanctions	0.20 250.00/hr	50.00
3/5/2020 ZNG Emails with opposing counsel and client regarding possibility of resolving Motion for Sanctions	0.30 250.00/hr	75.00
3/6/2020 ZNG Call with opposing counsel regarding procedural resolution of Motion for Sanctions, revise proposed order and email proposed order to opposing counsel and clients	0.80 250.00/hr	200.00
3/9/2020 ZNG Emails to opposing counsel regarding consent order and email to client regarding status of opposing counsel's failure to return consent order	0.30 250.00/hr	75.00
3/10/2020 ZNG Draft letter to Court regarding Motion for Sanctions and email same to opposing counsel and client and answer client question regarding Motion	0.40 250.00/hr	100.00
3/17/2020 ZNG Email Opposing counsel regarding the Borough's removal of RTKL information from its website; Email the office of open records latest pleadings; Email discussion with clients regarding other items suspected missing from Borough's responses	0.50 250.00/hr	125.00

**Del Sole Cavanaugh Stroyd LLC**

Three PPG Place, Suite 600  
Pittsburgh, PA 15222  
412-261-2393

Scott and Janet Brunermer

Page 2

Bill Date: 4/9/2020

	<u>Hrs/Rate</u>	<u>Amount</u>
3/30/2020 ZNG Email with OPC and client regarding status of Borough's compliance with current orders during shutdowns	0.20 250.00/hr	50.00
For professional services rendered	5.50	\$1,375.00

## Additional Charges :

	<u>Qty/Pric</u>	
3/31/2020 E108 Postage	1	11.90
Postage for the month of March	11.90	
Total costs		\$11.90
Total amount of this bill		\$1,386.90
Previous balance		\$11,473.88
4/1/2020 Payment - Thank You. Check No. 1931		(\$10,000.00)
4/6/2020 Transfer		\$300.00
4/6/2020 Transfer		\$675.00
4/6/2020 Transfer		\$1,510.00
Total payments and adjustments		(\$7,515.00)
<b>Balance due</b>		<b>\$5,345.78</b>
Previous balance of Retainer Funds		\$2,000.00
New balance of Retainer Funds		\$2,000.00

**Del Sole Cavanaugh Stroyd LLC**

Three PPG Place, Suite 600

Pittsburgh, PA 15222

412-261-2393

Scott and Janet Brunermer

Page 3

Bill Date: 4/9/2020

*In Reference To:* **RTKL - Apollo Borough  
4th Complaint**

Invoice No:

	<u>Amount</u>
Previous balance	\$300.00
4/6/2020 Transferred payment	<u>(\$300.00)</u>
Total payments and adjustments	(\$300.00)
<b>Balance due</b>	<u><u>\$0.00</u></u>

**Del Sole Cavanaugh Stroyd LLC**

Three PPG Place, Suite 600  
Pittsburgh, PA 15222  
412-261-2393

Invoice submitted to:  
Scott and Janet Brunermer  
514 Hoover Drive  
Apollo, PA 15613

EIN #56-2337482

C/O: Janet & Scott Brunermer

May 7, 2020

In Reference To: **RTKL - Apollo Borough**  
**2019- 01343, 01402 , and 01518**

Invoice No: 21044

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
4/1/2020	ZNG Review current deadlines and draft email to discuss deadlines with opposing counsel in light of pandemic and court closings	0.20 250.00/hr	50.00
4/3/2020	ZNG Email client on RTKL questions	0.20 250.00/hr	50.00
4/6/2020	ZNG Reply to opposing counsel email regarding deadlines due to pandemic	0.10 250.00/hr	25.00
4/21/2020	ZNG Review voicemail from Judge's law clerk, draft email to clerk regarding case status from the requesters' point of view and forward message with next steps to clients	0.40 250.00/hr	100.00
4/23/2020	ZNG Review emails from Opposing counsel produced in other open records appeal and cross-reference them to requests in the mandamus cases to assess when the Borough first reached out to its contractor for records and discuss those records with clients during a telephone conference	0.60 250.00/hr	150.00
	ZNG Call with clients regarding emails produced by Borough in open records case and how those emails relate and show the Borough's non-compliance in mandamus action RTKL requests	0.40 250.00/hr	100.00
	ZNG Draft letter regarding additional exhibits and Kanish records for Mandamus cases	0.20 250.00/hr	50.00
4/27/2020	ZNG Review documents from clients to examine whether Borough should have any additional responsive records and email client on possible other exhibits for reply brief	0.80 250.00/hr	200.00
	For professional services rendered	2.90	\$725.00
	Previous balance		\$5,345.78

Del Sole Cavanaugh Stroyd LLC

**Del Sole Cavanaugh Stroyd LLC**

Three PPG Place, Suite 600

Pittsburgh, PA 15222

412-261-2393

Scott and Janet Brunermer

Page 2

Bill Date: 5/7/2020

	<u>Amount</u>
<b>Balance due</b>	<b><u>\$6,070.78</u></b>
Previous balance of Retainer Funds	<u>\$2,000.00</u>
New balance of Retainer Funds	<u>\$2,000.00</u>

**Del Sole Cavanaugh Stroyd LLC**

Three PPG Place, Suite 600  
Pittsburgh, PA 15222  
412-261-2393

Invoice submitted to:  
Scott and Janet Brunermer

EIN  
#56-2337482

514 Hoover Drive  
Apollo, PA 15613

C/O: Janet & Scott Brunermer

June 9, 2020

In Reference To: **RTKL - Apollo Borough**  
**2019- 01343, 01402 , and 01518**

Invoice No: 21087

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
5/11/2020 ZNG Email to Opposing counsel discussing exhibits and stipulations for resolving mandamus cases	0.20 250.00/hr	50.00
5/21/2020 ZNG Emails with Judge's law clerk and opposing counsel on proceeding during Covid-19 and email to opposing counsel regarding exhibits and other issues	0.20 250.00/hr	50.00
For professional services rendered	0.40	\$100.00
Previous balance		\$6,070.78
5/18/2020 Payment - Thank You. Check No. 1915		(\$5,000.00)
Total payments and adjustments		(\$5,000.00)
<b>Balance due</b>		<b>\$1,170.78</b>
Previous balance of Retainer Funds		\$2,000.00
New balance of Retainer Funds		\$2,000.00

Exhibit 40

	3 cases bill	4th case bill
Oct. 2019	\$ 7,338.80	\$ -
Nov. 2019	\$ 2,904.85	\$ 1,565.25
Dec. 2019	\$ 5,731.05	\$ 150.00
Jan. 2020	\$ 5,004.88	\$ 300.00
Feb. 2020 (actual)	\$ 5,962.05	\$ -
Mar. 2020	\$ 1,386.90	\$ -
Apr. 2020	\$ 725.00	\$ -
May. 2020	\$ 100.00	\$ -
June 2020 (est)	\$10,075.00	
Total both bills	\$ 39,228.53	\$ 2,015.25
Total	\$ 41,243.78	
less \$75 for wrong entry on 11/12/19 plus filing fees in 3 other cases, and Feb. 2020	\$ 41,168.78	
Transcript cost	470.75	
<b>Total Fees and expenses</b>	<b>\$ 41,639.53</b>	

June 2020 Estimate	Copying costs and mail (est.)	\$150.
Total Hours		39.7
Hours by \$250 rate		\$ 9,925.00
<b>Est. of June Bill</b>		<b>\$10,075.00</b>
6/4/2020	Review emails from opposing counsel and clients regarding status of Brief	0.2
6/4/2020	Review Brief from Borough and start drafting reply	0.8
6/6/2020	Draft reply brief and communicate with client regarding reply brief	0.3
6/8/2020	Draft Reply Brief and review brief and attachments to brief from Borough	3.8
6/9/2020	Draft Reply Brief	3.9
6/10/2020	Draft Reply Brief and proposed order	5.6
6/11/2020	Emails with opposing counsel and Court regarding extension (0.2) NO Charge	
6/11/2020	Draft Reply Brief and review Borough Brief	1.3
6/12/2020	Draft Reply Brief and incorporate review of outstanding records and conflicting verified statements made by Borough	2.2
6/15/2020	Draft Reply Brief and Proposed Order	2.1
6/16/2020	Draft Brief, research OOR bad faith issue, prepare exhibits and affidavits for Brief	3.4
6/17/2020	Review exhibits and affidavits to accompany brief and email client summary of them for their review and comment	0.4
6/17/2020	Revise Brief	3.2
6/18/2020	Revise Brief, Revise Proposed Order, Prepare Brief and Exhibits for client review	3.2
6/19/2020	Revise Brief, affidavits, and proposed order	5.8
6/22/2020	Make final revisions to Brief, prepare Brief for filing, finalize affidavits, finalize exhibits, finalize proposed order	3.5

Total June Est. Hours

39.7

## Zachary Gordon

---

**From:** Zachary Gordon <zgordon@dscslaw.com>  
**Sent:** Thursday, May 21, 2020 10:10 AM  
**To:** 'Scott Andreassi'  
**Subject:** RE: Mandamus Cases Exhibits

Scott,

What do you think about resolving these procedural issues in this manner?

Respectfully,

Zach

**From:** Zachary Gordon  
**Sent:** Monday, May 11, 2020 7:59 AM  
**To:** Scott Andreassi <scott@charltonlawyers.com>  
**Subject:** Mandamus Cases Exhibits

Scott,

I think with the Motion for Sanctions and then COVID-19 occurring we never finalized making the Kanish file you provided an Exhibit for the hearings. I think my last Exhibit was Exhibit 36, so I would propose we make the Kanish file Exhibit 37.

I also recall in our telephone call regarding the Motions for Sanctions, I believe you made a comment that the file produced by you may not have been everything that Mr. Kanish produced to the Borough. I expect to raise this issue in my Reply Brief, but I thought it might be prudent for you to double check the file Mr. Kanish produced to you to be certain you provided me a complete copy and to have either Mr. Kanish or someone at the Borough attest to that (or if something was omitted to promptly provide the omitted files).

I would also intend to introduce the emails you provided related to OOR appeal 2020-0589 as another exhibit in the case. I would suggest that I would make that Exhibit 38.

If you are agreeable to those two items being submitted as Exhibits, I will draft an appropriate stipulation with the exhibits attached for your review.

Sincerely,

Zach

Zachary N. Gordon, Esq.  
**DEL SOLE CAVANAUGH STROYD LLC**  
Three PPG Place, Suite 600  
Pittsburgh, Pennsylvania 15222  
Main: 412-261-2393  
Fax: 412-261-2110  
Web: [www.dscslaw.com](http://www.dscslaw.com)





**CONFIDENTIALITY NOTICE:** The materials contained in this e-mail (including all attachments) are private and confidential, and the property of the law firm of Del Sole Cavanaugh Stroyd LLC. The information contained in the materials is privileged and intended only for the use of the named addressee(s). If you are not the intended addressee, be advised that any unauthorized disclosure, copying, distribution, or the taking of any action in reliance on the contents of this material is strictly prohibited. If you have received this e-mail transmission in error, please immediately notify the sender and thereafter destroy the e-mail you received and all copies thereof. Thank you.

IN THE COURT OF COMMON PLEAS OF ARMSTRONG COUNTY

JANET AND SCOTT BRUNERMER,	:	
	:	
Plaintiffs/Petitioners,	:	
	:	
v.	:	No. 2019-1343-CIVIL
	:	No. 2019-1402-CIVIL
APOLLO BOROUGH,	:	No. 2019-1518-CIVIL
	:	No. 2019-1790-CIVIL
Defendant/Respondent.	:	

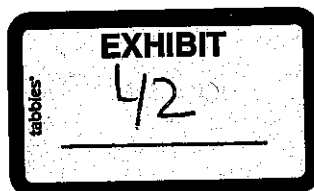
**AFFIDAVIT OF R. SCOTT BRUNERMER**

1. The facts described in Reply Brief of my attorney, Zachary N. Gordon are true and correct.

2. Exhibit 37 is a true and correct copy of documents Apollo Borough's attorney provided to Attorney Gordon on February 20, 2020, with the omission of a \$90 check. This check was removed solely to preserve confidentiality of financial account information in compliance with the Pennsylvania's Supreme Court's public access policy.

3. Exhibit 38 is a true and correct copy of a letter date April 22, 2020 and enclosures to that letter provided by the Borough in response to a Right-to-Know-Law appeal pending before the Office of Open Records at Docket Number AP-2020-0589.

4. Exhibit 39 is a true and correct copy of the counsel fee bills incurred in these cases for services performed on the above-captioned cases from February of 2020 to May of 2020. The October 2019 to January 2020 bills were previously admitted as Exhibit 35. My wife and I have paid the amounts billed thus far, and have agreed to paid the amounts billed by Attorney Gordon for the duration of this case.



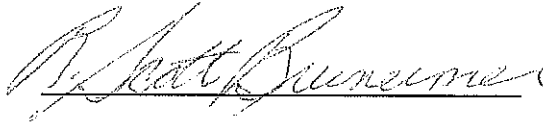
5. Exhibit 40 is a summary of the counsel fees incurred in Exhibits 35 and 39 as well as an estimate of the fees incurred in June of 2020.

6. Exhibit 41 is a true and correct copy of emails sent by Attorney Gordon to Attorney Andreassi.

7. I also paid the costs for transcribing the February 20, 2020 hearing directly and that transcript cost \$50, which was paid directly to the Court.

I state that the above is true and correct to the best of my knowledge, information and belief and this averment is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: June <sup>22</sup>  , 2020

A handwritten signature in cursive script, reading "R. Scott Brunermer", written over a horizontal line.

R. Scott Brunermer

IN THE COURT OF COMMON PLEAS OF ARMSTRONG COUNTY

JANET AND SCOTT BRUNERMER,	:	
	:	
Plaintiffs/Petitioners,	:	
	:	
v.	:	No. 2019-1343-CIVIL
	:	No. 2019-1402-CIVIL
APOLLO BOROUGH,	:	No. 2019-1518-CIVIL
	:	No. 2019-1790-CIVIL
Defendant/Respondent.	:	

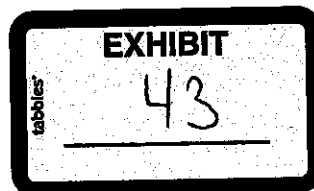
**AFFIDAVIT OF ZACHARY N. GORDON, ESQUIRE**

1. The description of my legal education and experience in Right-to-Know-Law matters as testified to on February 20, 2020 (Tr. p. 8-12) is accurate. Since the February 20, 2020 hearing, I was the primary author for amicus briefs addressing Right-to-Know-Law issues before the Pennsylvania Supreme Court.

2. The services provided as detailed on Exhibits 39 and 40 accurately represent the time and expenses incurred by my firm from February of 2020 through May of 2020 and my best estimate of time and expenses for June of 2020.

3. These services were necessary for this case, as the Borough's production of the documents on February 20, 2020 revealed its prior affidavits were not accurate. In my experience and judgment, a Motion for Sanctions and Other Relief was the most prudent way to raise the issues resulting from the Borough's production.

4. The services in these months were also necessary as the Borough's actions in other appeals before the Office of Open Records ("OOR") revealed issues relevant to these cases. Any services I performed for other OOR appeals not related to these cases has always been billed



separately and is not included on the bills or estimated provided to this Court. The exception is one time entry for November 12, 2019, which is deducted in the summary.

5. Finally, the Borough's Brief was extensive, and this Court acknowledged on February 20, 2020 (Tr. p. 17) "there is a large quantity of documents here to go through," so a detailed responsive brief properly informing this Court was necessary. Further, additional evidence and affidavits were authorized by this Court's March 12, 2020 Order and additional work was needed to provide all relevant information to this Court to advance the Plaintiffs' position consistent with that Order.

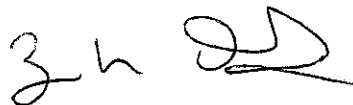
6. The time spent on these services was reasonable. The Borough submitted over 100 pages for its response, requiring additional legal research, detailed review of previous documents and exhibits, and preparation of a complete brief.

7. Further, the time incurred for the Motion for Sanctions showed requesters were acted reasonably by trying to resolve procedural issues amicably.

8. In addition to the above regarding counsel fees, Exhibit 41 is a true and correct copy of emails I sent to Attorney Andreassi. As of the date of this affidavit, I never received a response from Attorney Andreassi to those messages.

I state that the above is true and correct to the best of my knowledge, information and belief and this averment is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: June 22, 2020

A handwritten signature in black ink, appearing to read "Z N Gordon", written over a horizontal line.

Zachary N. Gordon

IN THE COURT OF COMMON PLEAS OF ARMSTRONG COUNTY

JANET AND SCOTT BRUNERMER,	:	
	:	
Plaintiffs/Petitioners,	:	
	:	
v.	:	No. 2019-1343-CIVIL
	:	No. 2019-1402-CIVIL
APOLLO BOROUGH,	:	No. 2019-1518-CIVIL
	:	No. 2019-1790-CIVIL
Defendant/Respondent.	:	

**ORDER OF COURT**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2020, after considering the evidence and argument submitted on January 15, 2020, and February 20, 2020, and considering the parties' Trial Briefs and other materials included therein in the above-captioned matters, it is hereby, ORDERED, ADJUDGED, and DECREED as follows:

1. The Borough was previously ordered to provide records as required by the Office of Open Records' Final Determination with docket number AP-2019-1021 and all other Office of Open Records dockets consolidated therewith. The Court finds that the Borough has failed to comply with that Final Determination and this Court's prior orders. The Borough must provide addition records and take further actions as follows:

- a. The Borough shall provide to Plaintiffs the complete unredacted file from Bureau Veritas regarding 719 N. Warren Ave., Apollo, PA 15613 described in Exhibit 33<sup>1</sup> (1/27/2020 letter from Mr. Kanish to Requesters' counsel) or provide a verified affidavit stating that the entirety of the unredacted file referenced in Exhibit 33 was previously produced;
- b. The Borough via verified affidavit shall describe that it has produced all records in its possession regarding 723 N. Warren Ave., Apollo, PA 15613 or provide any additional responsive records;

---

<sup>1</sup> All Exhibits reference the Plaintiffs' Exhibits introduced at the two hearings on January 15, 2020 and February 20, 2020.

- c. The Borough shall provide the August 2017 notification referenced during the prior summary appeal testimony (Exhibit 20, p. 14: 7-11) or provide a verified affidavit describing the search for this record;
- d. The Borough shall provide the 3 records referenced in Paragraph 2 of this Court's March 12, 2020 Order; and
- e. The Borough shall provide additional affidavits consistent with Paragraph 5 of this Court's March 12, 2020 Order. In particular, the Borough shall explain which email accounts Ms. Shupe personally searched and which other email accounts described in her May 8, 2020 affidavit were searched by other employees or contractors of the Borough and when those searches occurred. To the extent the Borough discovers additional responsive records it shall provide them.

2. This Court finds that the Office of Open Records Final Determination in AP-2019-1021 involved two separate RTKL requests that Plaintiffs had to litigate. This Court finds that the Borough by failing to respond to the Requests, by failing to participate in the appeals before the Office of Open Records, by failing to appeal or comply with the Final Determinations of the Office of Open Records, by failing to provide all records or definitively certifying that no further records exists, denied and unduly delayed access to public records responsive to both Requests in bad faith. As a result of the above findings:

- a. The Borough is directed to pay Plaintiffs **\$3,000** representing the \$1,500 civil penalty authorized by 65 P.S. § 67.1305(a) for both requests.
- b. This Court further finds that the records owed in Paragraph 1(a), (d), and (e) were due by January 29, 2020 pursuant to a January 15, 2020 Order, but had not yet been provided, despite the Borough's February 5, 2020 affidavit (Exhibit 29) incorrectly affirming that all responsive records had been provided. 124 days have elapsed since the Borough failed to provide these records between January 29, 2020 and June 1, 2020. The Borough is therefore subject to the civil penalty of 65 P.S. § 67.1305(b) and shall pay Plaintiffs a civil penalty of \$500 per day for 124 days for a total civil penalty of **\$62,000**.

The Borough will continue to be subject to the penalty provision of 65 P.S. § 67.1305(b) from June 2, 2020 until it provides the records described in Paragraph 1(a), (d), and (e) of this Order.

- c. To the extent the Borough in searching its files to provide an affidavit verifying nothing else exists determines responsive records do exist, then the Borough shall provide those records promptly and the disclosure of those records may also be subject to the civil penalty of 65 P.S. § 67.1305(b) for non-compliance with this Court's January 15, 2020 Orders.

3. The Borough was previously ordered to provide the records as required by the Office of Open Records' Final Determination docket number AP-2019-1103 and all other Office of Open Records dockets consolidated therewith. After hearing the evidence, the Borough has still not complied with its obligation to provide or prove it has no other records for:

The registry of vacant properties as of June 26, 2019 required by Ordinance No. 272-16, Articles 4-5, including for all properties the date of vacancy and any other information deemed necessary by the Borough Manager with names and telephone numbers redacted.

The Borough's January 29, 2020 letter (Exhibit 28) providing records alleged the Borough would verify the current vacant property list previously provided with Exhibit 2 was complete in the form originally provided, but the Borough's February 5, 2020 affidavit (Exhibit 29) failed to include any such verification. The Borough's Zoning Officer, Brenda Troup also testified (Exhibit 26, p. 26) that there may be other information on this current vacancy list, which was not included in the document provided to the Plaintiffs. The Borough shall provide either the entire vacancy registration list as previously ordered or provide a verified affidavit that the version produced previously is the only such responsive record.

4. This Court finds that the Office of Open Records Final Determination in AP-2019-1103 and all other Office of Open Records dockets consolidated thereto involved two separate RTKL requests. This Court finds that the Borough by failing to respond to the Requests, failing to



participate in the appeals before the Office of Open Records, by failing to appeal or comply with the Final Determinations of the Office of Open Records, and by failing to verify the completeness of its responses initially denied and unduly delayed access to public records responsive to both Requests in bad faith. The Borough is directed to pay Plaintiffs \$3,000 representing the \$1,500 civil penalty authorized by 65 P.S. § 67.1305(a) for both requests. In addition, this Court finds that the Borough's prior testimony in a summary appeal hearing against Plaintiff, Janet Brunermer, (Exhibit 20) affirmatively alleging that the Borough had cited the prior owners' of Plaintiffs property for vacancy when that was not true combined with the extensive delay it took the Borough to give a verified explanation that its prior testimony at that hearing was not true further justifies the finding of bad faith.

5. The Borough was previously ordered to provide the records as required by the Office of Open Records' Final Determination docket numbers AP-2019-1116 and all other Office of Open Records dockets consolidated therewith. The Court finds that the Borough affidavits and Record production still failed to adequately describe how the Borough searched for "A copy of the change of use, of the Kerr Manufacturing building going from a Tattoo Parlor, to light manufacturing" and so the Borough shall provide a supplemental affidavit describing in detail the search for this specific record stating no records exist or if any records are found, the Borough shall provide them.

6. This Court finds that the Office of Open Records Final Determination in Paragraph 5 regarding AP-2019-1116 arises from one RTKL request. This Court finds that the Borough by failing to respond to the Request, by failing to participate in the appeals before the Office of Open Records, by failing to appeal or comply with the Final Determination of the Office of Open Records, and by failing to provide complete affidavits certifying no further records exists has

denied access to this Request in bad faith. The Borough is directed to pay Plaintiffs a \$1,500 civil penalty authorized by 65 P.S. § 67.1305(a). This finding of bad faith is further supported by the fact that the Borough had acknowledged by August 22, 2019 letter (Exhibit 2) that it had the zoning map, but still failed to provide that document to the Plaintiffs until January 29, 2020 when ordered to do so by this Court (Exhibit 28). In addition, this request also included requests for records related to the prior owner of Plaintiffs' property and the findings in Paragraph 4 are equally applicable here and support a finding of bad faith for this request.

7. The Borough was previously ordered to provide the records as required by the Office of Open Records' Final Determination docket number AP-2019-1242 and all other Office of Open Records dockets consolidated therewith. For clarity, this Court describes what the Borough was previously required to provide followed by this Court's findings and further directives for each item in bold:

- a. Under Ordinance 272-16, Article 10: Inspections (c) The list of minimum requirements for the inspection; **The Borough has failed to provide this list or verify that no such list exists. The Borough shall provide the list or a verification that no such list exists.**
- b. The list of code officials that the Borough uses to perform inspections. **The Borough has failed to provide this list or verify that no such list exists. The Borough shall provide the list or a verification that no such list exists.**
- c. A list of the qualifications required to become a code official for Apollo Borough. **The Borough provided verification that no list exists on February 5, 2020. No further action is required.**
- d. The following ordinances identified in the Borough's August 22, 2019 letter (Exhibit 2):
  - (i) Uniform Construction Code; **The Borough has not yet provided access to this (Exhibit 30). The Borough shall provide this to the Requesters.**

- (ii) Ordinance No. [A]-190-79 (Grass/Weeds). **The Borough provided this on January 29, 2019. No further action is required.**
- (iii) Ordinance No. 273-16 (Dangerous Structures); and **The Borough provided this on January 29, 2019. No further action is required.**
- (iv) Ordinance No. [A]-2[0]6-81 (Nuisances). **The Borough provided this on January 29, 2019. No further action is required.**
- e. Financial records showing the Borough's cost to enforce the vacancy ordinance; **The Borough did not provide any records showing the cost to enforce the vacancy. On page 47 to 48 of Exhibit 25, the Borough's Open Records Officer admitted in her deposition that some of these costs would exist in Borough records. The Borough shall provide all records showing the costs to enforce the vacancy ordinance.**
- f. Aside from Ordinance 272-16, any other ordinances of borough code related to change of use zoning; **The Borough provided this by affidavit on February 5, 2020. No further action is required.**
- g. Record showing the first time Apollo Borough contracted with Bureau Veritas employee [Mr.] McMillen. **The Borough provided no records and said they have no contracts with this employee. (Exhibit 29). The Borough shall provide the records showing the date they first used Mr. McMillen to do inspections or verify no records exist, including verifying that the Borough inquired with its third-party contractors for responsive records.**
- h. Ordinance No. 264-14 and any other ordinances or paperwork necessary to rent or let to another business. **The Borough provided this on January 29, 2020. No further action is required.**
- i. All of the Borough's Change of Use requirements. **The Borough did not provide records in response to this Court's Order and this was not addressed by the Borough's February 5, 2020 affidavit (Exhibit 29). The Request may be satisfied by the Borough's compliance with Paragraph 7(d)(i).**
- j. Rich McMillan's qualifications to be a zoning officer, such as a resume or CV. **The Borough stated it did not possess this document in its February 5,**

**2020 affidavit (Exhibit 29), but the Borough never attested to whether it requested this information from its contractor. The Borough shall provide this record or verify no records exist, including verifying that the Borough inquired with its third-party contractors for responsive records.**

8. Items (a)-(j) of Paragraph 7 arise from three RTKL requests. This Court finds that the Borough by failing to respond to the Requests, by failing to participate in the appeals before the Office of Open Records, by failing to appeal or comply with the Final Determination of the Office of Open Records, and by failing to provide all records or attestations that no records exists as required by this Court's Order all show that the Borough has denied access to those Requests in bad faith. The Borough is directed to pay Plaintiffs \$4,500 representing the \$1,500 civil penalty authorized by 65 P.S. § 67.1305(a) for each of the three requests. This finding of bad faith is also warranted as many of the records the Borough was required to provide were ordinances that the Borough identified as being responsive and in its possession on August 22, 2019 (Exhibit 2), but the borough failed to provide those ordinances until ordered to do so by this Court. Plaintiffs tried to cooperate to avoid litigation on this issue by again asking the Borough to provide those ordinances on November 14, 2019 (Exhibit 4), but the Borough did not provide those records until January 29, 2020 after Plaintiffs had to obtain relief from this Court.

Sub-part (d)(i) of Paragraph 7 is from a distinct RTKL request and the Borough has not provided records despite this Court's January 15, 2020 Order requiring the Borough to do so. This Court's analysis of 65 P.S. § 67.1305(b) in Paragraph 2(b) is applicable to this distinct request and this Court finds that the Borough shall pay Plaintiffs a civil penalty of \$500 per day for 124 days for a total civil penalty of **\$62,000**. The Borough will continue to be subject to the penalty provision of 65 P.S. § 67.1305(b) from June 2, 2020 until it provides the records described in sub-part (d)(i) of Paragraph 7.

In addition, sub-part (e) of Paragraph 7 is from another distinct RTKL request and the Borough has not provided records despite this Court's January 15, 2020 Order requiring the Borough to do so. This Court's analysis of 65 P.S. § 67.1305(b) in Paragraph 2(b) is applicable to this distinct request and this Court finds that the Borough shall pay Plaintiffs a civil penalty of \$500 per day for 124 days for a total civil penalty of **\$62,000**. The Borough will continue to be subject to the penalty provision of 65 P.S. § 67.1305(b) from June 2, 2020 until it provides the records described in sub-part (e) of Paragraph 7.

In addition, sub-parts (g), (i), and (j) of Paragraph 7 are all from another distinct RTKL request and the Borough has not provided records despite this Court's January 15, 2020 Order requiring the Borough to do so. This Court's analysis of 65 P.S. § 67.1305(b) in Paragraph 2(b) is applicable to this distinct request and this Court finds that the Borough shall pay Plaintiffs a civil penalty of \$500 per day for 124 days for a total civil penalty of **\$62,000**. The Borough will continue to be subject to the penalty provision of 65 P.S. § 67.1305(b) from June 2, 2020 until it provides the records described in sub-part (g), (i), and (j) of Paragraph 7.

9. This Court previously ordered the Borough to comply with the Final Determination by the Office of Open Records at AP 2019-1552, by providing a copy of "the Municipal Inspection issued with the "Temporary Certificate of Use and Occupancy" certificate issue to the Requesters on April 5, 2017 for 719 N. Warren Ave., Apollo, PA 15613." The Borough failed to provide this record or a verified affidavit that this record does not exist. The Borough shall provide this record or a verified affidavit describing the Borough's search for this record and averring that the Borough does not have any such record.

10. This Court previously ordered the Borough to comply with the Final Determination by the Office of Open Records at AP 2019-1551, by requiring the Borough to provide the following

records related to 719 N. Warren Ave, Apollo, PA 15613. For clarity, this Court describes what the Borough was previously required to provide followed by this Court's finding and further directive for that item in bold:

- a. A copy of the request by the members of Shiloh Baptist Church, located at 719 N. Warren Avenue, Apollo, PA 15613 to request a waiver from vacancy from 2017; **The Borough provided an affidavit on February 5, 2020 stating that no records exist. Nothing further is needed.**
- b. A copy of the letter from Apollo Borough to the members of Shiloh Baptist Church, located at 719 N. Warren Ave, Apollo, PA 15613 that they are scheduled for a vacancy inspection to be held in October 2017; **The Borough provided an affidavit on February 5, 2020 stating that no records exist. Nothing further is needed.**
- c. A copy of the application, sent by the members of Shiloh Baptist Church located at 719 N. Warren Avenue, Apollo, PA 15613, registering the building as a vacant building; **The Borough provided an affidavit on February 5, 2020 stating that no records exist. Nothing further is needed.**
- d. A copy of the Apollo Borough Meeting minutes and or letter to the Pennsylvania Department of Labor and Industry that the Borough has chosen to "Opt-In" from the Department of Labor and Industry; **The Borough had previously provided some documents in response to this request (Exhibit 3 to Exhibit 19 and Exhibit 28), but the Borough has still failed to certify that nothing else responsive to this request exists. The Borough shall provide any other responsive records or verify that no other responsive records exist.**
- e. A copy of the documents sent from the Pennsylvania Department of Labor and Industry to Apollo Borough regarding the occupancy records of the property located at 719 N. Warren Avenue, Apollo, PA 15613. **The Borough provided an affidavit on February 5, 2020 stating that no records exist. Nothing further is needed.**

11. Paragraphs 9 and 10 arise from enforcement of two final determinations regarding two separate RTKL requests. This Court finds that the Borough by failing to respond to the

Requests, by failing to participate in the appeals before the Office of Open Records, by failing to appeal or comply with the Final Determinations of the Office of Open Records, and by not verifying that its response was complete despite this Court's Order to do so, has denied access to both Requests in bad faith. The Borough is directed to pay Plaintiffs \$3,000 representing the \$1,500 civil penalty authorized by 65 P.S. § 67.1305 (a) for both requests. The comments in Paragraph 4 regarding the prior owner of the Plaintiffs' property also applies to some these requests and further supports this Court's finding of bad faith.

12. All outstanding records described in this Order as still outstanding shall be provided promptly by the Borough. The Borough may be subject to additional sanctions of \$500 per day for each individual Right-to-Know-Law Request pursuant to 65 P.S. § 67.1305(b) for the Borough's non-compliance with this Court's January 15, 2020 Orders, March 12, Order, and this Order.

13. To the extent the Borough still maintains that it does not have the records required to be provided as described in this Order, then within seven (7) days of the date of this Order, the Borough shall provide verified affidavit(s) describing the Borough's efforts to locate the records. The verified affidavit shall state that no records were found as a result of that search. If the Borough's contractor(s) may have responsive records, the Borough's affidavit(s) shall describe that the Borough specifically contacted those contractor(s) to attempt to locate responsive records. If the Borough fails to conduct a good faith effort to search its records as required by 65 P.S. § 67.901, then the Borough may be subject to further sanctions for violations of the RTKL and this Order.

14. This Court finds the above-described RTKL requests were “deemed denied” by Apollo Borough and that the Borough acted in bad faith under the provisions of the RTKL. As such, an award of counsel fees is justified pursuant to 65 P.S. § 67.1304(a)(1).

15. This Court finds that the Plaintiffs’ incurred reasonable counsel fees and costs of \$41,639.53 in these enforcement actions, which the Borough shall pay to the Plaintiffs’ within seven (7) days of the date of this Order.

16. In summary, the total sanctions and counsel fees awarded and due within seven (7) days includes:

- a. \$3,000 in Section 1305(a) penalties from Paragraph 2(a);
- b. \$62,000 in Section 1305(b) penalties from Paragraph 2(b);
- c. \$3,000 in Section 1305(a) penalties from Paragraph 4;
- d. \$1,500 in Section 1305(a) penalties from Paragraph 6;
- e. \$4,500 in Section 1305(a) penalties from Paragraph 8;
- f. \$186,000 in Section 1305(b) penalties from Paragraph 8;
- g. \$3,000 in Section 1305(a) penalties from Paragraph 11; and
- h. \$41,639.53 in counsel fees and expenses from Paragraph 15.

**Thus, the total due is \$304,639.53.**

17. A compliance review hearing is scheduled for the \_\_\_\_ day of \_\_\_\_\_, 2020 at \_\_\_\_\_ a.m. / p.m. to review the Borough’s compliance with the disclosures and other terms of this Order. Further counsel fees under 65 P.S. § 67.1304(a)(1) and (c) and sanctions under 65 P.S. § 67.1305 (a) and (b) may be awarded if the Borough fails to comply with this Order.

18. The Prothonotary shall enter a copy of this Order on each of the above-captioned dockets.

BY THE COURT:

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