

CORNERSTONE LAW FIRM, LLC

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Counsel for Petitioners

<p>IN RE: HISTORIC KEMP FAMILY BURIAL GROUND</p> <p>Brenda Winkler, Juli Winkler, Meredith Brunt Goldey, and Linda Landis-Heffernan,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>Duke Realty Limited Partnership, Charles D. Wessner, and Carol J. Wessner,</p> <p style="text-align: center;">Respondents.</p>	<p>COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA ORPHANS' COURT DIVISION</p> <p>Docket No.: 2020-X-87273</p> <p>Assigned to: Timothy J. Rowley</p>
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NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lawyers' Referral Service of the
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544 Court Street Reading, Pennsylvania 19601
Telephone (610) 375-4591
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NOTIFICACIÓN PARA DEFENDERSE

Le han demandado a usted en el tribunal. Si usted quiere defenderse de las demandas expuestas en las páginas siguientes, usted debe tomar acción en el plazo de veinte (20) días a partir de la fecha en que se le hizo entrega de la demanda y la notificación, al interponer una comparecencia escrita, en persona o por un abogado y registrando por escrito en el tribunal sus defensas o sus objeciones a las demandas en contra de su persona. Se le advierte que si usted no lo hace, el caso puede proceder sin usted y podría dictarse un fallo por el juez en contra suya sin notificación adicional y podría ser por cualquier dinero reclamado en la demanda o por cualquier otro reclamo o desagravio en la demanda solicitado por el demandante. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

USTED DEBE LLEVARLE ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O NO PUEDE CORRER CON LOS GASTOS DE UNO, VAYA O LLAME POR TELEFONO A LA OFICINA EXPUESTA ABAJO. ESTA OFICINA PUEDE POVEERLE INFORMACION RESPECTO A COMO CONTRATAR A UN ABOGADO.

SI NO PUEDE CORRER CON LOS GASTOS PARA CONTRATAR A UN ABOGADO, ESTA OFICINA PUDIERA PROVEERLE INFORMACION RESPECTO A INSTITUCIONES QUE PUEDAN OFRECER SERVICIOS LEGALES A PERSONAS QUE CALIFICAN PARA LA REDUCCION DE HONORARIOS O QUE NO TENGAN QUE PAGAR HONORARIOS.

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4. Petitioner, Linda Landis-Heffernan, is an adult and resident of the State of Maryland, having a mailing address of --

5. Respondent, Duke Realty Limited Partnership, is an Indiana limited partnership that, on information and belief, has appeared before the Court in this matter through its counsel, Saul Ewing Arnstein & Lehr, LLP, 1500 Market Street, Center Square West, 38th Floor, Philadelphia, PA 19002.

6. Respondents, Charles D. Wessner and Carol J. Wessner, are husband and wife and adult residents of Maxatawny Township (Berks County), Pennsylvania. On information and belief, the Wessners have a mailing address of --.

GROUND FOR RELIEF

I. Facts and Procedural Background.

7. Charles D. Wessner and Carol J. Wessner (collectively, “the Wessners”) own 4 Hilltop Road, Maxatawny Township, Pennsylvania (the “Subject Property”).

8. Situated on the Subject Property is the Historic Kemp Family Burial Ground,¹ which contains the remains of many historical persons who were among the first settlers of Maxatawny Township, some of whom have headstones and others do not.

9. Without any notice to the Petitioners or any notice by publication in a newspaper of general circulation, on July 22, 2020 the Court entered a Final Decree (“the Final Decree”), authorizing Duke Realty Limited Partnership (“Duke Realty”) to “remove the headstones and disinter the remains presently buried at the Kemp Family Cemetery, and to subsequently relocate any remaining intact headstones and to reinter the remains in a nearby cemetery in Berks County,” if Duke Realty obtains title to the Subject Property.

¹ Referred to as the Kemp Family Cemetery by Duke Realty.

10. Petitioners lacked notice of and were not served with the Duke Realty Reinterment Petition.

11. As shown by the attached letter to Judge Rowley by the Kutztown Area Historical Society, within the Historic Kemp Family Burial Ground are the remains of Theobault (“Dewalt”) Kemp, who arrived in America by 1720 “and is said to be the original pioneer settler of Maxatawny Township.” [Ex. A]. Additionally:

During the Revolutionary War, his son, George Kemp, was appointed captain and was present at the Battle of Germantown. George inherited and ran Levan’s Tavern, which was a way station for several signers of the Declaration of Independence, including John Adams. Hannah, the only known slave in this section of Berks County, is also buried in the Historic Kemp Family Burial Ground, as specified in the will of Captain George Kemp.

[Ex. A]. As such, “The Kutztown Area Historical Society enthusiastically supports the preservation of the Historic Kemp Family Burial Ground . . .” [Id.].

12. Those deceased persons having headstones in the Historic Kemp Family Burial Ground, and their approximate vital records, are shown in Exhibit B, Table 1.

13. Additional persons reputedly buried in the Historic Kemp Family Burial Ground, but without sufficiently preserved headstones, would include spouses or children of the persons identified in Exhibit B, Table 1, as well as the following: Theobault (“Dewalt”) Kemp (1685—1760); Elizabeth Mayer (Drescher) Kemp (1685—?); Hannah (?—?); Jacob Kemp (1665—1735); Anna Kemp (1670—?); Johannes Kemp (1771—1854); William Kemp (1784—1834); Susannah Catherine (Griesemer) Kemp (1778—1856); Dorothea Kemp (1745—?); and Vorrest Vernon Steelman (1913—?).

14. Petitioners are individually aggrieved by the Final Decree and are the next friends of all deceased persons in the Historic Kemp Family Burial Ground.

15. As shown in Exhibit B, the Historic Kemp Family Burial Ground contains the remains of Petitioners’ ancestors and, by blood and affinity, collateral relatives:

Table 2 (ancestors and collaterals of Petitioner Brenda Winkler)

Table 3 (ancestors and collaterals of Petitioner Juli Winkler)

Table 4 (ancestors and collaterals of Meredith Brunt Goldey)

Table 5 (ancestors and collaterals of Linda Landis-Heffernan)

The foregoing tables are non-exhaustive.

16. Petitioners have regularly maintained records of their genealogy and are competent witnesses to testify to their genealogy under Rules 803(13) and 803(19) of the *Pennsylvania Rules of Evidence*. Petitioners' genealogy is also supported by ancient documents, including last wills and testaments of some of the deceased.

17. Petitioners believe and aver that there are now at least 200 living descendants of persons buried in the Historic Kemp Family Burial Ground.

18. Petitioner Brenda Winkler resides less than one mile from the Subject Property.

19. Where women in the 18th and 19th centuries had higher mortality rates than today as a result of pregnancy and childbirth, it is believed and averred that males buried in the Historic Kemp Family Century may be buried with additional spouses that are not accounted for by records.

20. State and local governments in Pennsylvania did not regularly maintain birth certificates, marriage certificates, and death certificates during the 17th, 18th, and 19th centuries.

21. As stated by the Kutztown Area Historical Society, the Historic Kemp Family Burial Ground "is one of the largest" historic family burial grounds in Maxatawny Township. [Ex. A].

22. Based on the foregoing, the total number of persons buried in the Historic Kemp Family Burial Ground remains unknown at this time.

23. The Court entered the Final Decree on the request of the June 16, 2020 Petition by Duke Realty (the "Duke Realty Reinterment Petition"), which contained the following material

representations: (1) Duke Realty entered into a confidential sale agreement with Charles D. Wessner and Carol J. Wessner for the purchase of the Subject Property; (2) Duke Realty hired CHRS Historic Preservation Services, Inc. (“CHRS”) to conduct a cultural resources assessment of the property, exhibiting a report by CHRS to the Petition; (3) CHRS evaluated the persons buried at the Kemp Family Cemetery; (4) Duke Realty cannot proceed with the purchase of the Subject Property unless it can relocate and reinter the Kemp Family Cemetery; (5) Duke Realty and CHRS did not locate “any known living relatives of the decedents buried at the Kemp Family Cemetery”; (6) “no public notice is necessary in connection with the request made herein”; (7) the Kemp Family Cemetery “is currently in a state of disrepair and has no public means of access”; (8) “No individuals or entities currently provide for the maintenance or care of the Kemp Family Cemetery”; (9) since 1962 the Wessners “have never seen anyone visit, tend to, care for or maintain the Kemp Family Cemetery”; and (10) if the Duke Realty’s reinterment request is approved by the Court, then Duke Realty will “retain a capable third party to respectfully exhume the remains using archeological methods so as to cause minimal disruption to and best preserve the burial and headstones,” and reinter the same “in a to-be-determined nearby cemetery located in Berks County at its sole cost.”

24. As shown below, the Duke Realty Reinterment Petition contains material errors of facts, including as follows:

(a) There are living descendants of persons buried at Historic Kemp Family Burial Ground, reasonably known to Respondents upon due diligence.

(b) The Historic Kemp Family Burial Ground was adopted by the Berks County Association for Graveyard Preservation and other community organizations—and such information was withheld from the Court.

(c) Many persons have visited the Historic Kemp Family Burial Ground, or intended to visit the same, but were denied access by the Wessners, their tenant on the Subject Property, or both—and such information was withheld from the Court.

(d) The CHRS Report, exhibited in the Duke Realty Reinterment Petition, is deficient on its face: It contains substantial redactions and otherwise does not describe what efforts were made to locate living descendants from those buried in the Historic Kemp Family Burial Ground. Furthermore, the unredacted portions of the CHRS Report do not identify any research methodology other than to have made a minimal search through a Web site, www.findagrave.com.

(e) Petitioners believe and aver that the redacted portions of the CHRS Report will reveal unfavorable, material facts that were purposefully withheld from the Court or otherwise show that CHRS did not contact any local or community-based organizations within Berks County.

25. The Duke Realty Reinterment Petition does not identify the location of the cemetery where the remains from Historic Kemp Family Burial Ground would be reinterred.

26. The Duke Realty Reinterment Petition does not identify the service-provider that would remove the remains and headstones from the Historic Kemp Family Burial Ground, using archeologically appropriate methods.

27. The Duke Realty Reinterment Petition does not disclose how to avoid misidentification of deceased persons, who are lacking any preserved headstone in the Historic Kemp Family Burial Ground, in the absence of DNA testing.

28. On information and belief, Duke Realty has not obtained a commitment from any suitable cemetery in Maxatawny Township for the reinterment of the Historic Kemp Family Burial Ground.

29. On information and belief, Duke Realty has the ability to commercially develop the Subject

Property while maintaining historical preservation of and reasonable access to the Historic Kemp Family Burial Ground.

30. In approximately mid-September of 2020, Petitioner Brenda Winkler became informed by word-of-mouth from her of the proposed reinterment of the Historic Kemp Family Burial Ground, and informed her daughter, Petitioner Juli Winkler, of such possibility.

31. On October 11, 2020, the *Reading Eagle* published a news article about Duke Realty's proposed reinterment of the Historic Kemp Family Burial Ground, namely, "Volunteers and Descendants Clear Weeds at Threatened Maxatawny Graveyard," by Michelle N. Lynch.

32. From the aforementioned article in the *Reading Eagle*, Petitioner Linda Landis-Heffernan's family members residing in Berks County became informed of the proposed reinterment of the Historic Kemp Family Burial Ground, and as a result contacted her about it.

33. From the October 2020 edition of *Grave Happenings* (Volume 15, Issue 4), the Berks County Association for Graveyard Preservation published an article about the proposed reinterment of the Historic Kemp Family Burial Ground.

34. From the aforementioned publication of *Grave Happenings*, Petitioner Meredith Brunt Goldey became informed of the proposed reinterment of the Historic Kemp Family Burial Grounds.

35. On December 4, 2020, Petitioners and other persons held a teleconference with Duke Realty and informed the latter, inter alia, of Petitioners' ancestry and objections to the reinterment of the Historic Kemp Family Burial Ground and that the Duke Realty Reinterment Petition contained erroneous statements of fact. Despite receiving such notice, Duke Realty has made no effort to submit corrections to the Court based on the erroneous information in the Duke Realty Reinterment Petition.

36. During the same conversation on December 4, 2020, Duke Realty expressed an intent for a follow-up meeting to occur in January as a part of a good faith resolution — which induced Petitioners’ reliance that a good faith resolution could be reached out-of-court — but subsequently Duke Realty has not initiated any further contact.

37. Since December 4, 2020, Duke Realty has not committed itself on how it will proceed with archeologically-appropriate methods for reinterment of the Historic Kemp Family Burial Ground.

38. Subsequent to December 4, 2020, Petitioners diligently sought to obtain counsel and a budget to afford counsel in order to file the instant Petition.

39. The instant Petition is filed by Petitioners within 30 days of obtaining counsel.

40. As early as 1995, the Berks County Association for Graveyard Preservation had adopted the Historic Kemp Family Burial Ground for purposes of repairs and preservation.

41. On May 14, 1997, Kutztown Area High School volunteers prepared the brick wall surrounding the Historic Kemp Family Burial Ground for repairs.

42. The Berks County Association for Graveyard Preservation has regularly performed cleanup for the Historic Kemp Family Burial Ground, inclusive of the years 2008, 2010, 2011, 2014, 2016, 2018, and 2020.

43. The Court may judicially notice the following: On December 21, 2017, Governor Tom Wolf signed into law Act 65, i.e., Act of Dec. 21, 2017, No. 65, P.L. 1205 (“Act 65 of 2017”), which added Chapter 7 (“Reasonable Access to Burial Grounds”) to Title 9 of the Pennsylvania Consolidated Statutes, including a statutory mandate that took effect on February 19, 2018, “The owner of property where a private cemetery or private family cemetery is located shall grant an individual reasonable ingress and egress to a burial plot in the private cemetery or the private family cemetery for the purposing of visiting the burial plot.” 9 Pa.C.S. § 703(c).

44. Prior to Act 65 of 2017, the Wessners, their tenant at the Subject Property, or either of them, had unfettered discretion in refusing visiting to the Historic Kemp Family Burial Ground and, additionally, no statutory mandate existed in the Commonwealth of Pennsylvania in respect of reasonable access to a private cemetery or private family cemetery, such as the Historic Kemp Family Burial Ground.

45. If an evidentiary hearing is held, Petitioners will present evidence that, prior to Act 65 of 2017, persons intended to visit the Historic Kemp Family Burial Ground and had either trespassed for that purpose or were otherwise refused access by the property-owner or tenant, including as follows: attempts during the 1970s and 1980s by descendant Donald Wink; and trespass on the Subject Property in 2009 by Donald Wink to visit the Historic Kemp Family Burial Ground.

46. Petitioners were made aware of the hostility of the owner or tenant of the Subject Property towards allowing visitors to the Historic Kemp Family Burial Ground, but since the adoption of Act 65 of 2017 Petitioners intend to exercise their statutory rights of reasonable access.

II. Legal Bases.

47. The Final Decree, entered without notice by publication and without any means employed of actually informing an aggrieved absentee, violated Due Process under the Fourteenth Amendment of the U.S. Constitution and under Article I, Sections 1, 9, and 11 of the Pennsylvania Constitution.

48. The Final Decree is also contrary to 20 Pa.C.S. § 711(1) and violates due process under the Fourteenth Amendment of the U.S. Constitution and under Article I, Sections 1, 9, and 11 of the Pennsylvania Constitution, by having conferred unfettered discretion on Duke Realty in the methods of reinterment of ancient remains and ancient headstones and in the selection of another cemetery, where judicial supervision over those matters should have been retained.

49. Petitioners suffered material prejudice by the failure of notice by publication and by the aforementioned noncompliance with statutory and due process requirements: The Court entered the Final Decree without Petitioners being heard and where the Court was not properly briefed by Duke Realty on the applicable equity standard where the Court must give “due regard to the interests of the public, the wishes of the decedent and the rights and feelings of those entitled to be heard by reason of relationship or association.” Novelli v. Carroll, 420 A.2d 469, 471 (Pa.Super. 1980) (quotation omitted). Further, the Court was deprived of advocate’s briefs under the Novelli factors governing reinterment petitions, that is, “(1) “the degree of relationship that the party seeking reinterment bears to the decedent”; (2) “the degree of relationship that the party seeking to prevent reinterment bears to the decedent”; (3) rites of any religious organization which “granted the right to inter the body in the first place”; (4) “the desire of the decedent,” including the desire to be buried in a specific location or with the decedent’s family; (5) “the conduct of the person seeking reinterment,” including waiver or unclean hands; (6) “the conduct of the person seeking to prevent reinterment,” including waiver or unclean hands; (7) “the length of time that has elapsed since the original interment,” generally, “the sooner the person seeking reinterment acts after the original interment, the better the chance of obtaining reinterment”; and (8) “the strength of the reasons offered both in favor and in opposition to reinterment.” Id. at 473-74.

50. Respondents have engaged in misconduct, including knowingly withholding material facts from the Court; failing to effect notice by publication or otherwise calculated to inform aggrieved absentees, including Petitioners; Respondents failing to correct material facts in prior submissions to the Court despite becoming informed of the truth; and improperly seeking to bypass judicial supervision over archeologically appropriate methods of reinterment, as well as judicial supervision over the selection of another cemetery, where judicial supervision over such matters

should have been retained.

51. Petitioners' reasons for objecting to the reinterment include: (1) the wishes of the deceased to remain buried with their loved ones and to continue undisturbed in their eternal rest which they have enjoyed for hundreds of years; (2) the benefit to the community of learning about the earliest settlers of Maxatawny Township, including the story of Theobault ("Dewalt") Kemp and Captain George Kemp from the Revolutionary War, as well as historical research on Hannah, the only recorded African American slave in that section of Berks County; (3) substantial danger in irrevocably damaging ancient remains and ancient headstones by a proposed reinterment, including the danger of misidentification in the absence of DNA testing, where some of the deceased persons do not have headstones and are buried with spouses or parents; and (4) where Respondents are prioritizing profits over any respect for the dead and the interests of the community, having the ability to do so but failing to meaningfully develop a site plan that can leave the Historic Kemp Family Burial Ground preserved where it is currently situated.

52. A true and correct proposed Answer to the Duke Reinterment Petition is appended as Exhibit C, if the Court will vacate the Final Decree.

53. Petitioners have acted with reasonable promptness in filing the instant Petition.

54. The failure of Petitioners to previously appear before the Final Decree was entered is excusable due to lack of notice or where never served with the Duke Reinterment Petition.

55. In the instant Petition as well as the proposed answer in Exhibit C, Petitioners have shown meritorious grounds to oppose the Duke Realty Reinterment Petition.

INTERIM RELIEF

56. Pursuant to law, including Pa.R.C.P. 206.5(b), Petitioners request an immediate stay of the Final Decree pending resolution of the instant Petition.

57. Pursuant to law, including 20 Pa.C.S. § 774 and Pa.R.C.P. 206.7, Petitioners request authorization from the Court to conduct discovery as in civil actions pending resolution of the instant Petition.

58. Petitioners request that Duke Realty be compelled to produce an unredacted copy of the CHRS Report.

59. At the close of discovery, Petitioners request an evidentiary hearing on the instant Petition.

FINAL RELIEF

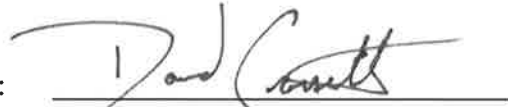
WHEREFORE, based on the foregoing, Petitioners request that the Court enter a rule to show cause in the nature of a stay of its Order filed on July 22, 2020 and to conduct discovery as in civil actions and, at the close of discovery, to hold an evidentiary hearing on this Petition and, afterwards, to enter an order, striking or, alternatively, opening the Order filed on July 22, 2020; and such other relief as the Court deems reasonable, just, or necessary.

Respectfully submitted,

CORNERSTONE LAW FIRM, LLC

Dated: January 25, 2020

By:



David W. Crossett, Esquire
Attorney I.D. #313031
8500 Allentown Pike, Suite 3
Blandon, PA 19510
(610) 926-7875
Counsel for Petitioners

VERIFICATION

I am Meredith Brunt Goldey, a Petitioner in the within instrument. I hereby verify that facts set forth herein are true and correct to the best of my knowledge, information and belief and that this verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 1/25/2021


Meredith Brunt Goldey

VERIFICATION

I am Juli Winkler, a Petitioner in the within instrument. I hereby verify that facts set forth herein are true and correct to the best of my knowledge, information and belief and that this verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 01/26/2021



Juli Winkler

VERIFICATION

I am Brenda Winkler, a Petitioner in the within instrument. I hereby verify that facts set forth herein are true and correct to the best of my knowledge, information and belief and that this verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 1/25/2021

Brenda Winkler
Brenda Winkler

VERIFICATION

I am Linda Landis-Heffernan, a Petitioner in the within instrument. I hereby verify that facts set forth herein are true and correct to the best of my knowledge, information and belief and that this verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 25 Jan. 2021

Linda Landis-Heffernan
Linda Landis-Heffernan

Exhibit A

Exhibit A



The Kutztown Area Historical Society
P.O. Box 307
Normal Avenue and South Whiteoak Street
Kutztown, PA 19530

January 19, 2020

The Honorable Timothy J. Rowley
Berks County Orphans' Court
633 Court Street
Reading, PA 19601

Dear Judge Rowley:

The Kutztown Area Historical Society enthusiastically supports the preservation of the Historic Kemp Family Burial Ground, which is located on land originally patented by the Kemp family in the early 18th century. It is one of the largest of 17 historic family burial grounds in Maxatawny Township with the Kemp family being one of the founding families of the East Penn Valley. The burial ground is the final resting place for key figures in the early years of Maxatawny Township. Their life stories form much of the township's history. Theobault Kemp arrived in America around 1720 and is said to be the original pioneer settler of Maxatawny Township. During the Revolutionary War, his son, George Kemp, was appointed captain and was present at the Battle of Germantown. George inherited and ran Levan's Tavern, which was a way station for several signers of the Declaration of Independence, including John Adams. Hannah, the only known slave in this section of Berks County, is also buried in the Historic Kemp Family Burial Ground, as specified the will of Captain George Kemp.

Part of the Kutztown Area Historical Society's mission is encouraging preservation of historically significant sites, structures, and material culture artifacts throughout its area of influence. Preserving the Historic Kemp Family Burial Ground is, therefore, of significant urgency to the society. The society is recognized by the Pennsylvania Historic and Museum Commission, PennDOT, and other state agencies as the official historic agency of record for Maxatawny Township and the surrounding area.

Sincerely,

A handwritten signature in black ink, appearing to read 'Craig A. Koller'. The signature is fluid and cursive, with the first name being the most prominent.

Craig A. Koller
President, Kutztown Area Historical Society

Exhibit B

Exhibit B

TABLE 1:
ANCESTORS BURIED AT HISTORIC KEMP FAMILY BURIAL GROUND

Chronologically (Oldest to Youngest)	Alphabetically
1. Captain George L. Kemp (1749—1833)	1. Anna Maria (Kemp) Bieber (1782—1824)
2. Susanna (Levan) Kemp (1750—1823)	2. Daniel Kemp (1770—1854)
3. Daniel Kemp (1770—1854)	3. Elizabeth (Sharadin) Kemp (1804—1879)
4. Rachel (Wink) Kemp (1775—1855)	4. Captain George L. Kemp (1749—1833)
5. George L. Kemp, Jr. (1775—1830)	5. George L. Kemp, Jr. (1775—1830)
6. Anna Maria (Kemp) Bieber (1782—1824)	6. George Wink Kemp (1798—1870)
7. George Remar PM (1788—?)	7. George Remar PM (1788—?)
8. George Wink Kemp (1798—1870)	8. Hettyann Elizabeth Kemp (1845—1852)
9. Anna (Kemp) Siegfried (1801—1834)	9. Isaac Kemp (1801—1856)
10. Isaac Kemp (1801—1856)	10. Jeremiah Kemp (1850—1852)
11. Elizabeth (Sharadin) Kemp (1804—1879)	11. Rachel (Wink) Kemp (1775—1855)
12. Willoughby Kemp (1840—1842)	12. Susanna (Levan) Kemp (1750—1823)
13. Hettyann Elizabeth Kemp (1845—1852)	13. Willoughby Kemp (1840—1842)
14. Jeremiah Kemp (1850—1852)	14. Anna (Kemp) Siegfried (1801—1834)

TABLE 2:
ANCESTORS OR COLLATERALS OF PETITIONER BRENDA WINKLER

Relative	Relationship
Theobault (“Dewalt”) Kemp (1685—1760)	Sixth Great-Granduncle
Captain George L. Kemp (1749—1833)	First Cousin, Seven Times-Removed
Daniel Kemp (1770—1854)	Second Cousin, Six Times-Removed
Rachel (Wink) Kemp (1775—1855)	Fourth Great-Grandmother
George L. Kemp, Jr. (1775—1830)	Second Cousin, Six Times-Removed
Anna Maria (Kemp) Bieber (1782—1824)	Second Cousin, Six Times-Removed
George Wink Kemp (1798—1870)	First Cousin, Five Times-Removed
Anna (Kemp) Siegfried (1801—1834)	Third Cousin, Five Times-Removed
Isaac Kemp (1801—1856)	First Cousin, Five Times-Removed
Willoughby Kemp (1840—1842)	Second Cousin, Four Times-Removed
Hettyann Elizabeth Kemp (1845—1852)	Second Cousin, Four Times-Removed
Jeremiah Kemp (1850—1852)	Second Cousin, Four Times-Removed

TABLE 3:
ANCESTORS OR COLLATERALS OF PETITIONER JULI WINKLER

Relative	Relationship
Theobault (“Dewalt”) Kemp (1685—1760)	Seventh Great-Granduncle
Captain George L. Kemp (1749—1833)	First Cousin, Eight Times-Removed
Daniel Kemp (1770—1854)	Second Cousin, Seven Times-Removed
Rachel (Wink) Kemp (1775—1855)	Fifth Great-Grandmother
George L. Kemp, Jr. (1775—1830)	Second Cousin, Seven Times-Removed
Anna Maria (Kemp) Bieber (1782—1824)	Second Cousin, Seven Times-Removed
George Wink Kemp (1798—1870)	First Cousin, Six Times-Removed
Anna (Kemp) Siegfried (1801—1834)	Third Cousin, Six Times-Removed
Isaac Kemp (1801—1856)	First Cousin, Six Times-Removed
Willoughby Kemp (1840—1842)	Second Cousin, Five Times-Removed
Hettyann Elizabeth Kemp (1845—1852)	Second Cousin, Five Times-Removed
Jeremiah Kemp (1850—1852)	Second Cousin, Five Times-Removed

TABLE 4:
ANCESTORS OR COLLATERALS OF PETITIONER MEREDITH BRUNT GOLDEY

Relative	Relationship
Theobault (“Dewalt”) Kemp (1685—1760)	Seventh Great-Grandfather
Captain George L. Kemp (1749—1833)	Sixth Great-Grandfather
Susanna (Levan) Kemp (1750—1823)	Sixth Great-Grandmother
George L. Kemp, Jr. (1775—1830)	Fifth Great-Grandfather
Anna (Kemp) Siegfried (1801—1834)	Fourth Great-Grandmother

TABLE 5:
ANCESTORS OR COLLATERALS OF PETITIONER LINDA LANDIS-HEFFERNAN

Relative	Relationship
Theobault (“Dewalt”) Kemp (1685—1760)	Sixth Great-Grandfather
Elizabeth (Drescher) Kemp (1685—?)	Sixth Great-Grandmother
Captain George L. Kemp (1749—1833)	Fifth Great-Grandfather
Susanna (Levan) Kemp (1750—1823)	Fifth Great-Grandmother
Daniel Kemp (1770—1854)	Fourth Great-Grandfather
Rachel (Wink) Kemp (1775—1855)	Fourth Great-Grandmother
George L. Kemp, Jr. (1775—1830)	Fourth Great-Grandfather

Exhibit C

Exhibit C

CORNERSTONE LAW FIRM, LLC

David W. Crossett, Esquire
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<p>IN RE: HISTORIC KEMP FAMILY BURIAL GROUND</p> <p>Brenda Winkler, Juli Winkler, Meredith Brunt Goldey, and Linda Landis-Heffernan,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>Duke Realty Limited Partnership, Charles D. Wessner, and Carol J. Wessner,</p> <p style="text-align: center;">Respondents.</p>	<p>COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA ORPHANS' COURT DIVISION</p> <p>Docket No.: 2020-X-87273</p> <p>Assigned to: Timothy J. Rowley</p>
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ANSWER TO PETITION TO DISINTER THE REMAINS AT KEMP FAMILY CEMETERY BY BRENDA WINKLER, JULI WINKLER, MEREDITH BRUNT GOLDEY, AND LINDA LANDIS-HEFFERNAN

NOW COMES, respondents and real parties in interest, Brenda Winkler, Juli Winkler, Linda Landis-Heffernan, and Meredith Brunt Goldey, by and through counsel, who hereby submit this Answer and state the following:

1. Admitted.
2. Without sufficient information to admit or deny.
3. Without sufficient information to admit or deny.
4. Admitted in part and denied in part. Exhibit A is denied because it contains redactions, thereby concealing the entirety of the report. The balance is admitted.
5. Admitted.
6. Denied. It is specifically denied that Petitioner cannot proceed with the purchase and

commercial development of the property but for relocation of the Kemp Family Cemetery.

7. No response is needed. Otherwise, denied as a legal conclusion.

8. Admitted in part and denied in part. Denied that 28 Pa. Code § 1.25(d) has any application.

The balance is admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted in part and denied in part. Petitioners are without sufficient information whether May 23, 1879 was the last burial to occur in the Kemp Family Cemetery. The balance is admitted.

13. Denied. It is specifically denied that CHRS conducted a diligent search calculated to identify any living relatives of decedents buried at the Kemp Family Cemetery. It is specifically denied that public notice is unnecessary.

14. Admitted in part and denied in part. It is specifically denied that the Kemp Family Cemetery has no public means of access. The balance is admitted.

15. Denied. It is specifically denied that no individuals or entities currently provide for the maintenance or care of the Kemp Family Cemetery.

16. Denied. It is specifically denied that the Sellers have never seen anyone visit to or care for or maintain the Kemp Family Cemetery. Respondents are without sufficient information to answer the balance.

17. Denied. It is specifically denied that Petitioner will retain a capable third party to exhume the remains using archeological methods that will avoid disruption to the remains and headstones. It is specifically denied that Petitioner has located any cemetery near Berks County. It is further specifically denied that reinterment meets the equity standard and the factors test articulated in

Novelli v. Carroll, 420 A.2d 469 (Pa.Super. 1980) and its progeny.

AFFIRMATIVE DEFENSES

18. Unclean hands and fraud on the court.

CONCLUSION

WHEREFORE, based on the foregoing, Respondents request that the Court permit discovery under 20 Pa.C.S. § 774 and, at the close of discovery, deny the Petition to Disinter the Remains at Kemp Family Cemetery; and such other relief as the Court deems reasonable, just, or necessary.

Respectfully submitted,

CORNERSTONE LAW FIRM, LLC

Dated: January 25, 2021

By: 

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Counsel for Petitioners

<p>IN RE: KEMP FAMILY CEMETERY</p> <p>Brenda Winkler, Juli Winkler, Meredith Brunt Goldey, and Linda Landis-Heffernan,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>Duke Realty Limited Partnership, Charles D. Wessner, and Carol J. Wessner,</p> <p style="text-align: center;">Respondents.</p>	<p>COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA ORPHANS' COURT DIVISION</p> <p style="text-align: center;">Docket No.: 2020-X-87273</p> <p style="text-align: center;">Assigned to: Judge Timothy J. Rowley</p>
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RULE TO SHOW CAUSE

AND NOW, this _____ day of the month of _____, 2021, upon consideration of the Petition to Open or Strike by Petitioners, Brenda Winkler, Juli Winkler, Linda Landis-Heffernan, and Meredith Brunt Goldey, it is ordered that:

- (1) A Rule is issued upon each Respondent to show cause why the Petitioners are not entitled to the relief requested by filing an answer within 20 days of the filing of this Rule.
- (2) The Court's Final Decree filed July 22, 2020 is hereby STAYED pending further order of Court.
- (3) Pursuant to 20 Pa.C.S. § 774, the parties authorized to conduct discovery as in civil actions and Respondent Duke Realty Limited Partnership is directed to immediately produce to Petitioners an unredacted copy of the report exhibited to its Petition dated June 16, 2020, and to make available for deposition the author of such report on due form and notice as in civil actions.
- (4) At the close of 120 days, any party may praecipe for an evidentiary hearing and briefing schedule as to the instant Petition or to request an extension of discovery on good cause shown.

By the Court:

Timothy J. Rowley, J.

<p>IN RE: KEMP FAMILY CEMETERY</p> <p>Brenda Winkler, Juli Winkler, Meredith Brunt Goldey, and Linda Landis-Heffernan,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>Duke Realty Limited Partnership, Charles D. Wessner, and Carol J. Wessner,</p> <p style="text-align: center;">Respondents.</p>	<p>COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA ORPHANS' COURT DIVISION</p> <p style="text-align: center;">Docket No.: 2020-X-87273</p> <p style="text-align: center;">Assigned to: Judge Timothy J. Rowley</p>
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FINAL ORDER

AND NOW, this _____ day of the month of _____, 2021, upon consideration of the Petition to Open or Strike by Petitioners, Brenda Winkler, Juli Winkler, Linda Landis-Heffernan, and Meredith Brunt Goldey, and any response thereto if any, it is hereby ordered and decreed as follows:

- The Final Decree filed July 22, 2020 is hereby STRICKEN and Respondent Duke Realty Limited Partnership is directed to effectuate notice of its July 16, 2020 petition by publication in a newspaper of general circulation to any other descendants of the Kemp Family Cemetery and to serve a copy on counsel for Petitioners.
- The Final Decree filed July 22, 2020 is hereby OPENED and Petitioners are directed to file an Answer within 30 days of the filing of this Order.

By the Court:

Timothy J. Rowley, *J.*