

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

SPRING GARDEN TOWNSHIP,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	NO.:
	:	
DARRAH REALTY, LP, AND	:	
JOE DARRAH, INC., d/b/a	:	
J & K SALVAGE,	:	
Defendants	:	

ORDER SCHEDULING HEARING

AND NOW, this _____ day of _____ 2021, a hearing on the
Application for Special/Preliminary Injunction is hereby scheduled before the Honorable
_____ on _____, beginning at
_____ in Courtroom No. _____, ____ Floor, York County Judicial Center, 45
North George Street, York, PA 17401.

The Prothonotary shall provide copies of this Order to Gregory W. Bair, II, Esquire,
attorney for the Applicant, and Christopher A. Naylor, attorney for Defendant.

BY THE COURT,

J.

Distribution List:

Gregory W. Bair, II, Esq., Stock and Leader, 221 W. Philadelphia St., Suite E600, York, PA 17401
Christopher A. Naylor, Esq., Barley Snyder, 100 East Market Street, York, PA 17401

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

SPRING GARDEN TOWNSHIP,	:	CIVIL ACTION
Plaintiff	:	
	:	NO.:
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DARRAH REALTY, LP, AND	:	
JOE DARRAH, INC., d/b/a	:	
J & K SALVAGE,	:	
Defendants	:	

ORDER GRANTING PRELIMINARY/SPECIAL INJUNCTION

AND NOW, upon consideration of the Application for Preliminary/Special Injunction presented by Plaintiff/Applicant, Spring Garden Township, it is hereby ORDERED:

1. The Defendants shall immediately cease day-to-day operations of the shredder facility located at the J & K property at 1099 King Mills Road, York, Pennsylvania 17403;
2. Prior to resuming operations, the Defendants shall take the following measures necessary to ensure that health, safety and welfare of the citizens of Spring Garden Township:
 - a. Expansion/enhancement of the existing shroud/guard on the shredder's infeed conveyor, the length of which shall be no less than twenty (20) feet and up to forty (40) feet ahead of the infeed conveyor head pulley. The expanded shroud/guard is to be constructed so that the height is at least ten (10) feet high, and shall allow for a full-sized vehicle to become vertical and not be blocked or hindered by the shroud/guard. The top of

the shroud/guard shall be constructed from solid steel and be no less than three-eighths (3/8") of an inch in thickness; the sides may be constructed from solid steel or expanded metal with small openings to allow the operator of the shredder to have vision of the upcoming scrap;

- b. Defendants are to familiarize themselves with the concept of "full-box shredding" and implement the tools necessary to carry out full-box shredding by installing a Programmable Logic Controller ("PLC") capable of managing the entire operation and equipment with little to no interaction from a human operator.
- c. In order to achieve "full-box shredding" the infeed conveyor must be completely full at all times with no gaps between lifts of scrap from the material handlers. If feeding only automobiles, the automobiles shall be touching bumper-to-bumper. If a mix of automobiles and other materials (referred to as "loose tin" or "white goods") are being shredded, the scrap shall be placed on the infeed conveyor with no spaces between lifts and the loose scrap piled as high as the sides of the conveyor.
- d. Defendants shall install a PLC that is cable of being programmed for self-automation in order mitigate the potential for safety hazards to the public and to record when such self-automation occurs. Such self-automation shall be in use at least 80% of the time the shredder is being utilized.

- i. Defendants shall undertake:
 - 1. Proper loading of the infeed conveyor;
 - 2. Proper start-up and shut-down procedures; and
 - 3. Management commitment to utilize system to the fullest extent possible.
 - 4. The employment of at least two (2) material handlers to load material
- e. Initiating the day-to-day start-up of operations by Defendants shall be carried out by ensuring that the feed chute and infeed conveyor are full of scrap prior to the starting of the shredder motor. This will ensure that “full box shredding” is utilized and also prevent any material from escaping the shredder as it energizes up to operating speed.
- f. At the conclusion of the day-to-day operations of the shredder, but before the shredder motor is turned off, Defendants must place an automobile as the final piece of scrap set onto the infeed conveyor and brought to a position inside the feed chute so as to prevent scrap from escaping the shredder box. Only after the shredder motor has come to a complete stop, shall a material handler remove the vehicle from the feed chute.
- g. Defendants must take all steps necessary to inspect supplies to minimize the potential for explosions or combustible events from occurring during the shredding operations.

- h. Defendants shall educate suppliers of scrap of the risk of explosions or combustible events associated with its operations by placing signage in a conspicuous area at the facility warning of such risk if combustible elements have not been previously disposed of by the supplier.
- i. Defendants must implement an inspection and reaction policy to suppliers with the goal that no explosions shall occur in any given month.
- j. Should there be a breakdown of any of equipment relating to shredding operations, Defendants must document the duration of the downtime and the date of return to service. Defendants must also manually record each instance of an explosion and the date/time of the instance, even if it is a minor occurrence.
- k. Defendants must install a passive sound monitoring device on the property as the shredder is located to monitor sound during normal shredder operations. The device must collect the decibel data when the shredder is operating, and stores said data for a period of not less than sixty (60) days. The passive sound monitoring device should be calibrated in accordance with the American National Standards Institute or International Electrotechnical Commission guidelines and is a type 2/class 2 sound level metering device with data recording technology.
 - i. Should there be a breakdown of this equipment, Defendants must document the duration of the downtime and the date of return to service.

3. Upon hearing and satisfactory presentation of evidence to the Court by Defendants that the above measures have been taken and/or implemented, Defendants may resume business operations during the pendency of the litigation and dissolve this Preliminary Injunction.
4. Defendants shall reimburse the Township for all costs and expenses related to efforts taken to date by the Township to compel Defendants to safely operate its business so as to not constitute a nuisance upon certification by the solicitor for the Township that the costs incurred are reasonable and appropriate for the area.

J.

Distribution Legend:

Gregory W. Bair, II, Esq., Stock and Leader, 221 W. Philadelphia St., Suite E600, York, PA 17401
Christopher A. Naylor, Esq., Barley Snyder, 100 East Market Street, York, PA 17401

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CIVIL DIVISION

SPRING GARDEN TOWNSHIP,	:	CIVIL ACTION
Plaintiff	:	
	:	NO.:
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DARRAH REALTY, LP, AND	:	
JOE DARRAH, INC., d/b/a	:	
J & K SALVAGE,	:	
Defendants	:	

**APPLICATION OF PLAINTIFF FOR PRELIMINARY/SPECIAL INJUNCTIVE
RELIEF PURSUANT TO Pa.R.C.P. 1531 AND Y.C.CIV. 1531.1**

AND NOW, comes the Plaintiff, Spring Garden Township, by and through its undersigned attorneys, Stock and Leader, LLP, and Gregory W. Bair, II, Esq., and file its Application for Preliminary/Special Injunctive Relief pursuant to the Pennsylvania Rules of Civil Procedure Rule 1531 and York County Local Rules of Civil Procedure 1531.1, of which the following is a statement:

1. Concurrently with this Application, Plaintiff filed a Verified Complaint with the York County Court of Common Pleas seeking to enforce its Zoning Ordinance against Defendants for failing to take adequate corrective measures to abate a continuing and pervasive nuisance that affects the health, safety and welfare of the residents of Spring Garden Township existing at

Defendants' place of business, located at 1099 King Mills Road, York, Spring Garden Township, Pennsylvania 17403.

2. This Application for Preliminary/Special Injunctive Relief is being sought with notice to the Defendants, and Plaintiff is requesting a hearing on the merits. *See* YCCiv. 1531.1(b)(2).

3. The facts, as pled in Plaintiff's Complaint, are incorporated herein by reference as though fully set forth below.

4. To summarize the facts averred in the Complaint, Darrah Reality, LP, and Joe Darrah, Inc., d/b/a J & K Salvage (hereinafter "Defendants" or "J & K") operate a salvage business located at 1099 King Mills Road, York, Pennsylvania 17403. The J & K property consists of approximately 5.7 acres in a district zoned for industrial use.

5. J & K salvages and destroys automobiles, scrap metal, and other materials by use of an industrial shredder (the "shredder").

6. On numerous occasions metal scrap has been ejected from the shredder on the J & K property, which has caused damage to residential property in proximity to the shredder.

7. On numerous occasions metal scrap has been ejected from the shredder on the J & K property, which have landed on or along the York County Rail Trail that runs along the property line of the J & K property along Indian Rock Dam Road.

8. Due to the nature of the shredding operations, metal on metal contact occurs, which, when combined with combustible fluids, fumes and vapors from automobiles and other scrapped materials, can cause fires and explosions.

9. On numerous occasions explosions have resulted from the shredding operations at J & K, which have damaged residential property in proximity to the shredder.

10. On numerous occasions, fires have developed at the J & K property in which fumes, soot, and ash are emitted into the air and envelops the area around the J & K property.

11. The Township has promulgated an ordinance which addresses and regulates “nuisances” within the Township.

12. The Township’s nuisance ordinance permits the Township to file an equitable action in a court of competent jurisdiction to compel the owner of any premises within Spring Garden Township to comply with the terms of any notice of violations.

13. Errant debris and/or projectiles leaving a property, and/or explosions and/or irritant sounds from explosions are considered by the Township to be a nuisance within the meaning of Township’s nuisance ordinance.

14. The Township has an obligation to help ensure the health, safety, and welfare of its citizens through enforcement of its ordinances for violations that pose risks of harm to the Township’s citizens.

15. Despite repeated enforcement actions and efforts to assist Defendants with taking corrective measures relating to the unsafe operations of the shredding operations, Defendants continue to conduct their business such that explosions occur, and errant shrapnel leaves the boundaries of the J & K property in violations of the Township’s nuisance ordinance.

16. Defendant is endangering their own safety, the safety of their employees, and the safety of the citizens of the Township and any third party passing by the J & K property by refusing to comply and take all necessary corrective measures to once and for all prevent and stop explosions from occurring and errant metal shrapnel from leaving the shredder facility.

17. The Township seeks a temporary closure of Defendants’ day-to-day shredding operations until Defendants to take all steps necessary to abate the continuing nuisance and to take

all corrective actions that are necessary to ensure the shredding operations no longer pose a threat of harm to the citizens of the Township by implementing corrective measure to mitigate the threat posed by errant metal leaving the shredder facility, to eliminate explosions and concussive events that emanate thunderous blasting sounds, and to eliminate the potential for fires from said explosions.

18. The Defendants must cease operations of the shredder facility until it can be made safe, minimally as outlined in the Complaint at Paragraph 72 a-k.

19. As to each item of relief requested, greater injuries will be inflicted upon Plaintiff, its citizens, *and* the Defendants by the denial of the relief requested than will be inflicted upon Defendants by the granting thereof.

20. Plaintiff has no other adequate remedy at law. Plaintiff has previously pursued this matter to the extent its Nuisance Ordinance permits, with the exception of seeking this injunction to restrain the violations of Section 310-5 of the Nuisance Ordinance and the First-Class Township Code.

21. The requested injunctive relief to require Defendants to temporarily close its day-to-day shredding operations until Defendants to take all steps necessary to abate the continuing nuisance and to take all corrective actions that are necessary to ensure the shredding operations no longer pose a threat of harm to the citizens of the Township by implementing corrective measure to mitigate the threat posed by errant metal leaving the shredder facility, to eliminate explosions and concussive events that emanate thunderous blasting sounds , and to eliminate the potential for fires from said explosions, will restore the parties to the status quo prior to the violations of the Nuisance Ordinance, which is the last actual, peaceable and lawful non-contested status which

preceded the pending controversy. *Valley Forge Historical Soc'y v. Wash. Memorial Chapel*, 426 A.2d 1123, 1129 (Pa. 1981).

22. Further, this request is a temporary injunction that will dissolve when the violations have been abated and all corrective measures taken and implemented.

23. The activity sought to be restrained is actionable and the requested injunction is reasonably suited to abate such activity.

24. The Township's rights to relief are clear and the alleged wrong is manifest.

25. No prior application to this Court for such relief or similar relief has been made by the Plaintiff.

26. An affidavit of Marcy Krum-Tinsley, Manager for Spring Garden Township, is attached hereto, incorporated herewith and marked **Exhibit 1** in compliance with YCCiv 1531.1(b)(4).

27. An affidavit of Linda Keller, Zoning Officer for Spring Garden Township, is attached hereto, incorporated herewith and marked **Exhibit 2** in compliance with YCCiv 1531.1(b)(4).

28. An affidavit of Chief George Swartz, Chief of Police for Spring Garden Township Police Department, is attached hereto, incorporated herewith and marked **Exhibit 3** in compliance with YCCiv. 1531.1(b)(4).

29. Plaintiff is a Township of the First Class, organized pursuant to the First Class Township Code, and is therefore a political subdivision. Accordingly, no bond is required to be posted in accordance with Pa.R.C.P. No. 1521(b).

WHEREFORE, Plaintiff respectfully request that this Honorable Court grant their Application for Preliminary/Special Injunctive Relief and enter an Order that:

1. Orders the Defendant to temporary cease day-to-day operations of the shredder facility located at the J & K property at 1099 King Mills Road, York, Pennsylvania 17403;
2. Take any and all corrective measures to the shredder facility necessary to ensure that health, safety and welfare of the citizens of Spring Garden Township are not compromised by the day-to-day shredding operations such that all errant metal is prevented from escaping the shredder facility, all explosions/concussive events are stopped, and the potential for fires at the facility is ceased.
3. Requiring Defendants to reimburse the Township for all costs and expenses related to efforts taken to date by the Township to compel Defendants to safely operate its business so as to not constitute a nuisance.

STOCK AND LEADER

Date: 12/7/2021

By: s/Gregory W. Bair, II
Gregory W. Bair, II, Esquire
PA 208156
Sarah L. Doyle, Esquire
PA 321149
Attorney for Spring Garden Township
Susquehanna Commerce Center – East
221 West Philadelphia Street, Suite 600
York, PA 17401-2994
Phone: 717-846-9800
Fax: 717-843-6134
gbair@stockandleader.com

Exhibit 1

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

SPRING GARDEN TOWNSHIP,	:	NO.:
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	
DARRAH REALTY, LP, AND	:	
JOE DARRAH, INC., d/b/a	:	
J & K SALVAGE,	:	
Defendants.	:	

AFFIDAVIT

I, Marcy Krum-Tinsley, do hereby swear and affirm that the following information regarding Plaintiff's Application for a Preliminary/Special Injunctive Relief Pursuant to Pa.R.C.P. 1531 and YCCiv. 1531.1 is true and correct to the best of my knowledge, information, and belief:

1. I am the appointed Manager of Spring Garden Township and I oversee the records of the Township and regularly receive correspondence from citizens regarding the J&K operations.
2. In addition, I am familiar with the prior zoning enforcement actions taken in this matter, as well as the investigations conducted by the Township and the Spring Garden Township Police Department.
3. I have also reviewed the Complaint and the Application for Preliminary/Special Injunction and the averments are correct and truthful to the best of my knowledge.
4. The Property is in violation of the Zoning Ordinance, §310-5.D.
5. Pursuant to the Township's Zoning Ordinance, the Township is empowered to seek enforcement of its Ordinance through the filing of all necessary applications for relief with the

Court, such as the Application for Preliminary/Special Injunction filed in this matter. See, §310-90.

6. As such, the Township's right to relief is clear, and the violations sought to be restrained are actionable, meaning that the Township is likely to prevail on the merits of its Complaint.

7. Further, there is an urgent necessity to avoid immediate and irreparable harm which cannot be compensated for by monetary damages.

8. Namely, the operations of the shredder pose an immediate risk to the health, safety and welfare of the residents of Rannoch Lane and anyone driving by the shredder on Indian Rock Dam Road.

9. The violation of the Zoning Ordinance also constitutes an immediate danger to Defendant and its employees, and without the temporary closure of the facility, death or serious bodily injury could befall the Defendant.

10. As such, greater injury will be done by refusing request for relief than by granting it.

11. Granting the relief sought by the Township will properly restore the parties to their status as it existed immediately before the wrongful conduct by the Defendant.

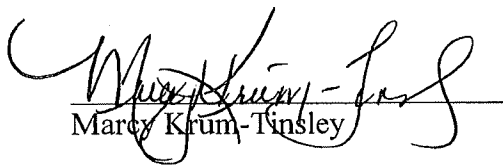
12. The Township has exhausted all other attempts to assist the Defendant in remedying the violations, and as such, the Township has used reasonable diligence in invoking the aid of the Court in this matter.

13. The injunction sought is reasonably suited to abate the violations because it is the least infringement necessary to eliminate debris and metal from being ejected from the J&K

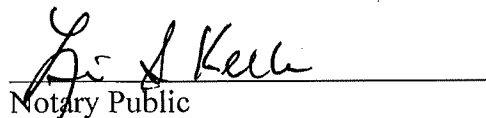
shredder that is causing the violations and ensure the safety of the Defendant and the residents of the Township.

14. The Defendant should be able to resume his/it's business as soon as the violations are remedied.

15. The relief sought is in the public interest, as the shredder operations are unsafe and a nuisance to the neighboring residents.


Marcy Krum-Tinsley

Sworn and Subscribed to
Before me this 6th day of December 2021.


Notary Public

My Commission Expires:

Commonwealth of Pennsylvania - Notary Seal
Linda S. Keller, Notary Public
York County
My commission expires October 30, 2025
Commission number 1083156
Member, Pennsylvania Association of Notaries

Exhibit 2

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

SPRING GARDEN TOWNSHIP,	:	NO.:
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	
DARRAH REALTY, LP, AND	:	
JOE DARRAH, INC., d/b/a	:	
J & K SALVAGE,	:	
Defendants.	:	

AFFIDAVIT

I, Linda Keller, do hereby swear and affirm that the following information regarding Plaintiff's Application for a Preliminary/Special Injunctive Relief Pursuant to Pa.R.C.P. 1531 and YCCiv. 1531.1 is true and correct to the best of my knowledge, information, and belief:

1. I am the appointed Zoning Officer of Spring Garden Township and as such, I am familiar with the prior zoning enforcement actions taken in this matter, as well as the investigations conducted by the Township and the Spring Garden Township Police Department.

2. I have also reviewed the Complaint and the Application for Preliminary/Special Injunction and the averments are correct and truthful to the best of my knowledge.

3. The Property is in violation of the Zoning Ordinance, §310-5.D.

4. Pursuant to the Township's Zoning Ordinance, the Township is empowered to seek enforcement of its Ordinance through the filing of all necessary applications for relief with the Court, such as the Application for Preliminary/Special Injunction filed in this matter. See, §310-90.

5. As such, the Township's right to relief is clear, and the violations sought to be restrained are actionable, meaning that the Township is likely to prevail on the merits of its Complaint.

6. Further, there is an urgent necessity to avoid immediate and irreparable harm which cannot be compensated with monetary damages.

7. Namely, the operations of the shredder pose an immediate risk to the health, safety and welfare of the residents of Rannoch Lane and anyone driving by the shredder on Indian Rock Dam Road.

8. The violation of the Zoning Ordinance also constitutes an immediate danger to Defendant and its employees, and without the temporary closure of the facility, death or serious bodily injury could befall the Defendant.

9. As such, greater injury will be done by refusing request for relief than by granting it.


10. Granting the relief sought by the Township will properly restore the parties to their status as it existed immediately before the wrongful conduct by the Defendant.

11. The Township has exhausted all other attempts to assist the Defendant in remedying the violations, and as such, the Township has used reasonable diligence in invoking the aid of the Court in this matter.

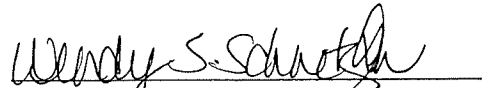
12. The injunction sought is reasonably suited to abate the violations because it is the least infringement necessary to eliminate debris and metal from being ejected from the J&K shredder that is causing the violations and ensure the safety of the Defendant and the residents of the Township.

13. The Defendant should be able to resume his/its business as soon as the violations are remedied.

14. The relief sought is in the public interest, as the shredder operations are unsafe and a nuisance to the neighboring residents.


Linda Keller

Sworn and Subscribed to
Before me this 6th day of December 2021.


Notary Public

My Commission Expires:

Commonwealth of Pennsylvania - Notary Seal
Wendy S. Schnetzka, Notary Public
York County
My commission expires November 20, 2022
Commission number 1286920
Member, Pennsylvania Association of Notaries

Exhibit 3

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

SPRING GARDEN TOWNSHIP,	:	NO.:
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	
DARRAH REALTY, LP, AND	:	
JOE DARRAH, INC., d/b/a	:	
J & K SALVAGE,	:	
Defendants.	:	
	:	

AFFIDAVIT

I, Chief George Swartz, do hereby swear and affirm that the following information regarding Plaintiff's Application for a Preliminary/Special Injunctive Relief Pursuant to Pa.R.C.P. 1531 and YCCiv. 1531.1 is true and correct to the best of my knowledge, information, and belief:

1. I am the Chief of Police of the Spring Garden Township Police Department and I oversee the investigations conducted by the Department, including the investigations of incidents related to J&K.

2. In addition, I am familiar with the prior zoning enforcement actions taken in this matter.

3. I have also reviewed the Complaint and the Application for Preliminary/Special Injunction and the averments are correct and truthful to the best of my knowledge.

4. Given the severity of the risk the shredder poses, and the accumulation of incidents related to the operation of the shredder, there is an urgent necessity to avoid immediate and irreparable harm which cannot be compensated with monetary damages.

5. Namely, the operations of the shredder pose an immediate risk to the health, safety and welfare of the residents of Rannoch Lane and anyone driving by the shredder on Indian Rock Dam Road.

6. The ejection of metal and debris from the shredder also constitutes an immediate danger to Defendant and its employees, and without the temporary closure of the facility, death or serious bodily injury could befall the Defendant.

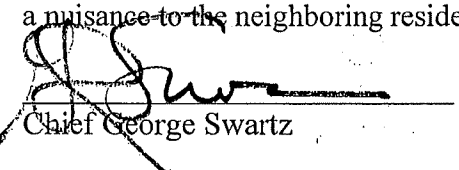
7. As such, greater injury will be done by refusing request for relief than by granting it.

8. Granting the relief sought by the Township will properly restore the parties to their status as it existed immediately before the wrongful conduct by the Defendant.

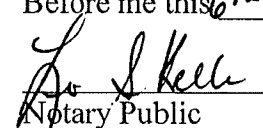
9. The injunction sought is reasonably suited to abate the violations because it is the least infringement necessary to eliminate debris and metal from being ejected from the J&K shredder that is causing the violations and ensure the safety of the Defendant and the residents of the Township.

10. The Defendant should be able to resume his/its business as soon as the violations are remedied.

11. The relief sought is in the public interest, as the shredder operations are unsafe and a nuisance to the neighboring residents.


Chief George Swartz

Sworn and Subscribed to
Before me this 6th day of December 2021.


Notary Public

My Commission Expires:

Commonwealth of Pennsylvania - Notary Seal
Linda S. Keller, Notary Public
York County
My commission expires October 30, 2025
Commission number 1083156
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