

03-732-CD
CITY OF DUBOIS (Cadm.or) vs. BUFFALO & PITTS. R.R. (Cadm.ee)

7

FILED

MAY 14 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CONDEMNATION BY THE CITY OF :
DUBOIS OF LANDS OF BUFFALO & :
PITTSBURGH RAILROAD, INC., FOR :
PURPOSES OF THE CONSTRUCTION :
OF FLOW EQUALIZATION FACILITIES : No. 03 - 132 C.D.
TO ELIMINATE UNAUTHORIZED :
BYPASSES OF SEWAGE AT THE HEAD : PROCEEDINGS IN REM
OF THE SEWAGE TREATMENT PLANT :
OPERATED BY THE CITY OF DUBOIS :
FOR THE HEALTH AND SAFETY OF :
ITS CITIZENS AND CUSTOMERS AND :
FOR FUTURE EXPANSION :
:

DECLARATION OF TAKING

The CITY OF DUBOIS, pursuant to the Pennsylvania Eminent Domain Code, as amended, 26 Pa. Stat. Ann. §1-101, *et seq.* ("Code"), hereby declares:

1. The Condemnor is the CITY OF DUBOIS, whose address is 16 West Scribner Avenue, DuBois, Pennsylvania 15801.
2. This condemnation is authorized by 53 P.S. §37801 empowering Third Class Cities to exercise eminent domain for the construction, erection and extension of sewers, public works, filtration plants, sewage systems, sewage treatment works and other such projects.
3. Pursuant to Ordinance No. 1656, enacted October 28, 2002, the CITY OF DUBOIS hereby appropriates and condemns real estate designated in the Ordinance, a true and correct copy of which is attached as Exhibit "A".
4. The name of the Condemnee is BUFFALO & PITTSBURGH RAILROAD, INC., whose last known address is 1200-C Scottsville Road, Suite 200, Rochester, New York 14624.

5. The property has been condemned by the CITY OF DUBOIS for purposes of the construction of flow equalization facilities to eliminate unauthorized bypasses of sewage at the head of the sewage treatment plant operated by the CITY OF DUBOIS, as provided for by the Ordinance.

6. The title acquired by the CITY OF DUBOIS shall be fee simple title.

7. A plan of the property condemned is being lodged for record in the Offices of the Register and Recorder of Deeds of Clearfield County, Pennsylvania, as of the same date as the filing of this Declaration of Taking, in accordance with Section 404 of the Code, 26 Pa. Stat. Ann. §1-404. A copy of the plan is attached hereto as Exhibit "B".

8. Both the ordinance and the plan may be inspected at the address of the Condemnor, the CITY OF DUBOIS.

9. Under Section 403(b) of the Code, 26 Pa. Stat. Ann. §1-403(b), the power of taxation granted to the CITY OF DUBOIS by the State Legislature of the Commonwealth of Pennsylvania is sufficient to secure just compensation for the appropriation of the property described herein.

10. Pursuant to Section 405(d) of the Code, 26 Pa. Stat. Ann. §1-405(d), a conformed copy of this declaration of taking, together with the information and notice required by Section 405(c) thereof, 26 Pa. Stat. Ann. §1-405(c), will be served upon the Condemnee in this proceeding. Proof of such service will be filed.

WHEREFORE, the CITY OF DUBOIS declares the within premises condemned and

appropriated for the public purpose mentioned.

Respectfully submitted,

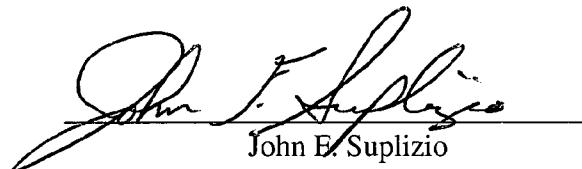
GLEASON, CHERRY AND CHERRY, L.L.P.

By


Attorneys for CITY OF DUBOIS, Condemnor

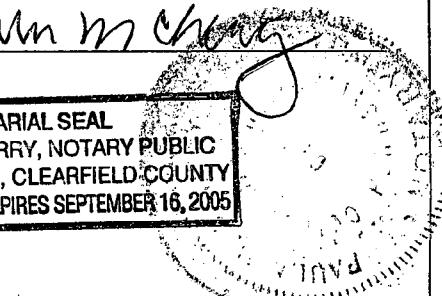
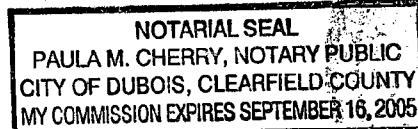
COMMONWEALTH OF PENNSYLVANIA :
: SS.
COUNTY OF CLEARFIELD :
:

Personally appeared before me, a Notary Public in and for the County and State aforesaid, JOHN F. SUPLIZIO, Mayor of the CITY OF DUBOIS, who, being duly sworn according to law, deposes and says that the facts contained in the foregoing Declaration of Taking are true and correct to the best of his knowledge, information and belief.



John E. Suplizio

Sworn to and subscribed before me this 12th day of May, 2003.



COUNCIL BILL NO. 1747

INTRODUCED BY JOHN D. MICKS

ORDINANCE NO. 1656

AN ORDINANCE

AUTHORIZING CHESTER ENGINEERS, THE CONSULTING ENGINEERS HIRED BY THE CITY OF DUBOIS TO SELECT AND APPROPRIATE CERTAIN PLOTS OF GROUND WITH THE IMPROVEMENTS THEREON SITUATED FOR PURPOSES OF THE CONSTRUCTION OF FLOW EQUALIZATION FACILITIES TO ELIMINATE UNAUTHORIZED BYPASSES OF SEWAGE AT THE HEAD OF THE SEWAGE TREATMENT PLANT OPERATED BY THE CITY OF DUBOIS FOR THE HEALTH AND SAFETY OF ITS CITIZENS AND CUSTOMERS AND FOR FUTURE EXPANSION.

The Council of the City of DuBois hereby ordains:

Section 1. Chester Engineers, the consulting engineers hired by the City of DuBois, are hereby authorized to select and appropriate the following plots of ground for the purposes of the construction of flow equalization facilities to eliminate unauthorized bypasses of sewage at the head of the sewage treatment plant operated by the City of DuBois for the health and safety of its citizens and customers and for future expansion:

ALL that certain piece or tract of land situate, lying and being in the Township of Sandy, Clearfield County, Pennsylvania, and being bounded and described as follows, to wit:

Beginning at a point in the northerly line of lands now or formerly owned by William Reed and Donna J. Reed where said line is intersected by the westerly line of lands now or formerly owned by the City of DuBois; thence North 75° 44' West, a distance of 181.65 feet to a point on the easterly line of lands owned by the City of DuBois; thence North 19° 01' East a distance of 287 feet more or less to a point; thence South 55° 42' 20" East, a distance of 89 feet more or less to a point at the corner of lands now or formerly owned by the City of DuBois; thence by a curve to the left with a radius of 445.3 feet and along the western line of lands now or formerly owned by the City of DuBois, a distance of 270.53 feet to the place of beginning. CONTAINING 0.73 acres more or less.

BEING a portion of the same premises which were conveyed to Buffalo & Pittsburgh Railroad, Inc., a Delaware Corporation, by deed of CSX Transportation, Inc., a Virginia Corporation, and the Buffalo, Rochester and Pittsburgh Railway Company, dated October 7, 1991, and recorded in the Offices of the Register and Recorder of Deeds of Clearfield County, Pennsylvania, in Deed Book Vol. 1432, page 285.

Section 2. The Solicitor of the City of DuBois is authorized and directed to prepare and file with the Court of Common Pleas of Clearfield County, Pennsylvania, a declaration of taking which shall be executed by the Mayor of the City of DuBois and to take any action that may be necessary or desirable to carry out the intent and purposes of this Ordinance.

Section 3. The City shall acquire fee simple title.

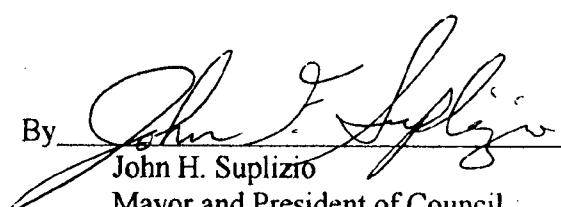
Section 4. The amount of damages when determined shall be paid by the City of DuBois for purposes of the construction of flow equalization facilities to eliminate unauthorized bypasses of sewage at the head of the sewage treatment plant operated by the City of DuBois for the health and safety of its citizens and customers and for future expansion.

ATTEST:


Gail Taylor
City Manager

CITY OF DUBOIS

By

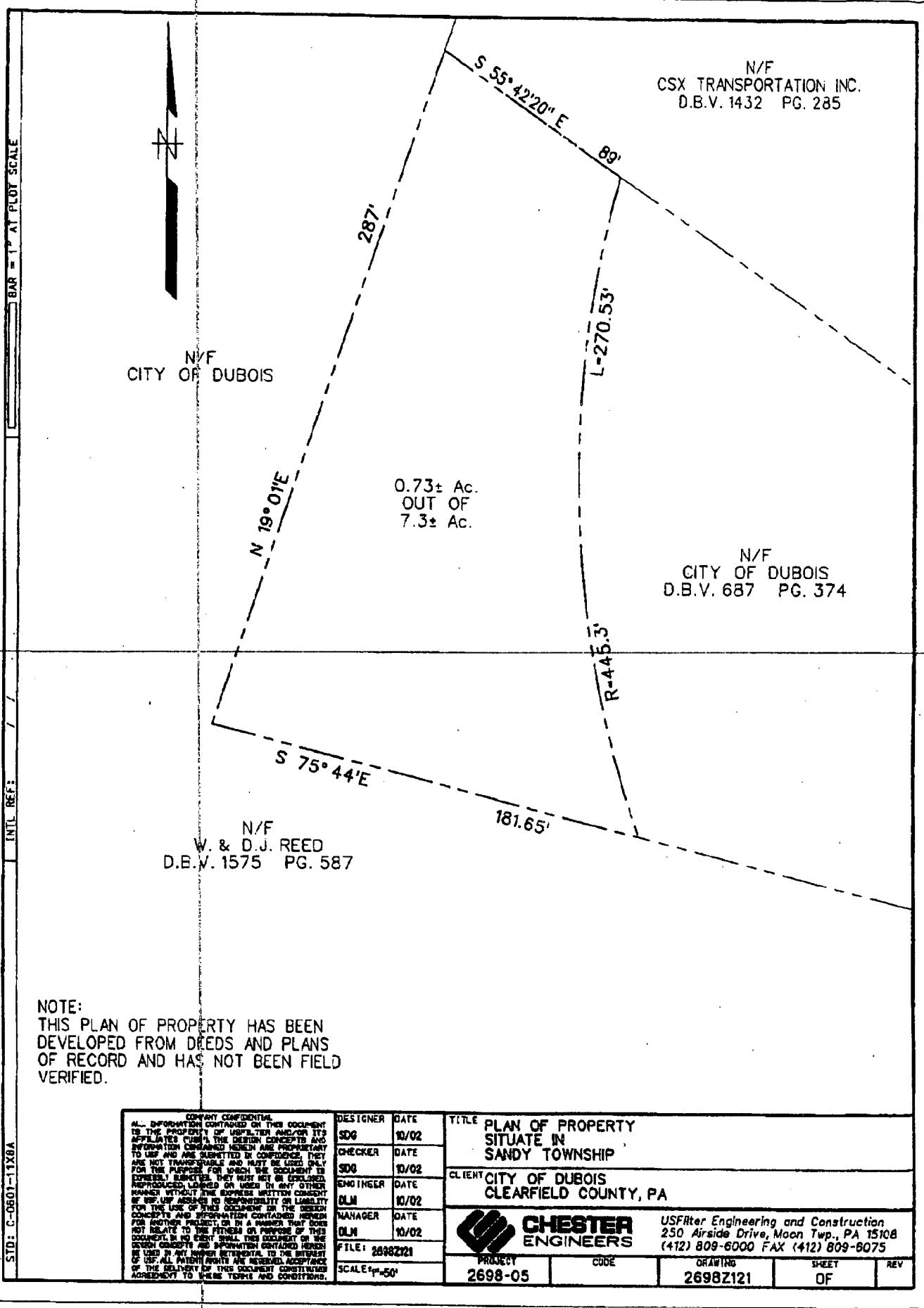

John H. Suplizio
Mayor and President of Council

PASSED BY COUNCIL:

October 28, 2002

I, Frances L. Lias, Secretary for the City of DuBois, Pennsylvania, do hereby certify that this is a true and correct copy of Ordinance No. 1656, as found in the Ordinance Book at the DuBois Municipal Building, 16 West Scribner Avenue, DuBois, Pennsylvania.


Frances L. Lias



FILED

MAY 14 2003

o 13:30/ my

William A. Shaw
Prothonotary

6 cert to Att'y

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CONDEMNATION BY THE CITY OF :
DUBOIS OF LANDS OF BUFFALO & :
PITTSBURGH RAILROAD, INC., FOR :
PURPOSES OF THE CONSTRUCTION :
OF FLOW EQUALIZATION FACILITIES : No. 03 - 732 C.D.
TO ELIMINATE UNAUTHORIZED :
BYPASSES OF SEWAGE AT THE HEAD : PROCEEDINGS IN REM
OF THE SEWAGE TREATMENT PLANT :
OPERATED BY THE CITY OF DUBOIS :
FOR THE HEALTH AND SAFETY OF :
ITS CITIZENS AND CUSTOMERS AND :
FOR FUTURE EXPANSION :
:

MEMORANDUM OF FILING OF NOTICE

TO THE PROTHONOTARY:

Notice of the above-captioned condemnation is recorded in the Offices of the Register
Inst. # 2003 08/13
and Recorder of Deeds of Clearfield County, Pennsylvania, in Book No. , page .

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By

John C. Cherry
Atorneys for CITY OF DUBOIS, Condemnor

FILED

MAY 14 2003

William A. Shaw
Prothonotary

FILED

MAY 14 2003
6 13:44 /
William A. Shaw
Prothonotary
3 cmr - To Axx

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

CONDEMNATION BY THE CITY OF :
DUBOIS OF LANDS OF BUFFALO & :
PITTSBURGH RAILROAD, INC., FOR :
PURPOSES OF THE CONSTRUCTION :
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OPERATED BY THE CITY OF DUBOIS :
FOR THE HEALTH AND SAFETY OF :
ITS CITIZENS AND CUSTOMERS AND :
FOR FUTURE EXPANSION :

FILED

MAY 14 2003
13:45 PM
William A. Shaw
Prothonotary

2 copies to
HTR

NOTICE OF CONDEMNATION

In accordance with Section 405 of the Eminent Domain Code of 1964, as amended, 26

Pa. Stat. Ann. §1-405, the City of DuBois notifies you that:

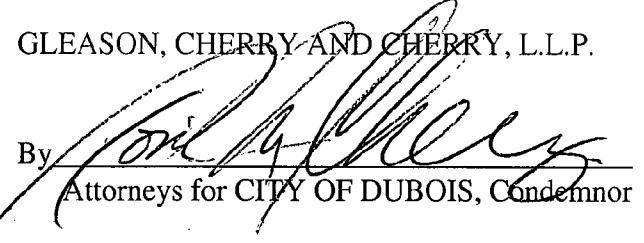
1. A Declaration of Taking, a copy of which is attached as Exhibit "A" was filed on May 14, 2003, in the Court of Common Pleas of Clearfield County, at the above-named term and number.
2. Your property has been condemned for purposes of the construction of flow equalization facilities to eliminate unauthorized bypasses of sewage at the head of the sewage treatment plant operated by the City of DuBois for the health and safety of its citizens and customers and for future expansion. Identification of your property appears on Exhibit "B" of the Declaration of Taking.
3. If you wish to challenge the power or right of the City of DuBois to appropriate the condemned property, the sufficiency of the security (because the City of DuBois has the power

of taxation, it is not required to file a bond with the Declaration of Taking—26 P.S. §1-403(b)), the procedure followed by the Condemnor, or the Declaration of Taking, you are required to file Preliminary Objections within thirty (30) days after being served with this Notice.

Respectfully submitted,

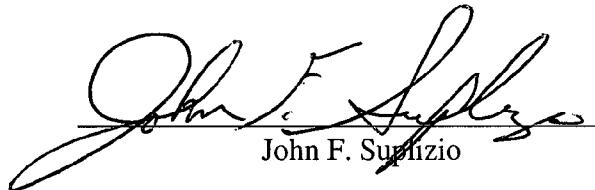
GLEASON, CHERRY AND CHERRY, L.L.P.

By


Attorneys for CITY OF DUBOIS, Condemnor

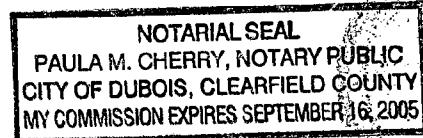
COMMONWEALTH OF PENNSYLVANIA :
: SS.
COUNTY OF CLEARFIELD :

Personally appeared before me, a Notary Public in and for the County and State aforesaid, JOHN F. SUPLIZIO, Mayor of the CITY OF DUBOIS, who, being duly sworn according to law, deposes and says that the facts contained in the foregoing Notice are true and correct to the best of his knowledge, information and belief.



John F. Suplizio

Sworn to and subscribed before me this 13th day of May, 2003.



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CONDEMNATION BY THE CITY OF :
DUBOIS OF LANDS OF BUFFALO & :
PITTSBURGH RAILROAD, INC., FOR :
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OF THE SEWAGE TREATMENT PLANT :
OPERATED BY THE CITY OF DUBOIS :
FOR THE HEALTH AND SAFETY OF :
ITS CITIZENS AND CUSTOMERS AND :
FOR FUTURE EXPANSION :
:

NOTICE OF FILING OF DECLARATION OF TAKING

In accordance with Section 404 of the Eminent Domain Code, 26 Pa. Stat. Ann. §1-404,
the CITY OF DUBOIS states:

A Declaration of Taking was filed on May 14, 2003, at the above Court term and
number, by which the following property owned by the BUFFALO & PITTSBURGH
RAILROAD, INC., was condemned in fee simple or absolute title:

ALL that certain piece or tract of land situate, lying and being in the Township of Sandy,
Clearfield County, Pennsylvania, and being bounded and described as follows, to wit:

Beginning at a point in the northerly line of lands now or formerly owned by
William Reed and Donna J. Reed where said line is intersected by the
westerly line of lands now or formerly owned by the City of DuBois;
thence North 75° 44' West, a distance of 181.65 feet to a point on
the easterly line of lands owned by the City of DuBois; thence North
19° 01' East a distance of 287 feet more or less to a point; thence
South 55° 42' 20" East, a distance of 89 feet more or less to a
point at the corner of lands now or formerly owned by the City
of DuBois; thence by a curve to the left with a radius of 445.3
feet and along the western line of lands now or formerly owned

KAREN L. STARCK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania

INSTRUMENT NUMBER

2003013113

RECORDED ON

May 14, 2003

3:35:24 PM

Total Pages: 9

RECORDING FEES -	\$23.00
RECORDER	\$2.00
COUNTY IMPROVEMENT	\$2.00
FUND	
RECORDER IMPROVEMENT	\$3.00
FUND	
STATE WRIT TAX	\$0.50
TOTAL	\$28.50

CUSTOMER

GLEASON, CHERRY & CHERRY

by the City of DuBois, a distance of 270.53 feet to the place of beginning. CONTAINING 0.73 acres more or less.

A copy of the Declaration of Taking is attached as Exhibit "A".

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By

Atorneys for CITY OF DUBOIS, Condemnor

Dist. # 2003 08113

I hereby certify this to be a true
and attested copy of the original
document filed in this office.

MAY 14 2003

Attest:

Reg. of Wills, Rec. of Deeds & Ctr. of Options' Court

My Commission Expires
First Monday in January, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CONDEMNATION BY THE CITY OF :
DUBOIS OF LANDS OF BUFFALO & :
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PURPOSES OF THE CONSTRUCTION :
OF FLOW EQUALIZATION FACILITIES : No. 03 - 737 C.D.
TO ELIMINATE UNAUTHORIZED :
BYPASSES OF SEWAGE AT THE HEAD : PROCEEDINGS IN REM
OF THE SEWAGE TREATMENT PLANT : I hereby certify this to be a true
OPERATED BY THE CITY OF DUBOIS : and attested copy of the original
FOR THE HEALTH AND SAFETY OF : statement filed in this case.
ITS CITIZENS AND CUSTOMERS AND :
FOR FUTURE EXPANSION :
:

MAY 14 2003

Attest.

Lisa A. Brown
Prothonotary/
Clerk of Courts

DECLARATION OF TAKING

The CITY OF DUBOIS, pursuant to the Pennsylvania Eminent Domain Code, as amended, 26 Pa. Stat. Ann. §1-101, *et seq.* ("Code"), hereby declares:

1. The Condemnor is the CITY OF DUBOIS, whose address is 16 West Scribner Avenue, DuBois, Pennsylvania 15801.
2. This condemnation is authorized by 53 P.S. §37801 empowering Third Class Cities to exercise eminent domain for the construction, erection and extension of sewers, public works, filtration plants, sewage systems, sewage treatment works and other such projects.
3. Pursuant to Ordinance No. 1656, enacted October 28, 2002, the CITY OF DUBOIS hereby appropriates and condemns real estate designated in the Ordinance, a true and correct copy of which is attached as Exhibit "A".
4. The name of the Condemnee is BUFFALO & PITTSBURGH RAILROAD, INC., whose last known address is 1200-C Scottsville Road, Suite 200, Rochester, New York 14624.

5. The property has been condemned by the CITY OF DUBOIS for purposes of the construction of flow equalization facilities to eliminate unauthorized bypasses of sewage at the head of the sewage treatment plant operated by the CITY OF DUBOIS, as provided for by the Ordinance.

6. The title acquired by the CITY OF DUBOIS shall be fee simple title.

7. A plan of the property condemned is being lodged for record in the Offices of the Register and Recorder of Deeds of Clearfield County, Pennsylvania, as of the same date as the filing of this Declaration of Taking, in accordance with Section 404 of the Code, 26 Pa. Stat. Ann. §1-404. A copy of the plan is attached hereto as Exhibit "B".

8. Both the ordinance and the plan may be inspected at the address of the Condemnor, the CITY OF DUBOIS.

9. Under Section 403(b) of the Code, 26 Pa. Stat. Ann. §1-403(b), the power of taxation granted to the CITY OF DUBOIS by the State Legislature of the Commonwealth of Pennsylvania is sufficient to secure just compensation for the appropriation of the property described herein.

10. Pursuant to Section 405(d) of the Code, 26 Pa. Stat. Ann. §1-405(d), a conformed copy of this declaration of taking, together with the information and notice required by Section 405(c) thereof, 26 Pa. Stat. Ann. §1-405(c), will be served upon the Condemnee in this proceeding. Proof of such service will be filed.

WHEREFORE, the CITY OF DUBOIS declares the within premises condemned and

appropriated for the public purpose mentioned.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

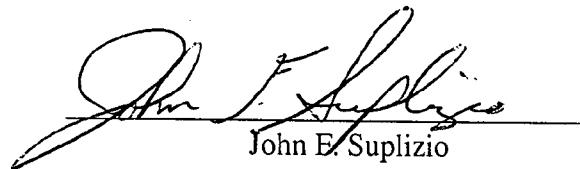
By


John P. Cherry

Attorneys for CITY OF DUBOIS, Condemnor

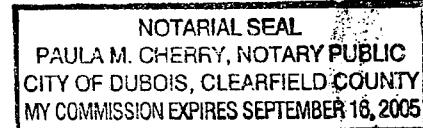
COMMONWEALTH OF PENNSYLVANIA :
: SS.
COUNTY OF CLEARFIELD :

Personally appeared before me, a Notary Public in and for the County and State
aforesaid, JOHN F. SUPLIZIO, Mayor of the CITY OF DUBOIS, who, being duly sworn
according to law, deposes and says that the facts contained in the foregoing Declaration of
Taking are true and correct to the best of his knowledge, information and belief.



John E. Suplizio

Sworn to and subscribed before me this 12th day of May, 2003.



COUNCIL BILL NO. 1747

INTRODUCED BY JOHN D. MICKS

ORDINANCE NO. 1656

AN ORDINANCE

AUTHORIZING CHESTER ENGINEERS, THE CONSULTING ENGINEERS HIRED BY THE CITY OF DUBOIS TO SELECT AND APPROPRIATE CERTAIN PLOTS OF GROUND WITH THE IMPROVEMENTS THEREON SITUATED FOR PURPOSES OF THE CONSTRUCTION OF FLOW EQUALIZATION FACILITIES TO ELIMINATE UNAUTHORIZED BYPASSES OF SEWAGE AT THE HEAD OF THE SEWAGE TREATMENT PLANT OPERATED BY THE CITY OF DUBOIS FOR THE HEALTH AND SAFETY OF ITS CITIZENS AND CUSTOMERS AND FOR FUTURE EXPANSION.

The Council of the City of DuBois hereby ordains:

Section 1. Chester Engineers, the consulting engineers hired by the City of DuBois, are hereby authorized to select and appropriate the following plots of ground for the purposes of the construction of flow equalization facilities to eliminate unauthorized bypasses of sewage at the head of the sewage treatment plant operated by the City of DuBois for the health and safety of its citizens and customers and for future expansion:

ALL that certain piece or tract of land situate, lying and being in the Township of Sandy, Clearfield County, Pennsylvania, and being bounded and described as follows, to wit:

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Section 2. The Solicitor of the City of DuBois is authorized and directed to prepare and file with the Court of Common Pleas of Clearfield County, Pennsylvania, a declaration of taking which shall be executed by the Mayor of the City of DuBois and to take any action that may be necessary or desirable to carry out the intent and purposes of this Ordinance.

Section 3. The City shall acquire fee simple title.

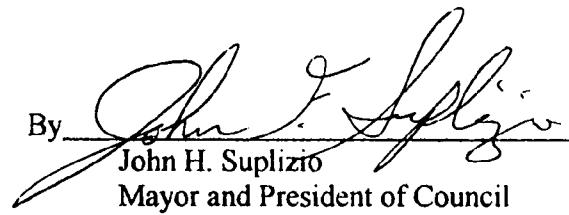
Section 4. The amount of damages when determined shall be paid by the City of DuBois for purposes of the construction of flow equalization facilities to eliminate unauthorized bypasses of sewage at the head of the sewage treatment plant operated by the City of DuBois for the health and safety of its citizens and customers and for future expansion.

ATTEST:



Bill F. Taylor
City Manager

CITY OF DUBOIS

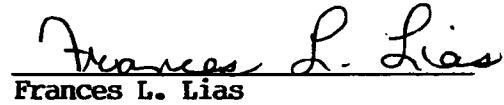
By 

John H. Suplizio
Mayor and President of Council

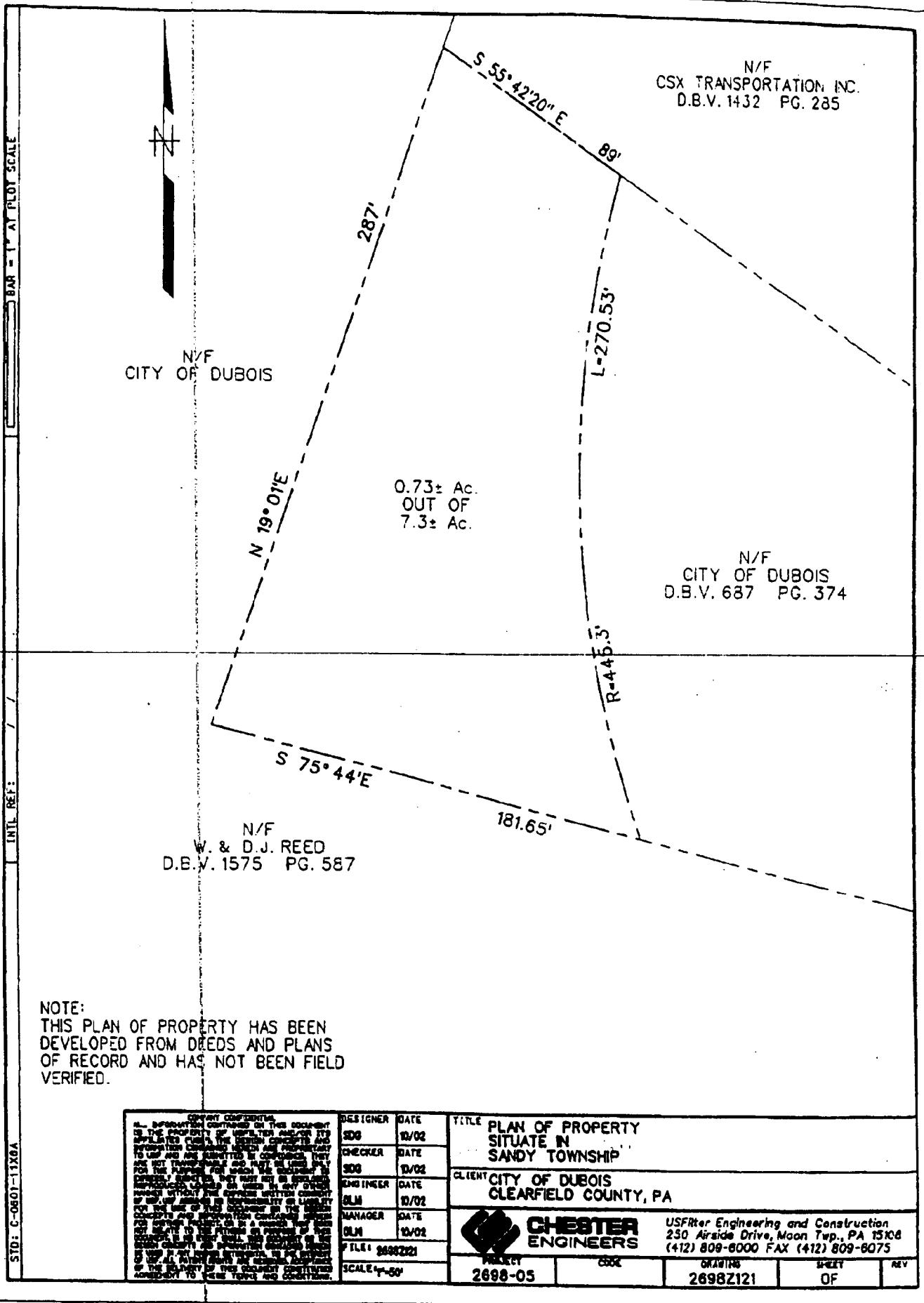
PASSED BY COUNCIL:

October 28, 2002

I, Frances L. Lias, Secretary for the City of DuBois, Pennsylvania, do hereby certify that this is a true and correct copy of Ordinance No. 1656, as found in the Ordinance Book at the DuBois Municipal Building, 16 West Scribner Avenue, DuBois, Pennsylvania.



Frances L. Lias



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CONDEMNATION BY THE CITY OF :
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PITTSBURGH RAILROAD, INC., FOR :
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FOR THE HEALTH AND SAFETY OF :
ITS CITIZENS AND CUSTOMERS AND :
FOR FUTURE EXPANSION :
:

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of May, 2003, a certified copy of the Notice of Condemnation was served upon BUFFALO & PITTSBURGH RAILROAD, INC., by mailing the same to them by Certified Mail, Return Receipt Requested, in accordance with 26 P.S. §1-405(b) at the following address:

BUFFALO & PITTSBURGH RAILROAD, INC.
1200-C Scottsville Road, Suite 200
Rochester, NY 14624

GLEASON, CHERRY AND CHERRY, L.L.P.

By

Attorneys for CITY OF DUBOIS, Condemnor

Dated: May 14, 2003

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
FILED
CIVIL DIVISION

MAY 22 2003

CONDEMNATION BY THE CITY OF :
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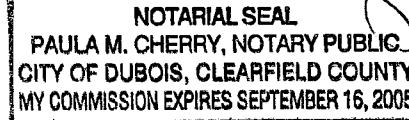
William A. Shaw
Prothonotary

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA:
: SS.
COUNTY OF CLEARFIELD :
:

Before me, the undersigned official, personally appeared TONI M. CHERRY, ESQ., who, being duly sworn according to law, deposes and says that she is the Attorney for CITY OF DUBOIS, Condemnor in the above cause of action, and that she did serve BUFFALO & PITTSBURGH & RAILROAD, INC., with a certified copy of the Notice of Condemnation by mailing the same to them at 1200-C Scottsville Road, Suite 200, Rochester, New York 14624, by Certified Mail, Return Receipt Requested, on May 19, 2003, by Article No. 7002 3150 0006 4999 5042. The Return Receipt Card being attached hereto.

Sworn to and subscribed before me this 22nd day of May, 2003.

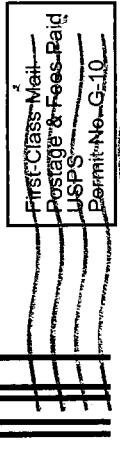


FILED

10:30 AM
MAY 22 2003

1cc
Atty. T. Cherry
8:30

William A. Shaw
Prothonotary



- Sender: Please print ~~your~~ name, address, and ZIP+4 in this box.

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ED 00

SENDER® COMPLETE THIS SECTION**COMPLETE THIS SECTION ON DELIVERY**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Buffalo & Pittsburgh Railroad, Inc.
1200-C Scottsville Road, Suite 200
Rochester, NY 14624

A. Signature	<input checked="" type="checkbox"/> Agent
B. Received by (Printed Name)	<input type="checkbox"/> Addressee
<i>Shelly Bestler</i>	<i>5-19-03</i>
C. Date of Delivery	

D. Is delivery address different from item 1? Yes
 No

If YES, enter delivery address below:

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

2. Article Number **7002 3150 0006 4999 5042**
(Transfer from service label)

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1035