

05-787-CD  
Sandy Citizens vs. Sandy Twp Board

2005-787-CD  
Sandy Citizens et al v. Sandy Twp. Et al

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

SANDY CITIZENS ARGUING FOR  
RESPONSIBLE ECONOMIC  
DEVELOPMENT (S.C.A.R.E.D.),  
WILLIAM B. CLYDE, GARY A.  
PETERSON, WILLIAM G.  
ALLENBAUGH and NANCY L.  
ALLENBAUGH,  
Appellants

vs.

SANDY TOWNSHIP BOARD OF  
SUPERVISORS,  
Appellees

: No. 05 - 787 C.D.  
:  
: Type of Case: LAND USE APPEAL  
:  
: Type of Pleading: NOTICE OF APPEAL  
: FROM ORDINANCE AMENDING  
: THE ZONING ORDINANCE AND  
: CHANGING THE ZONING MAP OF  
: SANDY TOWNSHIP  
:  
:  
: Filed on Behalf of: SANDY CITIZENS  
: ARGUING FOR RESPONSIBLE  
: ECONOMIC DEVELOPMENT  
: (S.C.A.R.E.D.), WILLIAM B. CLYDE,  
: GARY A. PETERSON, WILLIAM G.  
: ALLENBAUGH and NANCY L.  
: ALLENBAUGH, Appellants  
:  
: Counsel of Record for Appellants:  
:  
: TONI M. CHERRY, ESQ.  
: Supreme Court No.: 30205  
:  
: GLEASON, CHERRY AND CHERRY, L.L.P.  
: Attorneys at Law  
: P. O. Box 505  
: One North Franklin Street  
: DuBois, PA 15801  
:  
: (814) 371-5800

FILED *4/3/5500* *EW*  
*Atty T. Cherry*  
*JUN 01 2005* *Atty pd.*

William A. Shaw  
Prothonotary/Clerk of Courts  
*1 cert. w/ wnt*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

SANDY CITIZENS ARGUING FOR	:	
RESPONSIBLE ECONOMIC	:	
DEVELOPMENT (S.C.A.R.E.D.),	:	
WILLIAM B. CLYDE, GARY A.	:	
PETERSON, WILLIAM G.	:	
ALLENBAUGH and NANCY L.	:	
ALLENBAUGH,	:	No. 05 - _____ C.D.
Appellants	:	
	:	
vs.	:	
	:	
SANDY TOWNSHIP BOARD OF	:	
SUPERVISORS,	:	
Appellees	:	

**APPEAL FROM ORDINANCE AMENDING THE**  
**ZONING ORDINANCE AND CHANGING THE**  
**ZONING MAP OF SANDY TOWNSHIP**

AND NOW, come the Appellants, SANDY CITIZENS ARGUING FOR  
RESPONSIBLE ECONOMIC DEVELOPMENT (S.C.A.R.E.D.), WILLIAM B. CLYDE,  
GARY A. PETERSON, WILLIAM G. ALLENBAUGH and NANCY L. ALLENBAUGH, by  
their attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and file this Appeal and, in  
support of which, aver the following:

1. Appellant, SANDY CITIZENS ARGUING FOR RESPONSIBLE ECONOMIC  
DEVELOPMENT, (S.C.A.R.E.D.) is an association of citizens and taxpayers of Sandy  
Township having a business address at 6421 Home Camp Road, DuBois, Sandy Township,  
Pennsylvania 15801, and a mailing address of P. O. Box 323, Falls Creek, Pennsylvania  
15840.

2. Appellant, WILLIAM B. CLYDE, is an adult individual who resides at 6421 Home Camp Road, DuBois, Sandy Township, Pennsylvania 15801, and who is a taxpayer of the Township of Sandy.

3. Appellant, GARY A. PETERSON, is an adult individual who resides at 723 Monroe Street, DuBois, Pennsylvania 15801, and who owns property in the Township of Sandy located at 206 and 206-1/2 Wilson Avenue, DuBois, Sandy Township, Pennsylvania, and is a taxpayer of the Township of Sandy.

4. Appellants, WILLIAM G. ALLENBAUGH and NANCY L. ALLENBAUGH, husband and wife, reside at 210 Lewis Street, Reynoldsville, Jefferson County, Pennsylvania 15851, and are the owners as tenants by the entireties of property located at 170 McCracken Run Road, DuBois, Pennsylvania 15801, which land is located adjacent to the 12.47-acre parcel which is the subject of Sandy Township Ordinance No. 4-2005 adopted on May 16, 2005, which land is the subject of this Appeal. Consequently, WILLIAM G. ALLENBAUGH and NANCY L. ALLENBAUGH have standing to bring this Appeal as persons aggrieved by the actions of the SANDY TOWNSHIP BOARD OF SUPERVISORS because they are adjoining landowners.

5. The Appellees are the SANDY TOWNSHIP BOARD OF SUPERVISORS, the governing body of Sandy Township, having their municipal office in the Sandy Township Municipal Building, R. D. #3, DuBois, with a mailing address of P. O. Box 267, DuBois, Pennsylvania 15801.

6. That on or about February 7, 2005, Appellees were presented with a request to rezone 12.47 acres of a larger parcel of ground from industrial to commercial highway district

and in accordance with the provisions of the Pennsylvania Municipalities Planning Code did refer that request to the Sandy Township Planning Commission for its review and recommendation.

7. That at their meetings held on February 16, 2005 and March 16, 2005, the Sandy Township Planning Commission did review and discuss the request to re-zone the 12.47-acre parcel from industrial district to commercial highway district and did vote unanimously to recommend to Appellees that the request to re-zone the 12.47-acre parcel from industrial to commercial highway district be denied and that the 12.47-acre parcel remain zoned industrial.

8. That the 12.47-acre parcel is part of a larger portion of ground that is zoned as an industrial district and the request for re-zoning did not include the entire district but only a small portion thereof.

9. That on May 2, 2005, Appellees held a public hearing to secure public opinion at which time Appellants did object to the granting of the request.

10. That after the public hearing, Appellees did hold a regular meeting on Monday, May 2, 2005, at which time they voted four to one to re-zone the 12.47-acre parcel from industrial to commercial highway and did direct their Solicitor to prepare an ordinance amending the Sandy Township zoning map to change the zoning classification of the 12.47-acre portion of Parcel No. 128-C3-108 from an industrial zoned district to a commercial highway zoned district.

11. That on May 16, 2005, the Appellees enacted Ordinance No. 4-2005 changing the zoning classification of a 12.47-acre portion of Parcel No. 128-C3-108 in Sandy Township from an industrial zoned district to a commercial highway zoned district. A true and correct

copy of Sandy Township Ordinance No. 4-2005, recorded in the Offices of the Register and Recorder of Deeds of Clearfield County, Pennsylvania, as Instrument No. 200507814, is attached hereto and made a part hereof as Exhibit "A".

12. That the Appellees in drafting Ordinance No. 4-2005 did engage in invalid "spot zoning" and did sever off a portion of land from a larger parcel that is zoned industrial for the sole purpose of accommodating the requests of an individual landowner.

13. That the re-zoned tract is being treated differently from similar surrounding land and such differential treatment is not justifiable.

14. That the areas' physical attributes, topography and size, and the economic feasibility of the requested use evidence that the re-zoning is not part of a plan which will produce nondiscriminatory zoning.

15. That the decision by the Appellees to re-zone a portion of land previously zoned industrial as commercial highway is in violation of the comprehensive plan for the Township and in contradiction of the established purposes and goals of the Pennsylvania Municipalities Planning Code and the zoning ordinance for the Township of Sandy enacted on June 19, 1996.

16. That 12.47-acre parcel was located in an area that is best suited for industrial use as evidenced by the fact that Sandy Township sponsored the application for a \$700,000.00 grant from the Commonwealth of Pennsylvania, Department of Commerce and the Commonwealth of Pennsylvania, Department of Community Affairs, for development of the infrastructure for said land as an industrial park. Attached hereto as Exhibits "B" and "C" respectively are photographs of the signs which appear on the larger parcel verifying that the project to create an industrial park was financed by the Commonwealth of Pennsylvania.

17. That in applying for and securing a grant from the Commonwealth of Pennsylvania for the specific purpose of developing said land as an industrial site, the Township of Sandy asserted its position that the highest and best use of said land is for industrial purposes and Appellees are now estopped from changing any portion of that larger parcel from the use for which it was originally intended.

18. That the Appellees never performed a traffic study prior to voting to change the zoning classification of the 12.47-acre parcel and refused to consider the traffic study presented by Appellants.

19. That the traffic study presented by Appellants to Appellees proved that:

- (a) the proposed development for which the re-zoning classification was made would over-burden current traffic patterns;
- (b) the roadway was unsafe and had no safety controls, no shoulders or berms for vehicles to pull off;
- (c) there is currently an over-burdened traffic pattern which would double based on the proposed use for the 12.47-acre parcel.

20. That Appellees did not perform any storm water management study prior to granting the request to re-classify the 12.47-acre portion of the larger industrial district and if they had done so, they would have determined that:

- (a) the infrastructure was built with government money for use as an industrial park and is not suited to commercial enterprise;
- (b) the greater parking areas required for a commercial use will render a greater portion of the land impervious;

(c) a commercial use will overload the storm water control system and add to the Sandy Lick Creek flooding problems that plague both Sandy Township and its neighboring municipality, the City of DuBois.

21. That prior to granting the request for re-zoning, Appellees made no investigation of the impact that a commercial development would have upon the areas' wetlands and failed to consider that a substantially greater storm water impact will pour more water into Beaver Meadow Industrial Park and impact on the areas' wetlands.

22. That prior to granting the request to re-zone a 12.47-acre parcel out of the industrial district, Appellees failed to make any hydraulic calculations to determine if the sewer system serving the premises could handle the additional EDUs generated by a commercial use over those generated by an industrial use.

23. That in re-zoning a 12.47-acre parcel of the larger parcel described as No. 128-C3-108 in the Sandy Township assessment maps, the Appellees treated said parcel differently from similar surrounding land and such differential treatment was not justifiable.

24. That in deciding to re-zone a portion of the larger industrial tract, the Appellees failed to determine how such re-zoning would affect the public health, safety, morals and general welfare of the community and ignored the evidence submitted by Appellants that such re-zoning would adversely affect the public health, safety, morals and general welfare of the taxpayers of Sandy Township and the surrounding area.

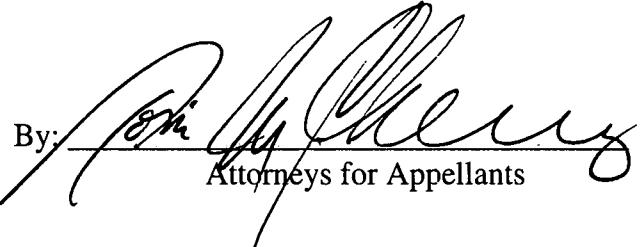
25. That the actions of the Appellees in voting to re-zone a 12.47-acre parcel of the larger industrial tract described as No. 128-C3-108 on the assessment maps of Sandy Township

is arbitrary and unreasonable and has no substantial relation to the general welfare of the public.

WHEREFORE, Appellants respectfully request Your Honorable Court to declare the rezoning of the 12.47-acre tract invalid and to vacate Ordinance No. 4-2005 and to enter judgment on behalf of Appellants and against Appellees for all further relief that Your Honorable Court may deem equitable and proper.

Respectfully submitted,

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

By: 

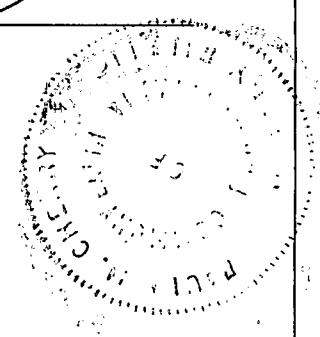
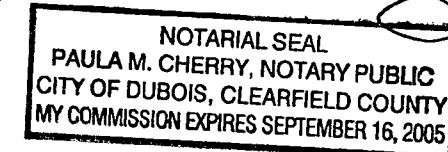
John M. Cherry  
Attorneys for Appellants

COMMONWEALTH OF PENNSYLVANIA :  
: SS.  
COUNTY OF CLEARFIELD :

Personally appeared before me, a Notary Public in and for the County and State aforesaid, WILLIAM B. CLYDE, who, being duly sworn according to law, deposes and says that he is one of the Appellants named in the above-captioned action and that he is authorized to make this Affidavit on behalf of all of the Appellants named herein and that the facts contained herein are true and correct to the best of his knowledge, information and belief.

William B. Clyde  
William B. Clyde

Sworn to and subscribed before me this 1<sup>st</sup> day of June, 2005.



# CLEARFIELD COUNTY RECORDER OF DEEDS

**Karen L. Starck, Recorder**

**Maurene Inlow - Chief Deputy**

P.O. Box 361

1 North Second Street, Suite 103  
Clearfield, Pennsylvania 16830

**\*RETURN DOCUMENT TO:**

SANDY TOWNSHIP  
P O BOX 267  
DUBOIS, PA 15801

Instrument Number - 200507814  
Recorded On 5/25/2005 At 2:28:45 PM

\* Instrument Type - ORDINANCES

\* Total Pages - 6

Invoice Number - 129940

\* Grantor - ORDINANCE

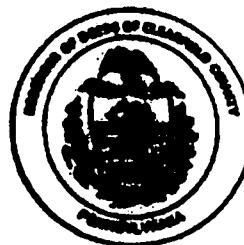
\* Grantee - SANDY TOWNSHIP

\* Customer - SANDY TOWNSHIP

**\*FEES**

STATE WRIT TAX	\$0.50
RECORDING FEES -	\$15.00
RECODER	
RECODER IMPROVEMENT	\$3.00
FUND	
COUNTY IMPROVEMENT FUND	\$2.00
TOTAL	\$20.50

I hereby CERTIFY that this document  
is recorded in the Recorder's Office of  
Clearfield County, Pennsylvania.



*Karen L. Starck*

**Karen L. Starck  
Recorder of Deeds**

THIS IS A CERTIFICATION PAGE

## **Do Not Detach**

THIS PAGE IS NOW PART OF THIS LEGAL DOCUMENT

\* - Information denoted by an asterisk may change during the verification process and may not be reflected on this page.

I hereby certify that the foregoing Ordinance was advertised in the Courier Express on May 6 & 9, 2005 a newspaper of general circulation in the municipality, and approval as set forth at a Regular Meeting of the Sandy Township Supervisors held on May 16, 2005.

**SANDY TOWNSHIP ORDINANCE NO. 4 - 2005**

Barbara D. Horning, Secretary

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE TOWNSHIP OF SANDY. THE AMENDMENT CONSISTS OF A CHANGE TO THE ZONING MAP (THE MAP IS IDENTIFIED IN SECTION 301 OF THE ZONING ORDINANCE OF SANDY TOWNSHIP.) THE AMENDMENT CHANGES THE ZONING CLASSIFICATION OF A 12.47 ACRE PORTION OF PARCEL NO. 128-C3-108 FROM AN INDUSTRIAL ZONED DISTRICT TO A COMMERCIAL-HIGHWAY ZONED DISTRICT. THE 12.47 ACRE PARCEL IS LOCATED ALONG THE WESTERN SIDE OF INDUSTRIAL DRIVE, DIRECTLY BEHIND THE EXISTING WAL-MART STORE IN SANDY TOWNSHIP, CLEARFIELD COUNTY.

**WHEREAS**, Sandy Township enacted Ordinance No. 1996-2, entitled The Zoning Ordinance of the Township of Sandy; and

**WHEREAS**, Section 301 of said Ordinance is entitled "Zoning Map" and states that a map entitled the Township of Sandy Zoning Map was adopted as a part of the Ordinance and was to be kept on file and available for examination at the Township offices; and

**WHEREAS**, the said Ordinance and map divide the Township into certain defined districts; and

**WHEREAS**, Parcel No. 128-C3-108 in the Township of Sandy is located in an Industrial Zone; and

**WHEREAS**, Sandy Township received a request to have a 12.47 acre portion of this parcel re-zoned from Industrial to Commercial-Highway; and

**WHEREAS**, the 12.47 acre parcel is located along the Western side of Industrial Drive, directly behind the existing Wal-Mart Store in Sandy Township, Clearfield County; and

**WHEREAS**, the Sandy Township Planning Commission and the Clearfield County Planning Commission were notified of the requested zoning map change and were given the opportunity to submit recommendations; and

**WHEREAS**, a Public Hearing was held on May 2, 2005, after due public notice, concerning the zoning classification of the 12.47 acre parcel from Industrial to Commercial-Highway; and

**WHEREAS**, the Supervisors of Sandy Township at their regular meeting held on May 2, 2005 authorized the Solicitor to advertise the Ordinance required to change the zoning classification; and

**WHEREAS**, proper legal notice was provided to the public of this proposed Ordinance and the Supervisors of the Township of Sandy now wish to amend the Sandy Township



H.F. LENZ  
COMPANY

**LEGAL DESCRIPTION OF LAND OF  
DEVELOPAC, INC. TO BE ACQUIRED BY  
WAL-MART STORES, INC.**  
**MARCH 8, 2005**

Beginning at a Berntsen aluminum monument in concrete at the northeasterly corner of land conveyed by David C. DuBois to Wal-Mart Stores, Inc. as recorded in Clearfield County Deed Book Volume 1394 at Page 217;

Thence, along the northerly line of said land, North Seventy degrees Forty-Six minutes Forty-Six seconds West ( $N 70^{\circ}46'46'' W$ ), a distance of Sixty-Six and Forty-Seven hundredths feet (66.47') to the westerly line of Industrial Drive dedicated to the Township of Sandy as recorded in Clearfield County Map File No. 1163, Plat of Partition, Lot No. 30 of Sandy Township/Developac Industrial Park recorded March 11, 1996, the True Point of Beginning.

Thence, continuing along said northerly line, North Seventy degrees Forty-Six minutes Forty-Six seconds West ( $N 70^{\circ}46'46'' W$ ), a distance of Eight Hundred Fifty-Seven and Fifty-Eight hundredths feet (857.58') to a Berntsen aluminum monument in concrete at the northwesterly corner of land conveyed by David C. DuBois to Wal-Mart Stores, Inc. as recorded in Clearfield County Deed Book Volume 1394 at Page 217;

Thence, along the southerly line of land conveyed by David C. DuBois to Developac, Inc. as recorded in Clearfield County Deed Book Volume 1687 at Page 109, North Seventy degrees Thirty minutes Thirty-Nine seconds West ( $N 70^{\circ}30'39'' W$ ), a distance of Ninety and Eighty hundredths feet (90.80') to an extant iron pin on the municipal line dividing Sandy Township and the City of DuBois;

Thence, along said dividing line, the following Four (4) courses:

- 1) North Fourteen degrees Four minutes Thirty-Seven seconds East ( $N 14^{\circ}04'37'' E$ ), a distance of One Hundred Seventy-Nine and Twenty-Six hundredths feet (179.26') to an extant nail.
- 2) North Eight degrees Forty-Five minutes Thirty-One seconds West ( $N 08^{\circ}45'31'' W$ ), a distance of Two Hundred Ten and Sixteen hundredths feet (210.16') to an extant iron pin.
- 3) North One degree Fifty-Six minutes Twenty-Eight seconds East ( $N 01^{\circ}56'28'' E$ ), a distance of Two Hundred Eighty-Two and One hundredth feet (282.01') to an extant iron pin and
- 4) North Twenty-Five degrees Thirty-Three minutes Fifty-Four seconds East ( $N 25^{\circ}33'54'' E$ ), a distance of One Hundred Seventeen and Two hundredths feet (117.02') to a point near an extant iron pipe with surveyor's plug on the southerly line of Lot No. 2 of the Sandy Township/Developac, Inc. Industrial Park;

Thence, along said southerly line, the following Three (3) courses:

- 1) South Eight degrees Fifty-Three minutes Thirty-Nine seconds West ( $S 08^{\circ}53'39'' W$ ), a distance of One Hundred Thirty-Eight and Thirteen hundredths feet (138.13') to an extant iron pipe with surveyor's plug.
- 2) South Seventy-Two degrees Twenty-Three minutes Twenty-One seconds East ( $S 72^{\circ}23'21'' E$ ), a distance of Five Hundred Eighty-Seven and Forty-Eight hundredths feet (587.48') to an extant iron pipe with surveyor's plug and

EXHIBIT "A"

1

3) North Eighty-Four degrees Thirty-Two minutes Fifty-Four seconds East (N 84°32'54" E), a distance of Seventy-Seven and Eighty-Nine hundredths feet (77.89') to the westerly right of way line of Industrial Drive dedicated to the Township of Sandy as recorded in Clearfield County Map File No. 1163, Plat of Partition, Lot No. 30 of Sandy Township/Developac Industrial Park recorded March 11, 1996 near an extant iron pipe with surveyor's plug.

Thence, along said westerly right of way line, the following Three (3) courses:

- 1) By a non-tangential curve to the left having a radius of Six Hundred Twenty-One and Ninety-Five hundredths feet (621.95'), a chord bearing South Seventeen degrees Fifty-Seven minutes Thirteen seconds East (S 17°57'13" E) for a distance of Two Hundred Sixty-Nine and Forty-Two hundredths feet (269.42') and an arc length of Two Hundred Seventy-One and Fifty-Seven hundredths feet (271.57') to an iron pin with aluminum alloy cap set at a point of tangency.
- 2) South Thirty degrees Twenty-Seven minutes Forty-Six seconds East (S 30°27'46" E), a distance of One Hundred Seventy and Sixty-Three hundredths feet (170.63') to an iron pin with aluminum alloy cap set at a point of curvature and
- 3) By a curve to the right having a radius of Four Hundred Forty-Eight and Fifteen hundredths feet (448.15'), chord bearing South Five degrees Fifty minutes Fifty-Three seconds East (S 05°50'53" E) for a distance of Three Hundred Seventy-Three and Thirty-Two hundredths feet (373.32') and an arc length of Three Hundred Eighty-Five and Six hundredths feet (385.06') to the True Point of Beginning.

Encompassing an area of Five Hundred Forty-Three Thousand One Hundred Thirty square feet (543,130 sq. ft.) or Twelve and Forty-Seven hundredths acres (12.47 ac.)

Being part of the same premises which David C. DuBois conveyed to Developac, Inc. by deed dated May 23, 1995 and recorded July 6, 1995 in Clearfield County Deed Book Volume 1687 at Page 109.



Zoning Ordinance and map to reclassify the 12.47 acre parcel from Industrial to Commercial-Highway and thus change the Zoning Map of the Township of Sandy.

**NOW, THEREFORE BE IT ORDAINED AND ENACTED AND IT IS HEREBY ORDAINED AND ENACTED** as follows:

**Section I.**

(a) The Zoning Map of the Township of Sandy (identified in Section 301 of the Zoning Ordinance of Sandy Township) is hereby amended so as to reclassify the 12.47 acre parcel from Industrial to Commercial-Highway.

(b) The said parcel is further identified and/or described in the attached Exhibit "A" which is a description of the 12.47 acre parcel, said Exhibit "A" incorporated herein to this Ordinance as if set forth fully herein.

**Section II. Conflict with other Regulations/Repeal of Prior Ordinances.**

All regulations, ordinances or parts of ordinances which are inconsistent herewith are hereby repealed.

**Section III. Severability.**

If any section, clause, provision or portion of this ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not effect any other section, clause, provision or portion of this ordinance.

**Section IV. Effective Date**

The effective date of this Ordinance is five (5) days after it is enacted by the Board of Supervisors of the Township of Sandy.

**ORDAINED, ENACTED, AND ADOPTED** this 16 day of May, 2005 by  
vote of the Board of Supervisors of the Township of Sandy.

ATTEST:

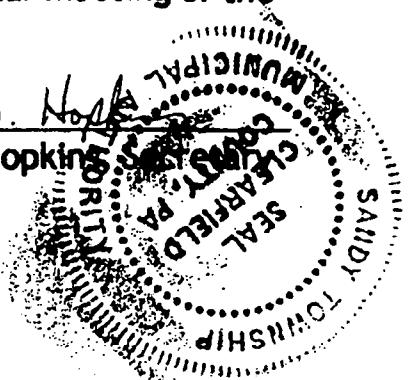
*[Handwritten signature of Bartender, possibly a stamp]*

SANDY TOWNSHIP  
BOARD OF SUPERVISORS

BY: *[Signature]*  
Chairman

WAL-MART SUPERCENTER ORD - SANDY TWP  
CGM

I hereby certify that the foregoing Ordinance was advertised in the Courier Express on May 6 and 9, 2005 a newspaper of general circulation in the municipality, and approval as set forth at a Regular Meeting of the Sandy Township Supervisors held on May 16, 2005.

*Barbara D. Hopkins*  
Barbara D. Hopkins, Secretary  


ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA

SS:

COUNTY OF CLEARFIELD

On this the 16 day of May, 2005, before me the subscriber, a Notary Public, personally appeared BARBARA D. HOPKINS, Secretary of the Township of Sandy and in due form of law acknowledged the Sandy Township Ordinance No. 4-2005 to be a true act and deed and adopted by the Sandy Township Board of Supervisors on May 16, 2005, and desired the same be recorded as such.

WITNESS my hand and seal the day and year aforesaid.

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Shelly A. Reasinger, Notary Public  
Sandy Twp., Clearfield County  
My Commission Expires Mar. 28, 2008  
Member, Pennsylvania Association of Notaries

*Shelly A. Reasinger*  
Notary Public

Inst # 200507814  
I hereby certify this to be a true  
and attested copy of the original  
document filed in this office.

JUN 1 2005

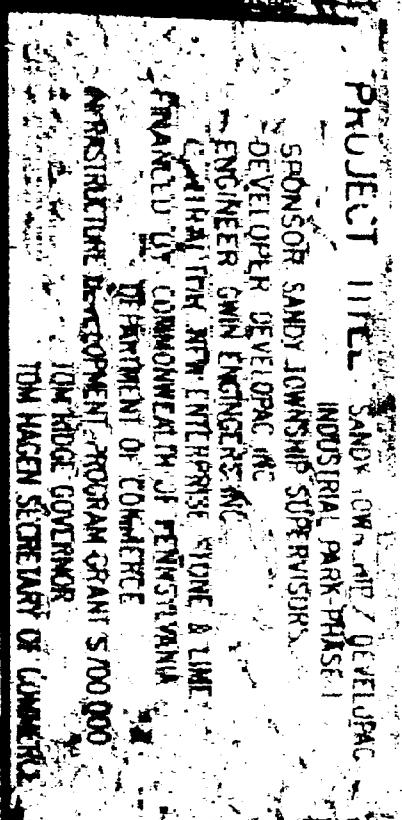
Attest:

  
Karen D. Lewis

Reg. of Wills, Rec. of Deeds & Clk. of Orphans' Court

MY COMMISSION EXPIRES  
FIRST MONDAY IN JANUARY 2008

# PENNSYLVANIA FUNDING FOR INDUSTRIAL PARK



PENNSYLVANIA FUNDING  
FOR INDUSTRIAL PARK

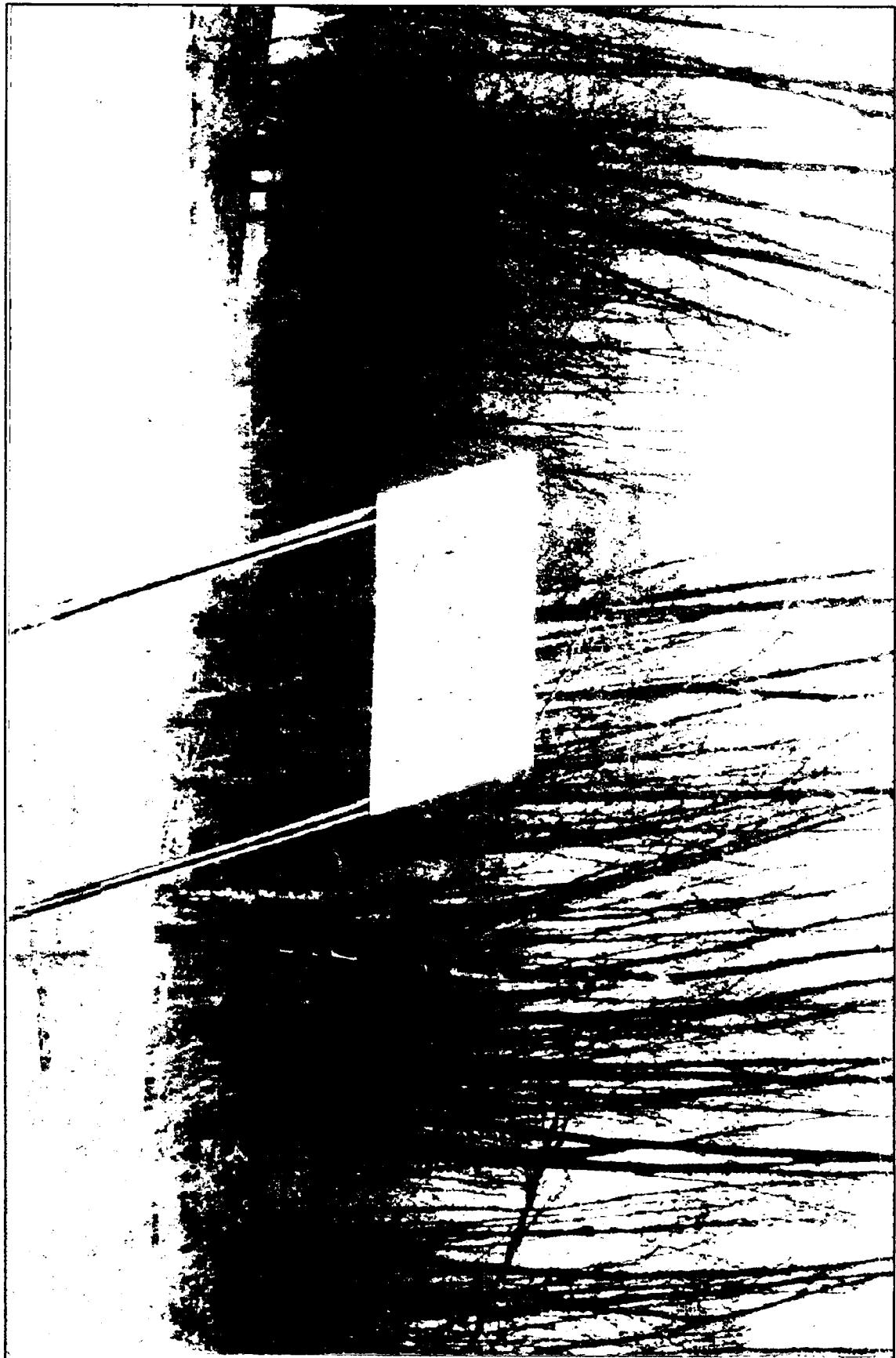


EXHIBIT "C"

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

Sandy Citizens Arguing for Responsible Economic \*  
Development (S.C.A.R.E.D.),  
William B. Clyde, Gary A. Peterson,  
William G. Allenbaugh and Nancy L. Allenbaugh  
Appellants  
Vs. \* No. 2005-00787-CD  
Sandy Township Board of Supervisors \*  
Appellees

TO: Sandy Township Board of Supervisors

On June 1, 2005, The Appellants in the above action have duly filed a Land Use Appeal Notice on the decisions of **The Sandy Township Board of Supervisors** to rezone 12.47 acres located in Sandy Twp. A copy of said Notice is hereby attached.

Therefore, you are hereby COMMANDED, within twenty (20) days after the receipt of this Writ, to certify to the Court your entire record in this matter from which the Land Use Appeal has been taken, or a true and correct copy thereof: including any transcripts of testimony in existence and available to **Sandy Township Board of Supervisors** or the **Township of Sandy** at the time this Writ is received by you.

WITNESS THE HAND AND SEAL OF  
WILLIAM A. SHAW, PROTHONOTARY,



Date: JUNE 1, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

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: Type of Case: LAND USE APPEAL  
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: Type of Pleading: PETITION TO STAY  
: ALL USE OR DEVELOPMENT OF  
: 12.47-ACRE PARCEL PENDING  
: APPEAL  
:  
:  
: Filed on Behalf of: SANDY CITIZENS  
: ARGUING FOR RESPONSIBLE  
: ECONOMIC DEVELOPMENT  
: (S.C.A.R.E.D.), WILLIAM B. CLYDE,  
: GARY A. PETERSON, WILLIAM G.  
: ALLENBAUGH and NANCY L.  
: ALLENBAUGH, Appellants  
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: Counsel of Record for Appellants:  
:  
: TONI M. CHERRY, ESQ.  
: Supreme Court No.: 30205  
:  
: GLEASON, CHERRY AND  
: CHERRY, L.L.P.  
: Attorneys at Law  
: P. O. Box 505  
: One North Franklin Street  
: DuBois, PA 15801  
:  
: (814) 371-5800

FILED

JUN 02 2005

6/11/05  
William A. Shaw  
Prothonotary

5 CENTS TO AIR

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

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ALLENBAUGH,	:	No. 05 - 787 C.D.
Appellants	:	
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SUPERVISORS,	:	
Appellees	:	

**PETITION TO STAY ALL USE OR DEVELOPMENT**  
**OF 12.47-ACRE PARCEL PENDING APPEAL**

TO THE HONORABLE, THE JUDGES OF SAID COURT:

AND NOW, come the Appellants, SANDY CITIZENS ARGUING FOR RESPONSIBLE ECONOMIC DEVELOPMENT (S.C.A.R.E.D.), WILLIAM B. CLYDE, GARY A. PETERSON, WILLIAM G. ALLENBAUGH and NANCY L. ALLENBAUGH, by and through their attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and petition Your Honorable Court to stay the use and development of a 12.47-acre parcel of ground located in Sandy Township for commercial purposes pending resolution of the above-captioned appeal and, in support thereof, aver the following:

1. That Appellants have filed a Land Use Appeal to the above-captioned term and number objecting to the re-zoning of a 12.47-acre parcel of ground out of Parcel No.

128-C3-108 in Sandy Township, Clearfield County, Pennsylvania, from industrial to commercial highway zoned district.

2. That Appellants contend, among other objections in their Appeal, that said action by the SANDY TOWNSHIP BOARD OF SUPERVISORS in re-zoning the parcel is invalid as “spot zoning”.

3. That it is believed and therefore averred that the legal owner of the subject premises has entered into an agreement to convey the subject premises to a buyer who intends to construct a commercial building thereon and that the sale of the premises is contingent upon the subject premises being re-zoned from industrial to commercial.

4. That by ordinance enacted on May 16, 2005, the Board of Supervisors of Sandy Township did re-zone the subject premises from industrial to commercial.

5. That said Ordinance No. 4-2005 was recorded in the Offices of the Register and Recorder of Deeds of Clearfield County, Pennsylvania, as Instrument No. 200507814.

6. That the filing of an appeal from such action by the Sandy Township Board of Supervisors does not stay the action appealed from automatically.

7. That if all matters emanating from the actions taken by the Sandy Township Board of Supervisors in re-zoning the subject premises are not stayed, the use and development of the 12.47-acre parcel in accordance with those uses permitted in a commercial highway zoned district will proceed.

8. If the premises is developed, Appellants will be prejudiced in litigating the issues raised by them on appeal because it is the use of the land for commercial purposes that Appellants seek to prevent.

9. That if a stay is not granted by Your Honorable Court, the property will be developed for a commercial purpose and the question of whether Appellees engaged in impermissible and invalid "spot zoning" will be rendered moot.

WHEREFORE, the undersigned respectfully requests Your Honorable Court to stay all use or development of the 12.47-acre parcel of land that is the subject of this appeal temporarily and to issue a final order staying all use and development of said premises pending final resolution of the appeal filed to the above-captioned term and number.

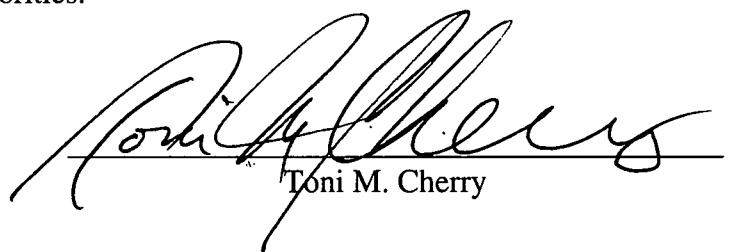
Respectfully submitted,

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

By   
John P. Cherry  
Attorneys for Appellants

## VERIFICATION

I, TONI M. CHERRY, Attorney for Appellants, verify that the information provided in the foregoing Petition are true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.



A handwritten signature in black ink, appearing to read "Toni M. Cherry". The signature is fluid and cursive, with a horizontal line drawn beneath it.

DATED: June 2, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

SANDY CITIZENS ARGUING FOR :  
RESPONSIBLE ECONOMIC :  
DEVELOPMENT (S.C.A.R.E.D.), :  
WILLIAM B. CLYDE, GARY A. :  
PETERSON, WILLIAM G. :  
ALLENBAUGH and NANCY L. :  
ALLENBAUGH, :  
Appellants :  
vs. :  
: No. 05 - 787 C.D.

SANDY TOWNSHIP BOARD OF :  
SUPERVISORS, :  
Appellees :  
:

FILED

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010:10 AM @  
William A. Shaw  
Prothonotary/Clerk of Courts

5 cent to Party Chosen

ORDER

AND NOW, this 3<sup>rd</sup> day of June, 2005, upon consideration of Appellants' Petition to Stay All Use or Development of 12.47-Acre Parcel Pending Appeal and in consideration of the facts set forth therein, a hearing to determine if a final order should be entered staying all use or development of the subject 12.47-acre parcel pending resolution of the Land Use Appeal filed to the above-captioned term and number is scheduled for the 8 day of June, 2005, in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania, at 10:30 o'clock A.M.

Notice of this hearing shall be served upon the SANDY TOWNSHIP BOARD OF SUPERVISORS as well as any other parties who have entered an appearance in this matter, together with a certified copy of the Petition for Stay filed herein.

Pending final disposition of this Petition, all further use and development of the 12.47-acre parcel, being part of a larger 196.97-acre parcel owned by Developac, Inc., is hereby stayed.

BY THE COURT:



A handwritten signature in black ink, appearing to read "Jack L. Humerman", is written over a horizontal line. Below the signature, the word "Judge" is printed in a smaller, sans-serif font.

U.S. Postal Service™  
**CERTIFIED MAIL™ RECEIPT**  
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DU BOIS PA 15801

**OFFICIAL USE**

Postage	\$ 1.06	0830 07 Postmark Here
Certified Fee	\$ 2.30	
Return Receipt Fee (Endorsement Required)	\$ 1.75	
Restricted Delivery Fee (Endorsement Required)	\$ 0.00	
Total Postage & Fees	\$ 5.11	

06/02/2005  
05-787-CD

05-787-CD

Sent To  
Sandy Township Board of Supervisors  
Street, Apt. No.  
or PO Box No.  
PO Box 267  
DuBois, PA 15801

PS Form 3800, June 2002  
See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

- 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:

Sandy Township Board of  
Supervisors  
PO Box 267  
DuBois, PA 15801

05-787-CD  
2. Article Number  
(Transfer from service label)

PS Form 3811, August 2001

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

*James A. Keck*

Agent

Addressee

B. Received by (Printed Name)

*James A. Keck*

C. Date of Delivery

5/30/05

D. Is delivery address different from item 1?  Yes

If YES, enter delivery address below:  No

3. Service Type

<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered	<input type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

7002 2030 0004 5014 7791

Domestic Return Receipt

102595-02-M-1540

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018:54 AM  
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C

W. Ian A. Shaw  
Prothonotary, Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

SANDY CITIZENS ARGUING FOR	:	
RESPONSIBLE ECONOMIC	:	
DEVELOPMENT (S.C.A.R.E.D.),	:	
WILLIAM B. CLYDE, GARY A.	:	
PETERSON, WILLIAM G.	:	
ALLENBAUGH and NANCY L.	:	
ALLENBAUGH,	:	No. 05 - 787 C.D.
Appellants	:	
	:	
vs.	:	
	:	
SANDY TOWNSHIP BOARD OF	:	
SUPERVISORS,	:	
Appellees	:	

FILED

01:45 PM

JUN 06 2005

William A. Shaw  
Prothonotary/Clerk of Courts

500 Atty T. Cherry

**CERTIFICATE OF SERVICE**

I hereby certify that on this 3<sup>rd</sup> day of June, 2005, a certified copy of the Petition to Stay All Use or Development of 12.47-Acre Parcel Pending Appeal and Order filed in the above-captioned case was served upon the following by mailing the same to them by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

Developac, Inc.  
996 Beaver Drive  
DuBois, PA 15801

Jeffrey A. Mills, Esq.  
Pepper, Hamilton LLP  
One Mellon Center, 50<sup>th</sup> Floor  
Pittsburgh, PA 15219

Sandy Township Board of Supervisors  
P. O. Box 267  
DuBois, PA 15801

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

By

Atorneys for Appellants

Dated: June 3, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

SANDY CITIZENS ARGUING FOR :  
RESPONSIBLE ECONOMIC :  
DEVELOPMENT (S.C.A.R.E.D.), :  
WILLIAM B. CLYDE, GARY A. :  
PETERSON, WILLIAM G. :  
ALLENBAUGH and NANCY L. :  
ALLENBAUGH, :  
Appellants :  
vs. :  
SANDY TOWNSHIP BOARD OF :  
SUPERVISORS, :  
Appellees :

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01:45 PM Atty  
JUN 06 2005 Cherry  
William A. Shaw  
Prothonotary/Clerk of Courts  
OK

No. 05 - 787 C.D.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2<sup>nd</sup> day of June, 2005, a true and correct copy of the Notice of Land Use Appeal filed in the above-captioned case was served upon the landowners or their attorneys as required by 53 P.S. §11003-A by mailing the same to them by Certified Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

Developac, Inc.  
Legal Landowner  
996 Beaver Drive  
DuBois, PA 15801

Jeffrey A. Mills, Esq.  
Attorney for Wal-Mart Stores, Inc.,  
Equitable Landowner  
Pepper, Hamilton LLP  
One Mellon Center, 50<sup>th</sup> Floor  
Pittsburgh, PA 15219

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

By

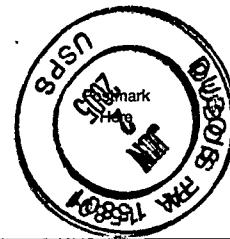
Attorneys for Appellants

Dated: June 2, 2005

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
*(Domestic Mail Only; No Insurance Coverage Provided)*

OFFICIAL USE

Postage	\$ 1.06
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 3.36



Sent To  
**Developac, Inc.**

Street, Apt. No.; or PO Box No.  
**996 Beaver Drive**  
 City, State, ZIP+4  
**DUBOIS, PA 15801**

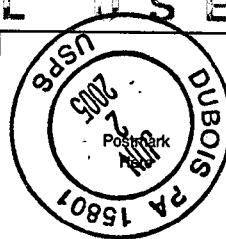
PS Form 3800, May 2000

See Reverse for Instructions

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
*(Domestic Mail Only; No Insurance Coverage Provided)*

OFFICIAL USE

Postage	\$ 1.06
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 3.36



Sent To  
**Jeffrey A. Mills, Esq., Pepper, Hamilton**

Street, Apt. No.; or PO Box No.  
**One Mellon Center, 50th Floor**  
 City, State, ZIP+4  
**Pittsburgh, PA 15219**

PS Form 3800, May 2000

See Reverse for Instructions

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

SANDY CITIZENS ARGUING FOR  
RESPONSIBLE ECONOMIC  
DEVELOPMENT (S.C.A.R.E.D.),  
WILLIAM B. CLYDE, GARY A.  
PETERSON, WILLIAM G.  
ALLENBAUGH and NANCY L.  
ALLENBAUGH,

CIVIL DIVISION

No. 05-787 C.D.

**NOTICE OF INTERVENTION**

Appellants,

vs.

SANDY TOWNSHIP BOARD OF  
SUPERVISORS,

Filed on behalf of Intervenor:  
DEVELOPAC, INC.

Appellees.

Counsel of Record for this party:

Dusty Elias Kirk, Esquire  
PA ID No. 30702  
Sharon F. DiPaolo, Esquire  
PA ID No. 74520  
Pepper Hamilton LLP  
Firm I.D. No. 143  
One Mellon Center  
50<sup>th</sup> Floor  
500 Grant Street  
Pittsburgh, PA 15219-2502  
(412) 454-5000

Carl A. Belin, Jr., Esquire  
Belin & Kubista  
15 North Front Street, P.O. Box 1  
Clearfield, Pennsylvania 16830  
(814) 765-8972

FILED

JUN 08 2005

01/10/05

William A. Shaw

Prothonotary/Clerk of Courts

1 CERT TO ATT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

SANDY CITIZENS ARGUING FOR	)	CIVIL DIVISION
RESPONSIBLE ECONOMIC	)	
DEVELOPMENT (S.C.A.R.E.D.),	)	No. 05-787 C.D.
WILLIAM B. CLYDE, GARY A.	)	
PETERSON, WILLIAM G.	)	
ALLENBAUGH and NANCY L.	)	
ALLENBAUGH,	)	
	)	
Appellants,	)	
	)	
vs.	)	
	)	
SANDY TOWNSHIP BOARD OF	)	
SUPERVISORS,	)	
	)	
Appellees.	)	

**NOTICE OF INTERVENTION**

Kindly take notice that Developac, Inc., by and through its attorneys, Pepper Hamilton LLP and Belin & Kubista, hereby intervenes pursuant to 53 P.S. §11004-A in this appeal in support of the decision of the Sandy Township Board of Supervisors.

Respectfully submitted,



Dusty Elias Kirk  
Attorney for Intervenor  
PEPPER HAMILTON LLP  
One Mellon Center  
50th Floor  
500 Grant Street  
Pittsburgh, PA 15219-2502  
(412) 454-5000

**CERTIFICATE OF SERVICE**

I, Dusty Elias Kirk, hereby certify that on June 8, 2005 a true and correct copy of the foregoing Notice of Intervention was served via hand delivery, upon the following:

Toni M. Cherry, Esquire  
Gleason, Cherry and Cherry, L.L.P.  
P.O. Box 505  
One North Franklin Street  
Dubois, PA 15801

Sandy Township Board of Supervisors  
c/o Richard Castonguay, Jr.  
Sandy Township Manager  
P.O. Box 267  
DuBois, PA 15801

Dusty Elias Kirk  
Dusty Elias Kirk

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

SANDY CITIZENS ARGUING FOR :  
RESPONSIBLE ECONOMIC  
DEVELOPMENT (S.C.A.R.E.D.),  
WILLIAM B. CLYDE, GARY A.  
PETERSON, WILLIAM G.  
ALLENBAUGH and NANCY L.  
ALLENBAUGH

-VS-

No. 05-787-CD

SANDY TOWNSHIP BOARD OF  
SUPERVISORS

-VS-

DEVELOPAC, INC.

FILED 2cc  
of 30551 Atty:  
JUN 09 2005 T. Cherry  
William A. Shaw  
Prothonotary/Clerk of Courts  
Sandy Twp.  
Supervisors  
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O R D E R

NOW, this 8th day of June, 2005, following argument presented to the Court relative the stay that was issued by the Court's Order of June 3, 2005, it is the ORDER of this Court that counsel for the Plaintiff submit appropriate brief to the Court within no more than fifteen (15) days from this date as to the Court maintaining the stay and the propriety of the same. Counsel for the Intervener and counsel for Defendant Sandy Township shall also submit appropriate brief to the Court relative the issue and shall further supply the Court with an

alternative proposed order within the said fifteen (15) day time period.

BY THE COURT,

A handwritten signature in black ink, appearing to read "Freder J. Kinnear", is written over a horizontal line.

President Judge

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

SANDY TOWNSHIP ARGUING FOR  
RESPONSIBLE ECONOMIC  
DEVELOPMENT (S.C.A.R.E.D.),  
WILLIAM B. CLYDE, GARY A.  
PETERSON, WILLIAM G.  
ALLENBAUGH and NANCY L.  
ALLENBAUGH,

No. 05 – 787 CD

**RESPONSE TO WRIT OF  
CERTIORARI**

Appellants

Filed on behalf of Appellees

vs

SANDY TOWNSHIP BOARD OF  
SUPERVISORS,

Appellees

Counsel of Record for this party:  
R. Edward Ferraro, Esq.  
PA ID No. 05880  
Ferraro, Kruk & Ferraro, LLP  
690 Main Street  
Brockway, PA 15824  
814-268-2202

vs

DEVELOPAC, INC.,

Intervenor.

**FILED**

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JUN 23 2005  
0/11:25/05  
William A. Shaw  
Prothonotary/Clerk of Courts  
NO CERT COPIES

*DA*  
ALL ATTACHED DOCUMENTS  
RETURNED TO SANDY TWP.  
ON JULY 21, 2005

SEE ATTACHED SHEET.

*WMA*

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

SANDY TOWNSHIP ARGUING FOR : No. 05 - 787 CD

RESPONSIBLE ECONOMIC  
DEVELOPMENT (S.C.A.R.E.D.),  
WILLIAM B. CLYDE, GARY A.  
PETERSON, WILLIAM G.  
ALLENBAUGH and NANCY L.  
ALLENBAUGH,

Appellants

vs

SANDY TOWNSHIP BOARD OF  
SUPERVISORS,

Appellees

vs

DEVELOPAC, INC.,

Intervenor.

**RESPONSE TO WRIT OF CERTIORARI**

**TO: WILLIAM A. SHAW, PROTHONOTARY OF SAID COURT:**

1. This document is being filed on behalf of the Sandy Township Board of Supervisors, Appellees in the above-captioned matter.
2. Sandy Township received a Writ of Certiorari on June 3, 2005, commanding Sandy Township within twenty (20) days after receipt of the Writ to certify to the Court the entire record in this matter from which the Land Use Appeal has been taken, or a true and correct copy thereof.
3. The attached documents are true and correct copies of the entire record in this matter from which the Land Use Appeal has been taken.
4. This document includes the attached Certification signed by the Secretary of Sandy Township.

WHEREFORE, Sandy Township Board of Supervisors, Appellees, hereby respond to the Writ of Certiorari in the above-captioned matter.

SANDY TOWNSHIP  
BOARD OF SUPERVISORS –  
APPELLEES

BY: Frances M. Keal  
Attorney for Appellees

6-22-05

CERTIFICATION OF RECORD

I hereby certify to the Court of Common Pleas of Clearfield County, Pennsylvania, that the attached is a true and correct copy of the entire record of Sandy Township in the above-captioned matter.

Barbara D. Hopkins  
Barbara D. Hopkins, Secretary

6-22-05

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

Re: 05-0787-CD

Sandy Citizens Arguing for Responsible Economic  
Development (S.C.A.R.E.D.), William B. Clyde,  
Gary A. Peterson, William G. Allenbaugh and  
Nancy L. Allenbaugh

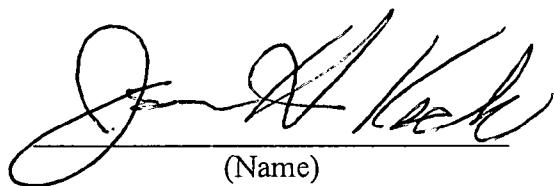
Vs.

Sandy Township Board of Supervisors

Vs.

Developac, Inc.

On the 21<sup>st</sup> day of July, 2005, I received, on behalf of the Sandy Township Supervisors, the record previously submitted to the Court by Sandy Township following the filing of a Writ of Certiorari June 1, 2005. This is in compliance with the Honorable Fredric J. Ammerman's Order of July 8, 2005, stating, "The Prothonotary is directed to return the record to Sandy Township Supervisors, with any costs of the same being paid by the Township of Sandy, as agreed by counsel."



(Name)

Sandy Twp. Zoning Office  
(Title)

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

SANDY TOWNSHIP ARGUING FOR  
RESPONSIBLE ECONOMIC  
DEVELOPMENT (S.C.A.R.E.D.),  
WILLIAM B. CLYDE, GARY A.  
PETERSON, WILLIAM G.  
ALLENBAUGH and NANCY L.  
ALLENBAUGH,

No. 05 – 787 CD

**CERTIFICATE OF SERVICE**

Appellants

Filed on behalf of Appellees

vs

SANDY TOWNSHIP BOARD OF  
SUPERVISORS,

Appellees

Counsel of Record for this party:  
R. Edward Ferraro, Esq.  
PA ID No. 05880  
Ferraro, Kruk & Ferraro, LLP  
690 Main Street  
Brockway, PA 15824  
814-268-2202

vs

DEVELOPAC, INC.,

Intervenor.

FILED

JUN 23 2005  
06/11/2005  
William A. Shaw  
Prothonotary/Clerk of Courts

NO CEM COPIES

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

SANDY TOWNSHIP ARGUING FOR : No. 05 - 787 CD

RESPONSIBLE ECONOMIC  
DEVELOPMENT (S.C.A.R.E.D.),  
WILLIAM B. CLYDE, GARY A.  
PETERSON, WILLIAM G.  
ALLENBAUGH and NANCY L.  
ALLENBAUGH,

Appellants

vs

SANDY TOWNSHIP BOARD OF  
SUPERVISORS,

Appellees

vs

DEVELOPAC, INC.,

Intervenor.

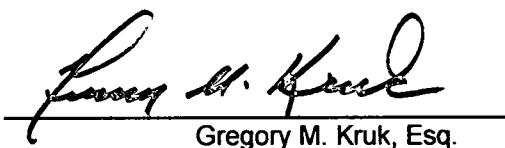
**CERTIFICATE OF SERVICE**

I, GREGORY M. KRUK, ESQ., hereby certify that a true and correct copy of the within Joinder and Adoption of Brief has been served upon the following parties via First Class Mail, Postage Prepaid, on this 23<sup>rd</sup> day of June, 2005.

TONI M. CHERRY, ESQ.  
Gleason, Cherry and Cherry, LLP  
PO Box 505  
One North Franklin Street  
DuBois, PA 15801

DUSTY ELIAS KIRK, ESQ.  
Pepper Hamilton, LLP  
One Mellon Center, 50<sup>th</sup> Floor  
500 Grant Street  
Pittsburgh, PA 15219-2502

JOHN RYAN, ESQ.  
BELIN & KUBISTA  
15 North Front Street  
PO Box 1  
Clearfield, PA 16830

  
\_\_\_\_\_  
Gregory M. Kruk, Esq.

06-23.05

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

SANDY TOWNSHIP ARGUING FOR  
RESPONSIBLE ECONOMIC  
DEVELOPMENT (S.C.A.R.E.D.),  
WILLIAM B. CLYDE, GARY A.  
PETERSON, WILLIAM G.  
ALLENBAUGH and NANCY L.  
ALLENBAUGH,

No. 05 – 787 CD

Appellants

vs

SANDY TOWNSHIP BOARD OF  
SUPERVISORS,

Appellees

vs

DEVELOPAC, INC.,

Intervenor.

**JOINDER and ADOPTION OF BRIEF**

Sandy Township Board of Supervisors hereby joins in and adopts the Brief filed on behalf of Developac, Inc., Intervener in the above-captioned case, said Brief being in opposition of Petition to Stay all use or development of 12.47-acre parcel pending appeal and also joins in and adopts the proposed Order of Court filed with said Brief by Developac, Inc., Intervener in the above-captioned matter.

SANDY TOWNSHIP  
BOARD OF SUPERVISORS

BY: Gregory M. Keel  
Attorney for Sandy Township  
Board of Supervisors

Dated: June 23, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

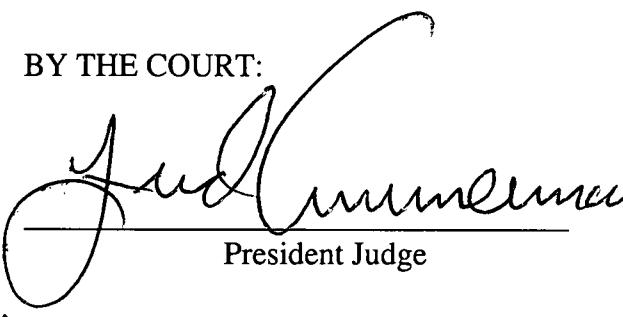
SANDY CITIZENS ARGUING FOR :  
RESPONSIBLE ECONOMIC :  
DEVELOPMENT (S.C.A.R.E.D.), :  
WILLIAM B. CLYDE, GARY A. :  
PETERSON, WILLIAM G. :  
ALLENBAUGH and NANCY L. :  
ALLENBAUGH, :  
Appellants :  
vs. :  
SANDY TOWNSHIP BOARD OF :  
SUPERVISORS, :  
Appellees :  
No. 05 - 787 C.D.

**RULE TO SHOW CAUSE**

AND NOW, this 23<sup>rd</sup> day of June, 2005, in consideration of the Motion filed on behalf of Appellants, a Rule is issued upon Appellees and Intervening Appellees to show cause, if any they have, why leave should not be granted to Appellants to withdraw the instant appeal.

Rule returnable the 23 day of July, 2005, at 11:00 o'clock A.M.  
in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania, for answer thereon.

BY THE COURT:

  
President Judge

FILED DCC  
9:24 K&L Aty T.Cherry  
JUN 24 2005  
60

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

SANDY CITIZENS ARGUING FOR  
RESPONSIBLE ECONOMIC  
DEVELOPMENT (S.C.A.R.E.D.),  
WILLIAM B. CLYDE, GARY A.  
PETERSON, WILLIAM G.  
ALLENBAUGH and NANCY L.  
ALLENBAUGH,  
Appellants

vs.

SANDY TOWNSHIP BOARD OF  
SUPERVISORS,  
Appellees

: No. 05 - 787 C.D.  
:  
: Type of Case: LAND USE APPEAL  
:  
: Type of Pleading: MOTION TO  
: WITHDRAW APPEAL  
:  
:  
:  
:  
:  
: Filed on Behalf of: SANDY CITIZENS  
: ARGUING FOR RESPONSIBLE  
: ECONOMIC DEVELOPMENT  
: (S.C.A.R.E.D.), WILLIAM B. CLYDE,  
: GARY A. PETERSON, WILLIAM G.  
: ALLENBAUGH and NANCY L.  
: ALLENBAUGH, Appellants  
:  
:  
: Counsel of Record for Appellants:  
:  
: TONI M. CHERRY, ESQ.  
: Supreme Court No.: 30205  
:  
: GLEASON, CHERRY AND  
: CHERRY, L.L.P.  
: Attorneys at Law  
: P. O. Box 505  
: One North Franklin Street  
: DuBois, PA 15801  
:  
: (814) 371-5800

FILED 4CC  
012:45PM Atty + Chey  
JUN 23 2005

WD  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

SANDY CITIZENS ARGUING FOR	:	
RESPONSIBLE ECONOMIC	:	
DEVELOPMENT (S.C.A.R.E.D.),	:	
WILLIAM B. CLYDE, GARY A.	:	
PETERSON, WILLIAM G.	:	
ALLENBAUGH and NANCY L.	:	
ALLENBAUGH,	:	No. 05 - 787 C.D.
Appellants	:	
vs.	:	
SANDY TOWNSHIP BOARD OF	:	
SUPERVISORS,	:	
Appellees	:	

**MOTION TO WITHDRAW APPEAL**

TO THE HONORABLE FREDRIC J. AMMERMAN, PRESIDENT JUDGE OF SAID COURT:

AND NOW, come the Appellants, by and through their attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and request leave to withdraw the above-captioned appeal and, in support of which, aver the following:

1. That on June 1, 2005, Appellants took the instant appeal from a decision made by the Sandy Township Board of Supervisors on May 2, 2005, to re-zone a 12.47-acre parcel out of a larger parcel of ground described as No. 128-C3-108 in Sandy Township from industrial to commercial highway zoned district.
2. That on June 2, 2005, Appellants filed a petition requesting Your Honorable Court to stay all development on the subject 12.47-acre parcel pending resolution of the appeal and on

June 3, 2005, Your Honorable Court did issue a temporary order granting such stay pending further argument before the Court.

3. That on June 20, 2005, Appellants also filed a zoning appeal before the Zoning Hearing Board of the Township of Sandy and did request the Zoning Hearing Board to entertain a validity challenge to the Ordinance No. 4-2005 which was adopted by Sandy Township on May 16, 2005, and became effective on June 21, 2005.

4. That said Ordinance No. 4-2005 was actually the legislative act of the Board of Supervisors of Sandy Township that re-zoned the subject 12.47-acre parcel.

5. That Appellants believe that the appropriate procedure is to allow the Sandy Township Zoning Hearing Board to review the subject Ordinance and to take an appeal to Your Honorable Court from the decision of the Zoning Hearing Board if the Zoning Hearing Board should elect to uphold the validity of Ordinance No. 4-2005 and the re-zoning that was accomplished thereby.

6. That no pleadings were actually filed by any of the parties in this appeal other than Appellants but Your Honorable Court did enter an Order. Accordingly, Appellants believe that the appropriate procedure is to file a motion before Your Honorable Court for leave to withdraw the appeal rather than to file a praecipe withdrawing the appeal.

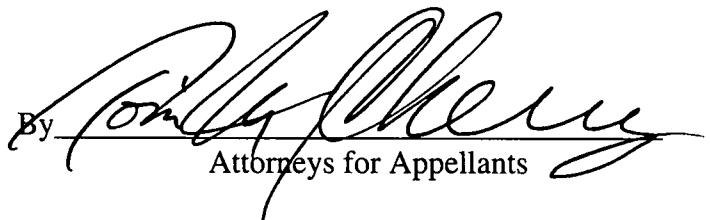
7. That because the matter is now pending before the Zoning Hearing Board of Sandy Township, the instant appeal is unnecessary.

WHEREFORE, the undersigned respectfully requests Your Honorable Court for leave to

withdraw the above-captioned appeal.

Respectfully submitted,

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

By   
Ron Cherry  
Attorneys for Appellants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

SANDY CITIZENS ARGUING FOR	:	
RESPONSIBLE ECONOMIC	:	
DEVELOPMENT (S.C.A.R.E.D.),	:	
WILLIAM B. CLYDE, GARY A.	:	
PETERSON, WILLIAM G.	:	
ALLENBAUGH and NANCY L.	:	
ALLENBAUGH,	:	No. 05 - 787 C.D.
Appellants	:	
	:	
vs.	:	
	:	
SANDY TOWNSHIP BOARD OF	:	
SUPERVISORS,	:	
Appellees	:	

**CERTIFICATE OF SERVICE**

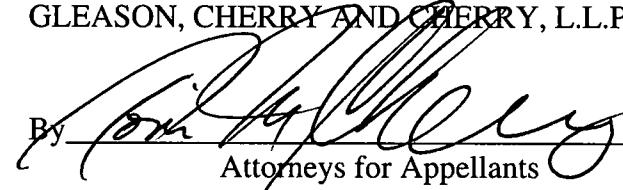
I hereby certify that on this 23<sup>rd</sup> day of June, 2005, a true and correct copy of Appellants' Motion to Withdraw Appeal was served upon the following by mailing the same to them by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

R. EDWARD FERRARO, ESQ.  
Ferraro, Kruk & Ferraro, LLP  
Attorneys at Law  
690 Main Street  
Brockway, PA 15824

DUSTY KIRK ELIAS, ESQ.  
Pepper Hamilton LLP  
Attorneys at Law  
500 Grant Street, 50<sup>th</sup> Floor  
Pittsburgh, PA 15219-2502

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

Dated: June 23, 2005

By   
John P. Kelly  
Attorneys for Appellants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

SANDY CITIZENS ARGUING FOR  
RESPONSIBLE ECONOMIC  
DEVELOPMENT (S.C.A.R.E.D.),  
WILLIAM B. CLYDE, GARY A.  
PETERSON, WILLIAM G.  
ALLENBAUGH and NANCY L.  
ALLENBAUGH

CIVIL DIVISION

NO. 05-787 CD

RESPONSE TO MOTION TO  
WITHDRAW LAND USE  
APPEAL

Appellants,

vs.

SANDY TOWNSHIP BOARD OF  
SUPERVISORS

Filed on behalf of Appellees:  
SANDY TOWNSHIP BOARD  
OF SUPERVISORS

Appellees,

vs.

DEVELOPAC, INC.

Counsel of Record for this Party:

Intervenor

R. Edward Ferraro, Esquire  
Supreme Court No. 05880

Ferraro, Kruk & Ferraro, LLP  
690 Main Street  
Brockway, PA 15824  
814/268-2202

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William A. Shaw

Prothonotary/Clerk of Courts

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

SANDY CITIZENS ARGUING FOR  
RESPONSIBLE ECONOMIC  
DEVELOPMENT (S.C.A.R.E.D.),  
WILLIAM B. CLYDE, GARY A.  
PETERSON, WILLIAM G.  
ALLENBAUGH and NANCY L.  
ALLENBAUGH

CIVIL DIVISION  
NO. 05-787 CD

Appellants,

vs.

SANDY TOWNSHIP BOARD OF  
SUPERVISORS

Appellees,

vs.

DEVELOPAC, INC.

Intervenor

**RESPONSE TO MOTION TO WITHDRAW LAND USE APPEAL**

**AND NOW**, comes Appellees, Sandy Township Board of Supervisors, by and through its Attorneys, Ferraro, Kruk & Ferraro, LLP, and files this Response to Motion to Withdraw Land Use Appeal, and in support thereof sets forth the following:

1. On June 23, 2005, Appellants filed with this Court a Motion to Withdraw Land Use Appeal, asking this Court to withdraw the Land Use Appeal Appellants filed on June 1, 2995, at No. 05-787 C.D. Appellants' rationale for filing the Motion to Withdraw Land Use Appeal was their realization that Appellants' filing of the Land Use Appeal was the incorrect procedure in the instant case. In support of Appellants' rationale, Appellants cite *Vanderlin v. Council of Williamsport*, 821 A.2d 1287 (Pa. Cmwlth. 2003).

2. *Vanerlin* at 1291-1292, holds that this Court is without jurisdiction to entertain Appellants Land Use Appeal in the first instance. Accordingly, Appellants' Land Use Appeal filed at No. 05-787 C.D. should be dismissed, with prejudice, and the stay issued by Court Orders dated June 3, 2005 and June 8, 2005, should be lifted due to this Court's lack of subject matter jurisdiction.

3. Appellants, in their Brief for Continuation of Stay, state that a final order from this Court continuing the stay is unnecessary because of the provisions of Section 915.1 of the Pennsylvania Municipalities Planning Code. However, Section 915.1 of the Pennsylvania Municipalities Planning Code applies to local zoning hearing board proceedings. Appellant began this Land Use Appeal with this Court, had an *ex parte* stay granted by this Court, and now Appellant asserts that this Court does not have subject matter jurisdiction. A final order is required to dismiss the Land Use Appeal and vacate the Court Orders dated June 3, 2005 and June 8, 2005.

4. Appellees consent to Appellants' Motion to Withdraw Land Use Appeal before this Court; provided that the Land Use Appeal is dismissed with prejudice and the stay issued by Court Orders dated June 3, 2005 and June 8, 2005, is lifted.

**WHEREFORE**, Appellees, Sandy Township Board of Supervisors respectfully requests that this Honorable Court enter an Order (a) dismissing the Land Use Appeal filed at 05-787 C.D., with prejudice, (b) vacating the Court Orders dated June 3, 2005 and June 8, 2005, and (c) any other relief that this Court deems appropriate.

Respectfully submitted,



R. Edward Ferraro, Esq.

**CERTIFICATE OF SERVICE**

I, R. EDWARD FERRARO, ESQ., hereby certify that a true and correct copy of the within Response to Motion to Withdraw Land Use Appeal has been served upon the following parties via overnight mail this 1st day of July, 2005.

TONI M. CHERRY, ESQ.  
GLEASON, CHERRY & CHERRY, LLP  
PO BOX 505  
ONE NORTH FRANKLIN STREET  
DUBOIS PA 15801

DUSTY ELIAS KIRK, ESQ.  
PEPPER HAMILTON, LLP  
ONE MELLON CENTER, 50<sup>TH</sup> FLOOR  
500 GRANT STREET  
PITTSBURGH, PA 15219

A handwritten signature in black ink, appearing to read "R. Edward Ferraro".

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

SANDY CITIZENS ARGUING FOR  
RESPONSIBLE ECONOMIC  
DEVELOPMENT (S.C.A.R.E.D.),  
WILLIAM B. CLYDE, GARY A.  
PETERSON, WILLIAM G.  
ALLENBAUGH and NANCY L.  
ALLENBAUGH,

Appellants,  
vs.

SANDY TOWNSHIP BOARD OF  
SUPERVISORS,

Appellees,

vs.

DEVELOPAC, INC.,

Intervenor.

CIVIL DIVISION

No. 05-787 C.D.

RESPONSE TO MOTION TO  
WITHDRAW LAND USE  
APPEAL

Filed on behalf of Intervenor:  
DEVELOPAC, INC.

Counsel of Record for this Party:

Dusty Elias Kirk, Esquire  
PA I.D. No. 30702  
Sharon F. DiPaolo, Esquire  
PA I.D. No. 74520  
Pepper Hamilton LLP  
Firm I.D. No. 143  
One Mellon Center, 50<sup>th</sup> Floor  
500 Grant Street  
Pittsburgh, PA 15219-2502  
(412) 454-5000

Carl A. Belin, Jr., Esquire  
PA I.D. No. 06805  
Belin & Kubista  
15 North Front Street, P.O. Box 1  
Clearfield, Pennsylvania 16830  
(814) 765-8972

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013:42601 Atty Belin  
JUN 27 2005  
C  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

SANDY CITIZENS ARGUING FOR	)	CIVIL DIVISION
RESPONSIBLE ECONOMIC	)	
DEVELOPMENT (S.C.A.R.E.D.),	)	No. 05-787 C.D.
WILLIAM B. CLYDE, GARY A.	)	
PETERSON, WILLIAM G.	)	
ALLENBAUGH and NANCY L.	)	
ALLENBAUGH,	)	
	)	
Appellants,	)	
	)	
vs.	)	
	)	
SANDY TOWNSHIP BOARD OF	)	
SUPERVISORS,	)	
	)	
Appellees,	)	
	)	
vs.	)	
	)	
DEVELOPAC, INC.,	)	
	)	
Intervenor.	)	

RESPONSE TO MOTION TO WITHDRAW LAND USE APPEAL

AND NOW, comes Intervenor, Developac, Inc., by and through its attorneys Dusty Elias Kirk, Esquire, of Pepper Hamilton LLP, and Carl A. Belin, Jr., Esquire, of Belin & Kubista, and files this Response to Motion to Withdraw Land Use Appeal, and in support thereof sets forth the following:

1. On June 23, 2005, Appellants filed with this Court a Motion to Withdraw Land Use Appeal, asking this Court to withdraw the Land Use Appeal Appellants filed on June 1, 2005, at No. 05-787 C.D. Appellants' rationale for filing the Motion to Withdraw Land Use Appeal was their realization that Appellants' filing of the Land Use Appeal was the incorrect procedure in the instant case. In support of Appellants' rationale, Appellants cite Vanderlin v. Council of Williamsport, 821 A.2d 1287 (Pa.Cmwlth.2003).

2. Vanderlin at 1291-1292, holds that this Court is without jurisdiction to entertain Appellants' Land Use Appeal in the first instance. Accordingly, Appellants' Land Use Appeal filed at No. 05-787 C.D. should be dismissed, with prejudice, and the stay issued by Court Orders dated June 3, 2005 and June 8, 2005, should be lifted due to this Court's lack of subject matter jurisdiction.

3. Appellants, in their Brief for Continuation of Stay, state that a final order from this Court continuing the stay is unnecessary because of the provisions of §915.1 of the Pennsylvania Municipalities Planning Code. However, §915.1 of the Pennsylvania Municipalities Planning Code applies to local zoning hearing board proceedings. Appellant began this Land Use Appeal with this Court, had an *ex parte* stay granted by this Court, and now Appellant asserts that this Court does not have subject matter jurisdiction. A final order is required to dismiss the Land Use Appeal and vacate the Court Orders dated June 3, 2005 and June 8, 2005.

4. Intervenor consents to Appellants' Motion to Withdraw Land Use Appeal before this Court; provided that the Land Use Appeal is dismissed with prejudice and the stay issued by Court Orders dated June 3, 2005 and June 8, 2005, is lifted.

WHEREFORE, Intervenor, Developac, Inc., respectfully requests that this Honorable Court enter an order (a) dismissing the Land Use Appeal filed at 05-787 C.D., with prejudice, (b) vacating the Court Orders dated June 3, 2005 and June 8, 2005, and (c) any other relief that this Court deems appropriate.

Respectfully submitted,

Dusty Elias Kirk

Dusty Elias Kirk  
PA I.D. No. 30702  
Sharon F. DiPaolo  
PA I.D. No. 74520  
Pepper Hamilton LLP  
One Mellon Center  
50th Floor  
500 Grant Street  
Pittsburgh, PA 15219-2502  
(412) 454-5000

CERTIFICATE OF SERVICE

I, Dusty Elias Kirk, hereby certify that a true and correct copy of the within Response to Motion to Withdraw Land Use Appeal has been served upon the following parties via overnight mail on this 27<sup>th</sup> day of June, 2005.

Toni M. Cherry, Esquire  
Gleason, Cherry and Cherry, L.L.P.  
P.O. Box 505  
One North Franklin Street  
Dubois, PA 15801

R. Edward Ferraro, Esquire  
Solicitor for Sandy Township  
Ferraro, Kruk & Ferraro, LLP  
690 Main Street  
Brockway, PA 15824

Dusty Elias Kirk  
Dusty Elias Kirk

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

SANDY CITIZENS ARGUING FOR :  
RESPONSIBLE ECONOMIC :  
DEVELOPMENT (S.C.A.R.E.D.), :  
WILLIAM B. CLYDE, GARY A. :  
PETERSON, WILLIAM G. :  
ALLENBAUGH and NANCY L. :  
ALLENBAUGH :  
vs. : No. 05-787-CD  
SANDY TOWNSHIP BOARD :  
OF SUPERVISORS :  
;

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JUL 01 2005 (6)

William A. Shaw  
Prothonotary/Clerk of Courts

ICC Atlys: T. Cherry

Ferraro  
Kirk

Belin  
(CIA env.)

O R D E R

AND NOW, this 30<sup>th</sup> day of June, 2005, it is the ORDER of the

Court that argument on Plaintiffs' Motion to Withdraw Appeal filed in the above  
matter has been rescheduled from July 22, 2005 to Friday, July 8, 2005 at 3:00 P.M.  
in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
\_\_\_\_\_  
FREDRIC J. AMMERMAN

President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

SANDY CITIZENS ARGUING FOR	:	
RESPONSIBLE ECONOMIC	:	
DEVELOPMENT (S.C.A.R.E.D.),	:	
WILLIAM B. CLYDE, GARY A.	:	
PETERSON, WILLIAM G.	:	
ALLENBAUGH and NANCY L.	:	
ALLENBAUGH,	:	
Appellants	:	No. 05 - 787 C.D.
	:	
vs.	:	
	:	
SANDY TOWNSHIP BOARD OF	:	
SUPERVISORS,	:	
Appellees	:	

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JUL 07 2005 US

William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27<sup>th</sup> day of June, 2005, a certified copy of the Rule to Show Cause on Appellants' Motion to Withdraw Appeal was served upon the following by mailing the same to them by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

R. EDWARD FERRARO, ESQ.  
Ferraro, Kruk & Ferraro, LLP  
Attorneys at Law  
690 Main Street  
Brockway, PA 15824

DUSTY KIRK ELIAS, ESQ.  
Pepper Hamilton LLP  
Attorneys at Law  
500 Grant Street, 50<sup>th</sup> Floor  
Pittsburgh, PA 15219-2502

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

Dated: June 27, 2005

By

Atorneys for Appellants

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

SANDY CITIZENS ARGUING FOR  
RESPONSIBLE ECONOMIC  
DEVELOPMENT (S.C.A.R.E.D.),  
WILLIAM B. CLYDE, GARY A.  
PETERSON, WILLIAM G.  
ALLENBAUGH and NANCY L.  
ALLENBAUGH

vs.

NO. 05  
50-787-CD

SANDY TOWNSHIP BOARD OF  
SUPERVISORS

vs.

DEVELOPAC, INC.

FILED  
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JUL 11 2005  
William A. Shaw  
Prothonotary/Clerk of Courts  
ICC Atts: T. Cherry  
R. Ferraro  
D. Kirk

O R D E R

NOW, this 8<sup>th</sup> day of July, 2005, this being the date and time set for argument on the Appellants' Motion to Withdraw Appeal, with the Court noting that the Appellees and the Intervenor have requested the Court to dismiss the appeal as being improperly filed from the actions of the Sandy Township Board of Supervisors; the parties being in agreement that the issues are first to be presented to the Sandy Township Zoning Hearing Board and that the Court does not have jurisdiction to hear the above-described appeal on the part of the Appellants, it is the ORDER of this Court as follows:

1. The land use appeal filed by the Appellants to the above-listed caption is hereby dismissed;
2. Any prior Orders of the Court which resulted in the stay of use or development on the parcel in question are hereby dismissed. As the Appellants have filed an

appeal with the Sandy Township Zoning Hearing Board, all parties agree that there is a stay by operation of law;

3.. Nothing in this Court Order is to be construed as preventing the Appellants from proceeding with an appeal, as prescribed by law, from any decision of the Sandy Township Zoning Hearing Board;

4. The Prothonotary is directed to return the record to Sandy Township Supervisors, with any costs of the same being paid by the Township of Sandy, as agreed by counsel. The Prothonotary is also directed to supply, upon request, a copy of the record to counsel for any party herein. In the event that there is any cost for production of the same, it shall be borne by the party who is requesting the copy.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge