

06-187-CD  
Sandy Citizens al vs Sandy Township  
Zoning Hearing Board

06-187-CD

# Commonwealth Court of Pennsylvania

June 20, 2006

RE: SCARED et al v. Sandy Twp ZHB et al  
No.: 1162 CD 2006  
Agency Docket Number: 06-187 C.D.  
Filed Date: June 16, 2006

FILED  
JUN 22 2006  
GR

William A. Shaw  
Prothonotary/Clerk of Courts

## Notice of Docketing Appeal

A Notice of Appeal from an order of your court has been docketed in the Commonwealth Court of Pennsylvania. The Commonwealth Court docket number must be on all correspondence and documents filed with the court.

Under Chapter 19 of the Pennsylvania Rules of Appellate Procedure, the Notice of Appeal has the effect of directing the Court to transmit the certified record in the matter to the Prothonotary of the Commonwealth Court.

The complete record, including the opinion of the trial judge, should be forwarded to the Commonwealth Court within forty (40) days of the date of filing of the Notice of Appeal. Do not transmit a partial record.

Pa.R.A.P. 1921 to 1933 provides the standards for preparation, certification and transmission of the record.

The address to which the Court is to transmit the record is set forth on Page 2 of this notice.

## Notice to Counsel

A copy of this notice is being sent to all parties or their counsel indicated on the proof of service accompanying the Notice of Appeal. The appearance of all counsel has been entered on the record in the Commonwealth Court. Counsel has thirty (30) days from the date of filing of the Notice of Appeal to file a praecipe to withdraw their appearance pursuant to Pa. R.A.P. 907 (b).

Appellant or Appellant's attorney should review the record of the trial court, in order to insure that it is complete, prior to certification to this Court. (Note: A copy of the Zoning Ordinance must accompany records in Zoning Appeal cases).

The addresses to which you are to transmit documents to this Court are set forth on Page 2 of this Notice.

If you have special needs, please contact this court in writing as soon as possible.

Attorney Name	Party Name	Party Type
Toni M. Cherry, Esq.	Sandy Citizens Arguing For Responsible	Appellant
Kim C. Kesner, Esq.	Sandy Township Zoning Hearing Board	Appellee
Dusty Elias Kirk, Esq.	Developac, Inc.	Appellee
Gregory M. Kruk, Esq.	Sandy Township Board of Supervisors	Appellee

6/20/2006 12:14 PM  
RECEIVED  
COMMONWEALTH COURT  
RECEIVED

#23

Address all written communications to:

Office of the Chief Clerk  
Commonwealth Court of Pennsylvania  
Room 624  
Irvis Office Building  
Harrisburg, PA 17120  
(717) 255-1650

Filings may be made in person at the following address (except on Saturdays, Sundays and holidays observed by Pennsylvania Courts) between 9:00 a.m. and 4:00 p.m.

Office of the Chief Clerk  
Commonwealth Court of Pennsylvania  
Room 624  
Sixth Floor  
Irvis Office Building  
Harrisburg, PA 17120  
(717) 255-1650

Pleadings and similar papers (but not paperbooks or certified records) may also be filed in person only at:

Office of the Chief Clerk  
Commonwealth Court of Pennsylvania  
Filing Office  
Suite 990  
The Widener Building  
One South Penn Square  
Philadelphia, PA 19107  
(215) 560-5742

The hours of the Philadelphia Filing Office are 9:00 a.m. to 4:00 p.m.

Under Pa.R.A.P. 3702, writs or other process issuing out of the Commonwealth Court shall exit only from the Harrisburg Office.

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA  
RULE OF APPELLATE PROCEDURE 1931(C)

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To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

06-187-CD

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

*Sandy Township Zoning Hearing Board and Sandy Township Board of Supervisors*

*Developac, Intervenor*

In compliance with Pa. R.A.P. 1931 (c).

The documents comprising the record have been numbered from **No. 1 to No.**  
26, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is

July 11, 2000



Prothonotary/Clerk of Courts

(seal)

Date: 07/11/2006

Time: 09:40 AM

Page 1 of 3

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2006-00187-CD

Current Judge: Fredric Joseph Ammerman

Civil Other

Date	Judge	
02/03/2006	New Case Filed. Filing: Notice of Appeal From Decision of the Sandy Township Zoning Hearing Board Paid by: Cherry, Toni M. (attorney for Sandy Citizens Arguing For Responsible Economic De) Receipt number: 1912351 Dated: 02/03/2006 Amount: \$85.00 (Check) 12 CC Atty T. Cherry, 1 Writ & 1CC to Sandy Twp. Zoning Hearing Board 92/3/06	No Judge No Judge
02/06/2006	Certified Mail Receipt, sent to Sandy Township Zoning Hearing Board. 1 Writ & One CC Notice of Appeal mailed to Sandy Twp. Zoning Board 2/3/06	Fredric Joseph Ammerman
02/07/2006	Domestic Return Receipt # 7002 2030 0004 5014 7982, Writ of Certiorari and Certified Notice of Appeal.	Fredric Joseph Ammerman
02/08/2006	Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal, filed by Atty. Cherry.  Order, NOW, this 8th day of Feb., 2006, upon consideration of Appellants' Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal, a hearing is scheduled for the 16th day of Feb., 2006 in Courtroom No 1 of the Clearfield County Courthouse, at 9:00 a.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 9 CC Atty. Cherry, indicated she will serve.  Certificate of Service, on 7th day of Feb., 2006, served a copy of the Notice Fredric Joseph Ammerman of Appeal from Decision of the Sandy Township Zoning Hearing Board upon: Dusty Elias Kirk, Esquire; Jeffrey A. Mills, Esquire; and Gregory Kruk, Esquire. Filed by s/ Toni M. Cherry, Esquire. 1CC to Atty	No Judge Fredric Joseph Ammerman
02/09/2006	Praecipe For Entry of Appearance, filed by Atty. Kesner on behalf of Sandy Township Zoning Hearing Board. no cert. copies copy to C/A	Fredric Joseph Ammerman
02/14/2006	Certificate of Service, filed. That on this 8th day of February, 2006, a certified copy of the Order issued by the Court of Commons Pleas of Clearfield County, Pennsylvania, scheduling a hearing on Appellants' Petition to Stay All Use of Development of the 12.47 Acre Parcel Pending Appeal was served upon all landowners and named parties in this case and the same to the attorney for each of them to Dusty Elias Kirk Esq., Jeffrey A. Mills Esq., Gregory Kruk Esq., Kim C. Kesner Esq., filed by s/ Toni M. Cherry Esq. No CC.	Fredric Joseph Ammerman
02/15/2006	Motion For Expedited Disposition of Appeal, filed by s/ Dusty Elias Kirk, Esquire. 1CC Atty. Kirk  Notice of Intervention Pursuant to 53 Pa. Cons. Stat. 11004-A, filed by s/ Dusty Elias Kirk. No CC  Response To Appellants' Notice of Appeal of Zoning Hearing Board Decision, filed by s/ Dusty Elias Kirk, esquire. No CC  Response To Appellants' Petition to Stay All Use or Development of Parcel, filed by s/ Dusty Elias Kirk, Esquire. No CC  Response of Sandy Township Board of Supervisors to Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal, filed by s/ Gregory M. Kruk, Esquire. 3CC Atty. Kruk	Fredric Joseph Ammerman Fredric Joseph Ammerman Fredric Joseph Ammerman Fredric Joseph Ammerman Fredric Joseph Ammerman
02/16/2006	Praecipe For Entry of Appearance, filed. Kindly enter the appearance of Dusty Elias Kirk Esq., and Pepper Hamilton LLP, and Carl A. Belin, Jr. and Belin and Kubista on behalf of Developac, Inc., filed by s/ Carl A. Belin Jr. Esq. and s/ Dusty Elias Kirk Esq. 1CC Atty Kirk.	Fredric Joseph Ammerman

Date: 07/11/2006

Time: 09:40 AM

Page 2 of 3

Clerkfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2006-00187-CD

Current Judge: Fredric Joseph Ammerman

Civil Other

Date	Judge
02/16/2006	Certificate of Service of Documents filed February 14, 2006, filed. Notice of Fredric Joseph Ammerman Intervention Pursuant to 53 PA C.S. 11004-A; Response to Appellant's Notice of Appeal of Zoning Hearing Board Decision; Response to Appellant's Petition to Stay All Use or Development of Parcel; Motion for Expedited Disposition of Appeal to Toni M. Cherry Esq., Gregory Kruk Esq., Kim C. Kesner Esq., filed by s/ Dusty Elias Kirk Esq. 1CC Atty Kirk.  Praeclipe to file attached Certificate of Record of Joseph T. Bowser, Chairman, with the accompanying record in accordance with your Writ of Certiorari issued February 3, 2006, filed by s/Kim C. Kesner, Esq. One CC (Praeclipe only)  Certificate of Record, filed s/Joseph T. Bowser, Chairman, Sandy Township Zoning Hearing Board Four parts: 1. Original Transcript of First Hearing on July 21, 2005 with Exhibits; 2. Original Transcript of Second Hearing on August 9, 2005 with Exhibits; 3. Original Transcript of Final Hearing on September 27, 2005 with Exhibits; 4. Written Decision with Findings of Fact and Conclusions of Law dated January 5, 2006.
02/17/2006	Order, filed Cert. to Atty's T. Cherry, K. Kesner, G. Kruk, D. Kirk and C. Belin  NOW, this 16th day of February, 2006, RE: Motion for Stay and Intervenor's Motion for Expedited Disposition of Appeal. See Original Order.
02/27/2006	Order NOW, this 24th day of February 2006, upon consideration of Appellants' Petition to Stay All Use or Development of the 12.47 Arce Parcel Pending Appeal, and Intervenor's Response to Appellants' Petition to Stay All Use or Development of Parcel, it is hereby ORDERED that a limited stay be and is hereby entered. Pursuant to this limited stay, no construction of improvements shall commence until this Court enters a final order in this case. This Limited stay shall be preclude any authorized person or entity from entering the property, seeking and obtaining governmental approval and permits relating to future development of the property at issued in the appeal and conducting soil, water and other such tests. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: T. Cherry, Kesner, Kruk, Kirk and Belin.
04/20/2006	Certificate of Service, filed. That on this, the 19th day of April 2006 a true and correct copy of Sandy Township's Brief in the above-captioned matter was sent to Toni M. Cherry Esq. and Dusty Elias Kirk Esq., filed by Gregory M. Kruk Esq. NO CC.
05/19/2006	Order, NOW, this 18th day of may, 2006, this Court notes the following: (see original). It is the Order of this Court that the decision of the Sandy Township Zoning Hearing Board be approved, and the appeal filed on behalf of the Appellants is Dismissed. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: T. Cherry, Kesner, Kruk, D. Kirk, Belin
06/16/2006	Filing: Notice of Appeal to Commonwealth Court Paid by: Cherry, Toni M. Fredric Joseph Ammerman (attorney for Allenbaugh, Nancy L.) Receipt number: 1914330 Dated: 06/16/2006 Amount: \$45.00 (Check) 8 CC Attorney Cherry
06/21/2006	Order, NOW, this 19th day of June, 2006, the Court having been notified of Appeal to the Commonwealth Court of Pennsylvania, it is the Order of this Court that William B. Clyde, Gary A Peterson, William C. Allenbaugh and Nancy L. Allenbaugh, Appellants, file a concise statement of the matters complained of on said Appeal no later than fourteen days herefrom. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: T. Cherry, Kesner, Kruk, D. Kirk, Belin

Date: 07/11/2006

Time: 09:40 AM

Page 3 of 3

Cuyahoga County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2006-00187-CD

Current Judge: Fredric Joseph Ammerman

Civil Other

Date	Judge
06/22/2006	From Commonwealth Court of Pennsylvania, Notice of Docketing Appeal, Fredric Joseph Ammerman Notice to Counsel, filed. Commonwealth Court Number: 1162 CD 2006
06/27/2006	Praecipe, Re: filing of Certification of Township Secretary, Sandy Township Fredric Joseph Ammerman Ordinance 1-2006, Sandy Township Ordinance 2-2006, and Sandy Township Zoning Ordinance--Chapter 27 of General Code Publishers General Code of Sandy Township Ordinances, filed by s/ Gregory M. Kruk, Esquire. Part 1 of 2. No CC  Filing, Re: Zoning, Chapter 27, Township of Sandy, filed. Part 2 of 2. Fredric Joseph Ammerman Certification of Township Secretary, Sandy Township Ordinance 1-2006, Sandy Township Ordinance 2-2006, and Sandy Township Zoning Ordinance--Chapter 27 of General Code Publishers General Code of Sandy Township Ordinances
07/03/2006	Statement of Matters Complained of, filed by s/Toni M. Cherry, Esq. One Fredric Joseph Ammerman CC Attorney T. Cherry
07/11/2006	July 11, 2006, Mailed Appeal to Commonwealth Court. July 11, 2006, Letters, Re: Notification of mailing appeal mailed to Toni M. Cherry, Esq.; Kim C. Kesner, Esq.; Gregory M. Kruk, Esq.; Dusty Elias Kirk, Esq.; and Carl A. Belin, Jr., Esq. with certified copies of docket sheet and summary of docket entries.

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

JUL 11 2006

Attest.

*William B. Ammerman*  
Prothonotary/  
Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

**No. 06-187-CD**

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

**Sandy Township Zoning Hearing Board and Sandy Township Board of Supervisors**

**Developac, Intervenor**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
01	02/03/06	Notice of Appeal from Decision of the Sandy Township Zoning Hearing Board; Writ of Certiorari	32
02	02/06/06	Certified mail receipt sent to Sandy Township Zoning Hearing Board	01
03	02/07/06	Domestic Return Receipt	01
04	02/08/06	Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal	09
05	02/08/06	Order, Re: hearing scheduled on Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal	02
06	02/08/06	Certificate of Service	02
07	02/09/06	Praeclipe for Entry of Appearance	01
08	02/14/06	Certificate of Service, Order scheduling a hearing	02
09	02/15/06	Motion for Expedited Disposition of Appeal	06
10	02/15/06	Notice of Intervention Pursuant to 53 Pa. Cons. Stat. 11004-A	04
11	02/15/06	Response to Appellants' Notice of Appeal of Zoning Hearing Board Decision	15
12	02/15/06	Response to Appellants' Petition to Stay All Use or Development of Parcel	10
13	02/15/06	Response of Sandy Township Board of Supervisors to Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal	05
14	02/16/06	Praeclipe for Entry of Appearance, Re: Developac, Inc.	03
15	02/16/06	Certificate of Service	04
16a	02/16/06	Praeclipe to file attached Certificate of Record of Joseph T. Bowser, Chairman, with accompanying record and Certificate of Record	03
16b	02/16/06	Record, four parts: Part One: Original Transcript of First Hearing on July 21, 2005, with Exhibits Part Two: Original Transcript of Second Hearing on August 9, 2005, with Exhibits Part Three: Original Transcript of Final Hearing on September 27, 2005, with Exhibits Part Four: Written Decision with Findings of Fact and Conclusions of Law dated January 5, 2006	Separate Cover
17	02/17/06	Order, Re: Motion for Stay and Intervenor's Motion for Expedited Disposition of Appeal	02
18	02/27/06	Order, Re: upon consideration of Appellants' Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal and Intervenor's Response to Appellants' Petition	02
19	04/20/06	Certificate of Service	02
20	05/19/06	Order, Re: decision of the Sandy Township Zoning Hearing Board be approved; appeal filed on behalf of Appellants is Dismissed	02
21	06/16/06	Notice of Appeal to Commonwealth Court	07
22	06/21/06	Order, Re: concise statement to be filed	01
23	06/22/06	Notice of Docketing Appeal from Commonwealth Court, Appeal Number 1162 CD 2006	02
24a	06/27/06	Praeclipe, Re: filing Certification of Township Secretary, Sandy Township Ordinance 1-2006, Sandy Township Ordinance 2-2006, and Sandy Township Zoning Ordinance—Chapter 27 of General Code Publishers General Code of Sandy Township Ordinances	08
24b	06/27/06	Filing: Zoning, Chapter 27, Township of Sandy: Certification of Township Secretary, Sandy Township Ordinance 1-2006, Sandy Township Ordinance 2-2006, and Sandy Township Zoning Ordinance—Chapter 27 of General Code Publishers General Code of Sandy Township Ordinances	Separate Cover
25	07/03/06	Statement of Matters Complained of	04
26	07/11/06	Letters to Counsel of Record: T. Cherry, K. Kesner, G. Kruk, D. Kirk, C. Belin. Docket sheet and docket summary sheet attached.	05

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

I, **William A. Shaw**, Prothonotary/Clerk of Courts of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein

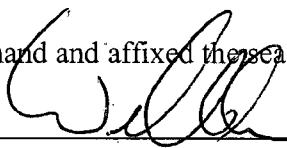
*Sandy Citizens Arguing for Responsible Economic Development (S.C.A.R.E.D.),  
William B. Clyde, Gary A. Peterson, William C. Allenbaugh and Nancy L. Allenbaugh  
VS.  
Sandy Township Zoning Hearing Board and Sandy Township Board of Supervisors*

*Developac, Intervenor*

06-187-CD

So full and entire as the same remains of record before the said Court, at No. 06-187-CD

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 6<sup>th</sup> Day of July, 2006.

  
Prothonotary/Clerk of Courts

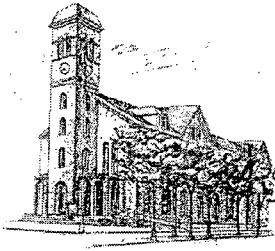
I, **Fredric J. Ammerman**, President Judge of the Forty-sixth Judicial District, do certify that **William A. Shaw** by whom the annexed record, certificate and attestation were made and given, and who, in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said county, was at the time of so doing and now is Prothonotary/Clerk of Courts in and for said County of Clearfield, the Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature, as elsewhere, and that the said record, certificate and attestation are in due form of law and made by the proper officer.

  
President Judge

I, **William A. Shaw**, Prothonotary/Clerk of Courts of the Court of Common Pleas in and for said county, do certify that the Honorable **Fredric J. Ammerman**, President Judge by whom the foregoing attestation was made and who has thereunto subscribed his name was at the time of making thereof and still is President Judge, in and for said county, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 11<sup>th</sup> day of July, 2006.

  
Prothonotary/Clerk of Courts



## Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw  
Prothonotary/Clerk of Courts

David S. Ammerman  
Solicitor

Jacki Kendrick  
Deputy Prothonotary

Bonnie Hudson  
Administrative Assistant

**FILED**  
07/04/06  
**JUL 11 2006**

William A. Shaw  
Prothonotary/Clerk of Courts

Fredric J. Ammerman, P.J.  
Court of Common Pleas  
230 E. Market Street  
Clearfield, PA 16830

Kim C. Kesner, Esq.  
23 North Second Street  
Clearfield, PA 16830

Dusty Elias Kirk, Esq.  
500 Grant St., 50<sup>th</sup> Floor  
Pittsburgh, PA 15219

Toni M. Cherry, Esq.  
PO Box 505  
1 North Franklin Street  
DuBois, PA 15801

Gregory M. Kruk, Esq.  
690 Main Street  
Brockway, PA 15824

Carl A. Belin, Jr., Esq.  
15 N. Front Street  
Clearfield, PA 16830

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

Sandy Township Zoning Hearing Board and Sandy Township Board of Supervisors  
AND  
Developac, Intervenor

Court No. 06-187-CD; Commonwealth Court No. 1162 CD 2006

Dear Counsel:

Please be advised that the above referenced record was forwarded to the  
Commonwealth Court of Pennsylvania on July 11, 2006.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

Date: 07/10/2006

Time: 04:53 PM

Page 1 of 3

Clefield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2006-00187-CD

Current Judge: Fredric Joseph Ammerman

Civil Other

Date	Judge	
02/03/2006	New Case Filed. Filing: Notice of Appeal From Decision of the Sandy Township Zoning Hearing Board Paid by: Cherry, Toni M. (attorney for Sandy Citizens Arguing For Responsible Economic De) Receipt number: 1912351 Dated: 02/03/2006 Amount: \$85.00 (Check) 12 CC Atty T. Cherry, 1 Writ & 1CC to Sandy Twp. Zoning Hearing Board 92/3/06	No Judge No Judge
02/06/2006	Certified Mail Receipt, sent to Sandy Township Zoning Hearing Board. 1 Writ & One CC Notice of Appeal mailed to Sandy Twp. Zoning Board 2/3/06	Fredric Joseph Ammerman
02/07/2006	Domestic Return Receipt # 7002 2030 0004 5014 7982, Writ of Certiorari and Certified Notice of Appeal.	Fredric Joseph Ammerman
02/08/2006	Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal, filed by Atty. Cherry. Order, NOW, this 8th day of Feb., 2006, upon consideration of Appellants' Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal, a hearing is scheduled for the 16th day of Feb., 2006 in Courtroom No 1 of the Clearfield County Courthouse, at 9:00 a.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 9 CC Atty. Cherry, indicated she will serve. Certificate of Service, on 7th day of Feb., 2006, served a copy of the Notice of Appeal from Decision of the Sandy Township Zoning Hearing Board upon: Dusty Elias Kirk, Esquire; Jeffrey A. Mills, Esquire; and Gregory Kruk, Esquire. Filed by s/ Toni M. Cherry, Esquire. 1CC to Atty	No Judge Fredric Joseph Ammerman
02/09/2006	Praeclipe For Entry of Appearance, filed by Atty. Kesner on behalf of Sandy Township Zoning Hearing Board. no cert. copies copy to C/A	Fredric Joseph Ammerman
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02/16/2006	Praeclipe For Entry of Appearance, filed. Kindly enter the appearance of Dusty Elias Kirk Esq., and Pepper Hamilton LLP, and Carl A. Belin, Jr. and Belin and Kubista on behalf of Developac, Inc., filed by s/ Carl A. Belin Jr. Esq. and s/ Dusty Elias Kirk Esq. 1CC Atty Kirk.	Fredric Joseph Ammerman

Date: 07/10/2006

Time: 04:53 PM

Page 2 of 3

Cleveland County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2006-00187-CD

Current Judge: Fredric Joseph Ammerman

Civil Other

Date	Judge
02/16/2006	<p>Certificate of Service of Documents filed February 14, 2006, filed. Notice of Intervention Pursuant to 53 PA C.S. 11004-A; Response to Appellant's Notice of Appeal of Zoning Hearing Board Decision; Response to Appellant's Petition to Stay All Use or Development of Parcel; Motion for Expedited Disposition of Appeal to Toni M. Cherry Esq., Gregory Kruk Esq., Kim C. Kesner Esq., filed by s/ Dusty Elias Kirk Esq. 1CC Atty Kirk.</p> <p>Praeclipe to file attached Certificate of Record of Joseph T. Bowser, Chairman, with the accompanying record in accordance with your Writ of Certiorari issued February 3, 2006, filed by s/Kim C. Kesner, Esq. One CC (Praeclipe only)</p> <p>Certificate of Record, filed s/Joseph T. Bowser, Chairman, Sandy Township Zoning Hearing Board Four parts: 1. Original Transcript of First Hearing on July 21, 2005 with Exhibits; 2. Original Transcript of Second Hearing on August 9, 2005 with Exhibits; 3. Original Transcript of Final Hearing on September 27, 2005 with Exhibits; 4. Written Decision with Findings of Fact and Conclusions of Law dated January 5, 2006.</p>
02/17/2006	<p>Order, filed Cert. to Atty's T. Cherry, K. Kesner, G. Kruk, D. Kirk and C. Belin</p> <p>NOW, this 16th day of February, 2006, RE: Motion for Stay and Intervenor's Motion for Expedited Disposition of Appeal. See Original Order.</p>
02/27/2006	<p>Order NOW, this 24th day of February 2006, upon consideration of Appellants' Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal, and Intervenor's Response to Appellants' Petition to Stay All Use or Development of Parcel, it is hereby ORDERED that a limited stay be and is hereby entered. Pursuant to this limited stay, no construction of improvements shall commence until this Court enters a final order in this case. This Limited stay shall be preclude any authorized person or entity from entering the property, seeking and obtaining governmental approval and permits relating to future development of the property at issued in the appeal and conducting soil, water and other such tests. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: T. Cherry, Kesner, Kruk, Kirk and Belin.</p>
04/20/2006	<p>Certificate of Service, filed. That on this, the 19th day of April 2006 a true and correct copy of Sandy Township's Brief in the above-captioned matter was sent to Toni M. Cherry Esq. and Dusty Elias Kirk Esq., filed by Gregory M. Kruk Esq. NO CC.</p>
05/19/2006	<p>Order, NOW, this 18th day of May, 2006, this Court notes the following: (see original). It is the Order of this Court that the decision of the Sandy Township Zoning Hearing Board be approved, and the appeal filed on behalf of the Appellants is Dismissed. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: T. Cherry, Kesner, Kruk, D. Kirk, Belin</p>
06/16/2006	<p>Filing: Notice of Appeal to Commonwealth Court Paid by: Cherry, Toni M. (attorney for Allenbaugh, Nancy L.) Receipt number: 1914330 Dated: 06/16/2006 Amount: \$45.00 (Check) 8 CC Attorney Cherry</p>
06/21/2006	<p>Order, NOW, this 19th day of June, 2006, the Court having been notified of Appeal to the Commonwealth Court of Pennsylvania, it is the Order of this Court that William B. Clyde, Gary A Peterson, William C. Allenbaugh and Nancy L. Allenbaugh, Appellants, file a concise statement of the matters complained of on said Appeal no later than fourteen days herefrom. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: T. Cherry, Kesner, Kruk, D. Kirk, Belin</p>

Date: 07/10/2006

Time: 04:53 PM

Page 3 of 3

Cleofield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2006-00187-CD

Current Judge: Fredric Joseph Ammerman

Civil Other

Date	Judge
06/22/2006	From Commonwealth Court of Pennsylvania, Notice of Docketing Appeal, Notice to Counsel, filed. Commonwealth Court Number: 1162 CD 2006
06/27/2006	Praeclipe, Re: filing of Certification of Township Secretary, Sandy Township Ordinance 1-2006, Sandy Township Ordinance 2-2006, and Sandy Township Zoning Ordinance--Chapter 27 of General Code Publishers General Code of Sandy Township Ordinances, filed by s/ Gregory M. Kruk, Esquire. Part 1 of 2. No CC Filing, Re: Zoning, Chapter 27, Township of Sandy, filed. Part 2 of 2. Certification of Township Secretary, Sandy Township Ordinance 1-2006, Sandy Township Ordinance 2-2006, and Sandy Township Zoning Ordinance--Chapter 27 of General Code Publishers General Code of Sandy Township Ordinances
07/03/2006	Statement of Matters Complained of, filed by s/Toni M. Cherry, Esq. One CC Attorney T. Cherry

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

JUL 11 2006

Attest.

*William B. Hudson*  
Prothonotary/  
Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

**No. 06-187-CD**

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

**Sandy Township Zoning Hearing Board and Sandy Township Board of Supervisors**

**Developac, Intervenor**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
01	02/03/06	Notice of Appeal from Decision of the Sandy Township Zoning Hearing Board; Writ of Certiorari	32
02	02/06/06	Certified mail receipt sent to Sandy Township Zoning Hearing Board	01
03	02/07/06	Domestic Return Receipt	01
04	02/08/06	Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal	09
05	02/08/06	Order, Re: hearing scheduled on Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal	02
06	02/08/06	Certificate of Service	02
07	02/09/06	Praeclipe for Entry of Appearance	01
08	02/14/06	Certificate of Service, Order scheduling a hearing	02
09	02/15/06	Motion for Expedited Disposition of Appeal	06
10	02/15/06	Notice of Intervention Pursuant to 53 Pa. Cons. Stat. 11004-A	04
11	02/15/06	Response to Appellants' Notice of Appeal of Zoning Hearing Board Decision	15
12	02/15/06	Response to Appellants' Petition to Stay All Use or Development of Parcel	10
13	02/15/06	Response of Sandy Township Board of Supervisors to Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal	05
14	02/16/06	Praeclipe for Entry of Appearance, Re: Developac, Inc.	03
15	02/16/06	Certificate of Service	04
16a	02/16/06	Praeclipe to file attached Certificate of Record of Joseph T. Bowser, Chairman, with accompanying record and Certificate of Record	03
16b	02/16/06	Record, four parts: Part One: Original Transcript of First Hearing on July 21, 2005, with Exhibits Part Two: Original Transcript of Second Hearing on August 9, 2005, with Exhibits Part Three: Original Transcript of Final Hearing on September 27, 2005, with Exhibits Part Four: Written Decision with Findings of Fact and Conclusions of Law dated January 5, 2006	Separate Cover
17	02/17/06	Order, Re: Motion for Stay and Intervenor's Motion for Expedited Disposition of Appeal	02
18	02/27/06	Order, Re: upon consideration of Appellants' Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal and Intervenor's Response to Appellants' Petition	02
19	04/20/06	Certificate of Service	02
20	05/19/06	Order, Re: decision of the Sandy Township Zoning Hearing Board be approved; appeal filed on behalf of Appellants is Dismissed	02
21	06/16/06	Notice of Appeal to Commonwealth Court	07
22	06/21/06	Order, Re: concise statement to be filed	01
23	06/22/06	Notice of Docketing Appeal from Commonwealth Court, Appeal Number 1162 CD 2006	02
24a	06/27/06	Praeclipe, Re: filing Certification of Township Secretary, Sandy Township Ordinance 1-2006, Sandy Township Ordinance 2-2006, and Sandy Township Zoning Ordinance—Chapter 27 of General Code Publishers General Code of Sandy Township Ordinances	08
24b	06/27/06	Filing: Zoning, Chapter 27, Township of Sandy: Certification of Township Secretary, Sandy Township Ordinance 1-2006, Sandy Township Ordinance 2-2006, and Sandy Township Zoning Ordinance—Chapter 27 of General Code Publishers General Code of Sandy Township Ordinances	Separate Cover
25	07/03/06	Statement of Matters Complained of	04

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 ZONING HEARING  
BOARD and SANDY TOWNSHIP BOARD OF  
SUPERVISORS,

Appellees

and.

DEVELOPAC, INC.,

Intervenor

: No. 06 - 187 C.D.  
: Type of Case: LAND USE APPEAL  
: Type of Pleading: STATEMENT OF  
MATTERS COMPLAINED OF  
: 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 these Parties:  
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 <sup>cc</sup>  
m10:30 AM JUL 03 2006  
JUL 03 2006  
Att'y T. Cherry

W<sup>MA</sup> William A. Shaw  
Prothonotary/Clerk of Courts

#25

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. 06 - 187 C.D.  
vs. : LAND USE APPEAL  
SANDY TOWNSHIP ZONING HEARING :  
BOARD and SANDY TOWNSHIP BOARD OF :  
SUPERVISORS, :  
Appellees :  
and :  
DEVELOPAC, INC., :  
Intervenor :

**STATEMENT OF MATTERS COMPLAINED OF**

AND NOW, this 29<sup>th</sup> day of June, 2006, Appellants having been ordered by the Court to file a concise statement of the matters complained of on Appeal in accordance with the requirements of Pa. R.A.P. 1925(b), Appellants set forth the following:

Appellants respectfully contend that the Sandy Township Zoning Hearing Board abused its discretion in failing to find that the rezoning of the 12.47 acre parcel bore no relationship to the public health, safety or welfare and was thus unjustified and abused its discretion in finding that there was not sufficient detriment to the rezoning to brand it unconstitutional and illegal. Appellants contend that the Sandy Township Zoning Hearing Board committed an error of law in concluding that the separate treatment of the 12.47 acre parcel was not unjustifiable nor

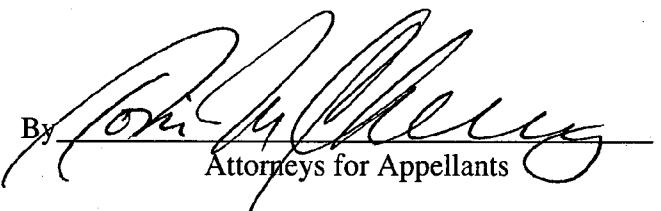
unreasonable and in concluding that Appellants had not borne their burden of establishing that the rezoning bore no relationship to the public health, safety or welfare.

Accordingly, Appellants raise the following issues on appeal:

- I. WHETHER THE SANDY TOWNSHIP ZONING HEARING BOARD'S FINDINGS THAT THE REZONING OF THE 12.47 ACRE PARCEL DID NOT PRESENT SUFFICIENT DETRIMENT TO BRAND IT UNCONSTITUTIONAL AND ILLEGAL CAPRICIOUSLY AND WITHOUT REASONABLE EXPLANATION DISREGARDED THE OVERWHELMING EVIDENCE HAVING A CONTRARY IMPORT?
- II. WHETHER THE SANDY TOWNSHIP ZONING HEARING BOARD ABUSED ITS DISCRETION IN REFUSING TO FIND THAT THE REZONING OF THE 12.47 ACRE PARCEL BORE NO RELATIONSHIP TO THE PUBLIC HEALTH, SAFETY OR WELFARE?
- III. WHETHER THE SANDY TOWNSHIP ZONING HEARING BOARD COMMITTED AN ERROR OF LAW IN CONCLUDING THAT THE SINGLING OUT OF THE 12.47 ACRE PARCEL FOR DIFFERENT TREATMENT WAS NEITHER UNJUSTIFIABLE NOR UNREASONABLE AND THUS NOT "SPOT ZONING"?
- IV. WHETHER THE SANDY TOWNSHIP ZONING HEARING BOARD'S PERFORMANCE OF ITS FACT-FINDING FUNCTION DEPRIVED APPELLANTS OF A FUNDAMENTALLY FAIR PROCEEDING?

Respectfully submitted,

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

By   
John M. 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. 06 - 187 C.D.  
Appellants : LAND USE APPEAL  
vs.  
SANDY TOWNSHIP ZONING HEARING :  
BOARD and SANDY TOWNSHIP BOARD OF :  
SUPERVISORS, :  
Appellees :  
and :  
DEVELOPAC, INC., :  
Intervenor :

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>TH</sup> day of June, 2006, a true and correct copy of Appellants' Statement of Matters Complained Of was sent to the following persons 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:

The Honorable Fredric J. Ammerman  
President Judge  
Judge's Chambers  
Clearfield County Courthouse  
Clearfield, PA 16830

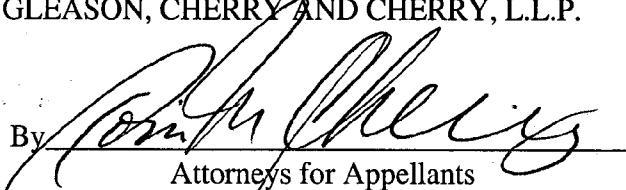
Gregory M. Kruk, Esq.  
Ferraro, Kruk & Ferraro, LLP  
Attorneys at Law  
690 Main Street  
Brockway, PA 15824

Dusty Elias Kirk, Esq.  
Pepper, Hamilton, LLP  
Attorneys at Law  
Firm No. 143  
One Mellon Center  
500 Grant Street, 50<sup>th</sup> Floor  
Pittsburgh, PA 15219

Kim C. Kesner, Esq.  
Attorney at Law  
23 North Second Street  
Clearfield, PA 16830

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

By

  
John H. Gleason  
Attorneys for Appellants

Dated: June 29, 2006

**FILED**

**JUL 03 2006**

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 ZONING  
HEARING BOARD and SANDY  
TOWNSHIP BOARD OF  
SUPERVISORS,

Appellees

and

DEVELOPAC, INC.,

Intervenor

No. 06 - 187 - CD

TYPE OF CASE: Land Use  
Appeal

TYPE OF PLEADING - Praeclipe

Filed on behalf of Sandy  
Township Board of Supervisors

Counsel of Record for this Party:  
**GREGORY M. KRUK, ESQ.**  
Supreme Court No.: 27048

FERRARO & YOUNG  
Attorneys at Law  
690 Main Street  
Brockway, PA 15824  
814/268-2202

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M 12:55 PM  
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Part 1 of 2  
William A. Shaw  
Prothonotary/Clerk of Courts  
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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. 06 – 187 – CD

Appellants

vs.

SANDY TOWNSHIP ZONING  
HEARING BOARD and SANDY  
TOWNSHIP BOARD OF  
SUPERVISORS,

Appellees

and

DEVELOPAC, INC.,

Intervenor

**PRAECIPE**

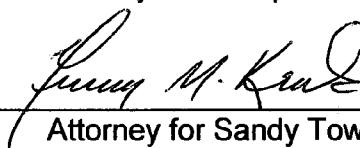
TO THE PROTHONOTARY OF SAID COURT:

Please file of record the following four (4) documents I am providing to you  
in the above captioned matter.

1. Certification of Township Secretary.
2. Sandy Township Ordinance 1 – 2006.
3. Sandy Township Ordinance 2 – 2006.
4. Sandy Township Zoning Ordinance – Chapter 27 of General Code  
Publishers General Code of Sandy Township Ordinances.

June 27, 2006

Date

  
\_\_\_\_\_  
James M. Keas

Attorney for Sandy Township

## CERTIFICATION

I hereby certify that the attached is a true copy of the current Zoning  
Ordinance of Sandy Township consisting of the General Code Publishers  
Pamphlet and Sandy Township Ordinances 1 and 2 of 2006.

ATTEST

Barbara D. Hopkins  
Sandy Township Secretary

Date: June 23, 2006

I hereby certify that the foregoing Ordinance was advertised in the Courier Express on March 26, 2006, a newspaper of general circulation in the municipality, and approval as set forth at a Regular Meeting of the Sandy Township Supervisors held on April 3, 2006.

Barbara D. Hopkins  
Secretary

**SANDY TOWNSHIP ORDINANCE NO. 1 - 2006**

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 PARCEL CONTAINING APPROXIMATELY 40.85 ACRES AND BEING IDENTIFIED AS A PORTION OF PARCEL NO. 102 ON THE SANDY TOWNSHIP ASSESSMENT MAP NO. 128-C3, SAID PARCEL BEING OWNED BY NEDZA REAL ESTATE DEVELOPMENT CORPORATION. THE AMENDMENT CONSISTS OF A CHANGE FROM AN INDUSTRIAL DISTRICT TO A COMMERCIAL DISTRICT. THE PARCEL OF APPROXIMATELY 40.85 ACRES IS LOCATED DIRECTLY TO THE NORTH OF A PARCEL COMMONLY REFERRED TO AS "THE COMMONS SHOPPING CENTER" NEAR ROUTE 255 IN THE TOWNSHIP OF SANDY.

**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-C3-102 in the Township of Sandy is located in an Industrial Zone; and

**WHEREAS**, Sandy Township received a request to have approximately 40.85 acres of the said parcel re-zoned from Industrial to Commercial, with said parcel more particularly bounded and described in a description which is attached hereto and marked as Exhibit "A"; and

**WHEREAS**, the portion of Parcel No. 128-C3-102 consisting of approximately 40.85 acres is located directly to the North of a parcel commonly referred to as "The Commons Shopping Center" near Route 255 in the Township of Sandy; and

**WHEREAS**, the Township has experienced significant commercial and retail growth over the past five (5) years, and this has resulted in the need for additional land zoned Commercial to permit said growth; and

**WHEREAS**, the Township has not experienced the level of industrial growth anticipated at the time said land was zoned Industrial (Commercial Highway); and

**WHEREAS**, the Township had a land absorption report prepared in 2005 to evaluate the utilization of industrial land within said Township and the report indicated "very limited market support for industrial land;" and

**WHEREAS**, the Supervisors recognize the importance of the jobs that will be created through the continued commercial and retain expansion; and

**WHEREAS**, proper notifications were given to the Sandy Township Planning Commission and the Clearfield County Planning Commission of the requested Zoning Map change and a Public Hearing, duly advertised, was held prior to the date of this document; 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 Zoning Ordinance and map to reclassify the said 40.95 acres of Parcel No. 128-C3-102 from Industrial to Commercial 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 40.85 acre parcel from Industrial to Commercial.

(b) The said parcel is further identified and/or described in the attached Exhibit "A" which is a description of the 40.85 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 3 day of April, 2006 by vote of the Board of Supervisors of the Township of Sandy.

ATTEST:

SANDY TOWNSHIP  
BOARD OF SUPERVISORS

Barbara D. Hopkins

BY: Bruce J. Bod  
Chairman

I hereby certify that the foregoing Ordinance was advertised in the ~~Carrier~~ Express on March 26, 2006, a newspaper of general circulation in the municipality, and approval as set forth at a Regular Meeting of the Sandy Township Supervisors held on April 3, 2006.

Barbara D. Hopkins  
Secretary

**SANDY TOWNSHIP ORDINANCE NO. 2 - 2006**

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 PARCEL CONTAINING APPROXIMATELY 9.22 ACRES AND BEING IDENTIFIED AS A PORTION OF PARCEL NO. 57 ON THE SANDY TOWNSHIP ASSESSMENT MAP NO. 128-C3, SAID PARCEL BEING OWNED BY JAMES O. BUEHLER, ET AL. THE AMENDMENT CONSISTS OF A CHANGE FROM A COMMERCIAL HIGHWAY TO A COMMERCIAL DISTRICT. THE PARCEL OF APPROXIMATELY 9.22 ACRES IS LOCATED DIRECTLY BEHIND THE K-MART STORE PARCEL IN THE SANDY PLAZA LOCATED ALONG ROUTE 255 IN THE TOWNSHIP OF SANDY.

**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-C3-57 in the Township of Sandy is located in a Commercial Highway Zone; and

**WHEREAS**, Sandy Township received a request to have approximately 9.22 acres of the said parcel re-zoned from Commercial Highway to Commercial, with said parcel more particularly bounded and described in a description which is attached hereto and marked as Exhibit "A"; and

**WHEREAS**, the portion of Parcel No. 128-C3-57 consisting of approximately 9.22 acres is located directly behind the K-Mart store parcel in the Sandy Plaza located along Route 255 in the Township of Sandy; and

**WHEREAS**, the Township has experienced significant commercial and retail growth over the past five (5) years, and this has resulted in the need for additional land zoned Commercial to permit said growth; and

**WHEREAS**, the Township has not experienced the level of industrial growth anticipated at the time said land was zoned Industrial (Commercial Highway); and

**WHEREAS**, the Township had a land absorption report prepared in 2005 to evaluate the utilization of industrial land within said Township and the report indicated "very limited market support for industrial land;" and

**WHEREAS**, the Supervisors recognize the importance of the jobs that will be created through the continued commercial and retain expansion; and

**WHEREAS**, proper notifications were given to the Sandy Township Planning Commission and the Clearfield County Planning Commission of the requested Zoning Map change and a Public Hearing, duly advertised, was held prior to the date of this document; 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 Zoning Ordinance and map to reclassify the said 9.22 acres of Parcel No. 128-C3-57 from Commercial Highway to Commercial 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 9.22 acre parcel from Commercial Highway to Commercial.

(b) The said parcel is further identified and/or described in the attached Exhibit "A" which is a description of the 9.22 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 3 day of April, 2006 by  
vote of the Board of Supervisors of the Township of Sandy.

ATTEST:

SANDY TOWNSHIP  
BOARD OF SUPERVISORS

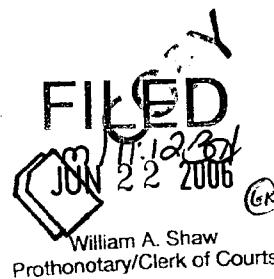
Barbara D. Hopkins

BY: *Barbara D. Hopkins*  
Chairman

# Commonwealth Court of Pennsylvania

June 20, 2006

RE: SCARED et al v. Sandy Twp ZHB et al  
No.: 1162 CD 2006  
Agency Docket Number: 06-187 C.D.  
Filed Date: June 16, 2006



## Notice of Docketing Appeal

A Notice of Appeal from an order of your court has been docketed in the Commonwealth Court of Pennsylvania. The Commonwealth Court docket number must be on all correspondence and documents filed with the court.

Under Chapter 19 of the Pennsylvania Rules of Appellate Procedure, the Notice of Appeal has the effect of directing the Court to transmit the certified record in the matter to the Prothonotary of the Commonwealth Court.

The complete record, including the opinion of the trial judge, should be forwarded to the Commonwealth Court within forty (40) days of the date of filing of the Notice of Appeal. Do not transmit a partial record.

Pa.R.A.P. 1921 to 1933 provides the standards for preparation, certification and transmission of the record.

The address to which the Court is to transmit the record is set forth on Page 2 of this notice.

## Notice to Counsel

A copy of this notice is being sent to all parties or their counsel indicated on the proof of service accompanying the Notice of Appeal. The appearance of all counsel has been entered on the record in the Commonwealth Court. Counsel has thirty (30) days from the date of filing of the Notice of Appeal to file a praecipe to withdraw their appearance pursuant to Pa. R.A.P. 907 (b).

Appellant or Appellant's attorney should review the record of the trial court, in order to insure that it is complete, prior to certification to this Court. (Note: A copy of the Zoning Ordinance must accompany records in Zoning Appeal cases).

The addresses to which you are to transmit documents to this Court are set forth on Page 2 of this Notice.

If you have special needs, please contact this court in writing as soon as possible.

Attorney Name	Party Name	Party Type
Toni M. Cherry, Esq.	Sandy Citizens Arguing For Responsible	Appellant
Kim C. Kesner, Esq.	Sandy Township Zoning Hearing Board	Appellee
Dusty Elias Kirk, Esq.	Developac, Inc.	Appellee
Gregory M. Kruk, Esq.	Sandy Township Board of Supervisors	Appellee

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Address all written communications to:

Office of the Chief Clerk  
Commonwealth Court of Pennsylvania  
Room 624  
Irvis Office Building  
Harrisburg, PA 17120  
(717) 255-1650

Filings may be made in person at the following address (except on Saturdays, Sundays and holidays observed by Pennsylvania Courts) between 9:00 a.m. and 4:00 p.m.

Office of the Chief Clerk  
Commonwealth Court of Pennsylvania  
Room 624  
Sixth Floor  
Irvis Office Building  
Harrisburg, PA 17120  
(717) 255-1650

Pleadings and similar papers (but not paperbooks or certified records) may also be filed in person only at:

Office of the Chief Clerk  
Commonwealth Court of Pennsylvania  
Filing Office  
Suite 990  
The Widener Building  
One South Penn Square  
Philadelphia, PA 19107  
(215) 560-5742

The hours of the Philadelphia Filing Office are 9:00 a.m. to 4:00 p.m.

Under Pa.R.A.P. 3702, writs or other process issuing out of the Commonwealth Court shall exit only from the Harrisburg Office.

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 C. ALLENBAUGH and NANCY L.	*
ALLENBAUGH,	*
Appellants	*
vs.	*
SANDY TOWNSHIP ZONING HEARING BOARD	*
and SANDY TOWNSHIP BOARD OF SUPERVISORS,	*
Appellees	*
vs.	*
DEVELOPAC, INC.,	*
Intervenor	*

## ORDER

NOW, this 19<sup>th</sup> day of June, 2006, the Court having been notified of Appeal to the Commonwealth Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that WILLIAM B. CLYDE, GARY A. PETERSON, WILLIAM C. ALLENBAUGH and NANCY L. ALLENBAUGH, Appellants, file a concise statement of the matters complained of on said Appeal no later than fourteen (14) days herefrom, as set forth in Rule 1925(b) of the Rules of Appellate Procedure.

BY THE COURT.

FREDRIC J. AMMERMAN  
President Judge

**FILED** 1cc Attns: T. Cherry  
04/00871  
JUN 21 2006 Kesner  
Krusk

William A. Shaw  
Prothonotary/Clerk of Courts

60

22

DATE: 6/21/04

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)  Plaintiff(s) Attorney  Other

Defendant(s)  Defendant(s) Attorney

Special Instructions:

Prothonotary/Clerk of Courts  
William A. Shaw

JUN 21 2006

FILED

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 ZONING HEARING  
BOARD and SANDY TOWNSHIP BOARD OF  
SUPERVISORS,

Appellees

and.

DEVELOPAC, INC.,

Intervenor

: No. 06 - 187 C.D.  
: Type of Case: LAND USE APPEAL  
: Type of Pleading: NOTICE OF APPEAL.  
: TO COMMONWEALTH COURT  
: 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 these Parties:  
: 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 16 2006  
03/25/8cc att'g Cherry  
William A. Shaw att'g Cherry  
Prothonotary/Clerk of Courts pd  
\$45.00  
\$60.00 Com. Court  
#21

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

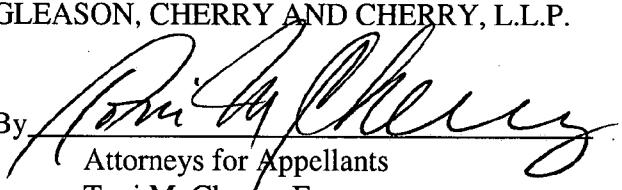
SANDY CITIZENS ARGUING FOR :  
RESPONSIBLE ECONOMIC DEVELOPMENT :  
(S.C.A.R.E.D.), WILLIAM B. CLYDE, GARY :  
A. PETERSON, WILLIAM G. ALLENBAUGH :  
and NANCY L. ALLENBAUGH, : No. 06 - 187 C.D.  
Appellants :  
:  
vs. :  
:  
SANDY TOWNSHIP ZONING HEARING :  
BOARD and SANDY TOWNSHIP BOARD OF :  
SUPERVISORS, :  
Appellees :  
:  
and :  
:  
DEVELOPAC, INC., :  
Intervenor :  
:

**NOTICE OF APPEAL**

Notice is hereby given that 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 above-named, hereby appeal to the Commonwealth Court of Pennsylvania from the Order entered in this matter on the 19<sup>th</sup> day of May, 2006. This Order has been entered in the docket as evidenced by the attached copy of the docket entry.

Respectfully submitted,  
GLEASON, CHERRY AND CHERRY, L.L.P.

By

  
Atorneys for Appellants  
Toni M. Cherry, Esq.  
Attorney I.D. No. 30205  
P. O. Box 505  
DuBois, PA 15801  
(814) 371-5800

Date: 06/12/2006  
Time: 03:56 PM  
Page 1 of 2

Clearfield County Court of Common Pleas  
ROA Report  
Case: 2006-00187-CD

Current Judge: Fredric Joseph Ammerman

User: GLKNISLEY  
I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

JUN 12 2006

Attest. *William L. Ammerman*  
Judge Prothonotary/  
Clerk of Courts

Date	Civil Other	Judge
02/03/2006	New Case Filed. Filing: Notice of Appeal From Decision of the Sandy Township Zoning Hearing Board Paid by: Cherry, Toni M. (attorney for Sandy Citizens Arguing For Responsible Economic De) Receipt number: 1912351 Dated: 02/03/2006 Amount: \$85.00 (Check) 12 CC Atty T. Cherry, 1 Writ & 1CC to Sandy Twp. Zoning Hearing Board 92/3/06	No Judge No Judge
02/06/2006	Certified Mail Receipt, sent to Sandy Township Zoning Hearing Board. 1 Writ & One CC Notice of Appeal mailed to Sandy Twp. Zoning Board 2/3/06	Fredric Joseph Ammerman
02/07/2006	Domestic Return Receipt # 7002 2030 0004 5014 7982, Writ of Certiorari and Certified Notice of Appeal.	Fredric Joseph Ammerman
02/08/2006	Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal, filed by Atty. Cherry. Order, NOW, this 8th day of Feb., 2006, upon consideration of Appellants' Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal, a hearing is scheduled for the 16th day of Feb., 2006 in Courtroom No 1 of the Clearfield County Courthouse, at 9:00 a.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 9 CC Atty. Cherry, indicated she will serve. Certificate of Service, on 7th day of Feb., 2006, served a copy of the Notice of Appeal from Decision of the Sandy Township Zoning Hearing Board upon: Dusty Elias Kirk, Esquire; Jeffrey A. Mills, Esquire; and Gregory Kruk, Esquire. Filed by s/ Toni M. Cherry, Esquire. 1CC to Atty	No Judge Fredric Joseph Ammerman
02/09/2006	Praecipe For Entry of Appearance, filed by Atty. Kesner on behalf of Sandy Township Zoning Hearing Board. no cert. copies copy to C/A	Fredric Joseph Ammerman
02/14/2006	Certificate of Service, filed. That on this 8th day of February, 2006, a certified copy of the Order issued by the Court of Commons Pleas of Clearfield County, Pennsylvania, scheduling a hearing on Appellants' Petition to Stay All Use of Development of the 12.47 Acre Parcel Pending Appeal was served upon all landowners and named parties in this case and the same to the attorney for each of them to Dusty Elias Kirk Esq., Jeffrey A. Mills Esq., Gregory Kruk Esq., Kim C. Kesner Esq., filed by s/ Toni M. Cherry Esq. No CC.	Fredric Joseph Ammerman
02/15/2006	Motion For Expedited Disposition of Appeal, filed by s/ Dusty Elias Kirk, Esquire. 1CC Atty. Kirk Notice of Intervention Pursuant to 53 Pa. Cons. Stat. 11004-A, filed by s/ Dusty Elias Kirk. No CC Response To Appellants' Notice of Appeal of Zoning Hearing Board Decision, filed by s/ Dusty Elias Kirk, esquire. No CC Response To Appellants' Petition to Stay All Use or Development of Parcel, filed by s/ Dusty Elias Kirk, Esquire. No CC Response of Sandy Township Board of Supervisors to Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal, filed by s/ Gregory M. Kruk, Esquire. 3CC Atty. Kruk	Fredric Joseph Ammerman
02/16/2006	Praecipe For Entry of Appearance, filed. Kindly enter the appearance of Dusty Elias Kirk Esq., and Pepper Hamilton LLP, and Carl A. Belin, Jr. and Belin and Kubista on behalf of Developac, Inc., filed by s/ Carl A. Belin Jr. Esq. and s/ Dusty Elias Kirk Esq. 1CC Atty Kirk.	Fredric Joseph Ammerman

## Civil Other

Date	Judge
02/16/2006	<p>Certificate of Service of Documents filed February 14, 2006, filed. Notice of Intervention Pursuant to 53 PA C.S. 11004-A; Response to Appellant's Notice of Appeal of Zoning Hearing Board Decision; Response to Appellant's Petition to Stay All Use or Development of Parcel; Motion for Expedited Disposition of Appeal to Toni M. Cherry Esq., Gregory Kruk Esq., Kim C. Kesner Esq., filed by s/ Dusty Elias Kirk Esq. 1CC Atty Kirk.</p> <p>Praeclipe to file attached Certificate of Record of Joseph T. Bowser, Chairman, with the accompanying record in accordance with your Writ of Certiorari issued February 3, 2006, filed by s/Kim C. Kesner, Esq. One CC (Praeclipe only)</p> <p>Certificate of Record, filed s/Joseph T. Bowser, Chairman, Sandy Township Zoning Hearing Board. Four parts: 1. Original Transcript of First Hearing on July 21, 2005 with Exhibits; 2. Original Transcript of Second Hearing on August 9, 2005 with Exhibits; 3. Original Transcript of Final Hearing on September 27, 2005 with Exhibits; 4. Written Decision with Findings of Fact and Conclusions of Law dated January 5, 2006.</p>
02/17/2006	<p>Order, filed Cert. to Atty's T. Cherry, K. Kesner, G. Kruk, D. Kirk and C. Belin</p> <p>NOW, this 16th day of February, 2006, RE: Motion for Stay and Intervenors' Motion for Expedited Disposition of Appeal. See Original Order.</p>
02/27/2006	<p>Order NOW, this 24th day of February 2006, upon consideration of Appellants' Petition to Stay All Use of Development of the 12.47 Arce Parcel Pending Appeal, and Intervenor's Response to Appellants' Petition to Stay All Use of Development of Parcel, it is hereby ORDERED that a limited stay be and is hereby entered. Pursuant to this limited stay, no construction of improvements shall commence until this Court enters a final order in this case. This Limited stay shall be preclude any authorized person or entity from entering the property, seeking and obtaining governmental approval and permits relating to future development of the property at issued in the appeal and conducting soil, water and other such tests. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Atty's: T. Cherry, Kesner, Kruk, Kirk, Kirk and Belin.</p>
04/20/2006	<p>Certificate of Service, filed. That on this, the 19th day of April 2006 a true and correct copy of Sandy Township's Brief in the above-captioned matter was sent to Toni M. Cherry Esq. and Dusty Elias Kirk Esq., filed by Gregory M. Kruk Esq. NO CC.</p>
05/19/2006	<p>Order, NOW, this 18th day of may, 2006, this Court notes the following: (see original). It is the Order of this Court that the decision of the Sandy Township Zoning Hearing Board be approved, and the appeal filed on behalf of the Appellants is Dismissed. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty's: T. Cherry, Kesner, Kruk, D. Kirk, Belin</p>

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. 06 - 187 C.D.  
Appellants :  
vs. :  
SANDY TOWNSHIP ZONING HEARING :  
BOARD and SANDY TOWNSHIP BOARD OF :  
SUPERVISORS, :  
Appellees :  
and :  
DEVELOPAC, INC., :  
Intervenor :

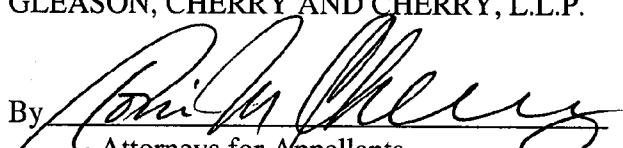
**ORDER FOR TRANSCRIPT**

A Notice of Appeal having been filed in this matter, the Official Court Reporter is hereby ordered to produce, certify, and file any transcript in this matter in conformity with Rule 1922 of the Pennsylvania Rules of Appellate Procedure.

Respectfully submitted,

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

By

  
Atorneys for Appellants  
Toni M. Cherry, Esq.  
Attorney I.D. No. 30205  
P. O. Box 505  
DuBois, PA 15801  
(814) 371-5800

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. 06 - 187 C.D.  
Appellants :  
vs. :  
SANDY TOWNSHIP ZONING HEARING :  
BOARD and SANDY TOWNSHIP BOARD OF :  
SUPERVISORS, :  
Appellees :  
and :  
DEVELOPAC, INC., :  
Intervenor :

**PROOF OF SERVICE OF NOTICE OF APPEAL**

I hereby certify that I am this day serving copies of the foregoing Notice of Appeal, Docket Entries, Order for Transcript and this Proof of Service on the following persons in the manner indicated below:

**Service in person as follows:**

THE HONORABLE FREDRIC J. AMMERMAN  
President Judge  
Judge's Chambers  
Clearfield County Courthouse  
Clearfield, PA 16830

MS. KATHY PROVOST  
Court Reporter  
Office of the Court Reporter  
Clearfield County Courthouse  
Clearfield, PA 16830

MR. DAVID S. MEHOLICK  
Court Administrator  
Office of the Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830

**Service by First Class Mail, addressed as follows:**

KIM C. KESNER, ESQ.  
Attorney at Law  
23 North Second Street  
Clearfield, PA 16830

GREGORY M. KRUK, ESQ.  
Ferraro, Kruk & Ferraro, LLP  
Attorneys at Law  
690 Main Street  
Brockway, PA 15824

DUSTY ELIAS KIRK, ESQ.  
Pepper, Hamilton, LLP  
Attorneys at Law  
Firm No. 143  
One Mellon Center  
500 Grant Street, 50<sup>th</sup> Floor  
Pittsburgh, PA 15219

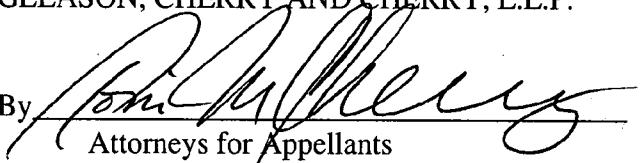
I understand that any false statements herein are made subject to the penalties of 18 Pa.

Cons. Stat. Ann. §4904 relating to unsworn falsification to authorities.

Dated: June 16, 2006

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

By

  
Toni M. Cherry, Esq.  
Attorney I.D. No. 30205  
P. O. Box 505  
DuBois, PA 15801  
(814) 371-5800

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 C. ALLENBAUGH and NANCY L.  
ALLENBAUGH,

Appellants

vs.

SANDY TOWNSHIP ZONING HEARING BOARD  
and SANDY TOWNSHIP BOARD OF SUPERVISORS,  
Appellees

vs.

DEVELOPAC, INC.,  
Intervenor

ea  
FILED  
04/19/2006  
MAY 19 2006  
T. Cherry  
William A. Shaw  
Prothonotary/Clerk of Courts  
Kesner  
Kruk  
S. Kirk  
Belin  
(60)

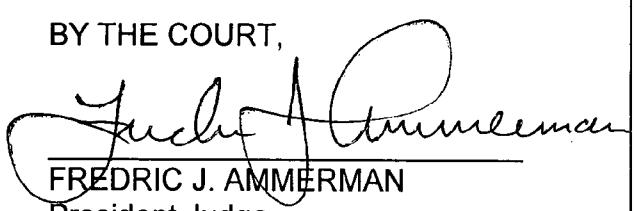
NO. 06-187-CD

ORDER

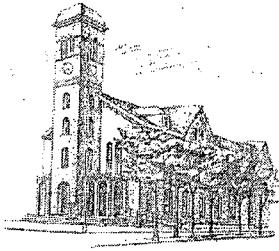
NOW, this 18<sup>th</sup> day of May, 2006, pursuant to 53 P.S. § 11005-A, this Court  
notes the following:

- 1) The Sandy Township Zoning Hearing Board issued a written decision  
which included Findings of Fact and Conclusions of Law in regard to granting the  
re-zoning in question;
- 2) No additional evidence or testimony was taken by this Court;
- 3) The Findings of Fact as set forth by the Sandy Township Zoning  
Hearing Board are supported by substantial evidence;
- 4) The Court does not believe that the Sandy Township Zoning Hearing  
Board has committed an error of law or abused its' discretion;
- 5) It is the ORDER of this Court that the decision of the Sandy Township  
Zoning Hearing Board be approved, and the appeal filed on behalf of the Appellants  
be and is hereby DISMISSED.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

ea  
\*20\*



## Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

DATE: 5/19/02

       You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

       Special Instructions:

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,

Appellants

vs

SANDY TOWNSHIP ZONING  
HEARING BOARD and SANDY  
TOWNSHIP BOARD OF  
SUPERVISORS,

Appellees

vs

DEVELOPAC, INC.,

Intervenor

No. 06 - 187 CD

Type of Case:

Type of Pleading:  
Certificate of Service

Filed on behalf of Sandy Township  
Supervisors

Counsel of Record for this party:

**GREGORY M. KRUK, Esq.**  
PA ID No. 27048  
**Ferraro, Kruk & Ferraro, LLP**  
690 Main Street  
Brockway, PA 15824  
814-268-2202

FILED NO  
APR 20 2006  
#19

William A. Shaw  
Prothonotary/Clerk of Courts

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. 06 - 187 - CD

Appellants

vs

SANDY TOWNSHIP ZONING HEARING  
BOARD and SANDY TOWNSHIP  
BOARD OF SUPERVISORS,

Appellees

vs

DEVELOPAC, INC.,

Intervenor.

**CERTIFICATE OF SERVICE**

I hereby certify that on this, the 19<sup>th</sup> day of April, 2006, a true and correct copy of Sandy Township's (Appellee's) Brief in the above-captioned matter was sent to the following persons by mailing the same to them by U.S. First Class Mail, postage prepaid, by the depositing the same in the United States Post Office at Brockway, PA, addressed as follows:

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  
Firm No. 143  
One Mellon Center  
500 Grant Street, 50<sup>th</sup> Floor  
Pittsburgh, PA 15219

FERRARO, KRUK & FERRARO, LLP

BY:   
Attorneys for Sandy Township

Dated: April 19, 2006

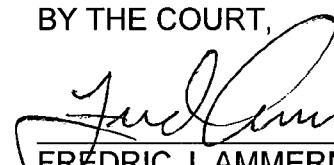
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

SANDY CITIZENS ARGUING FOR RESPONSIBLE \*  
ECONOMIC DEVELOPMENT (S.C.A.R.E.D.), \*  
WILLIAM B. CLYDE, GARY A. PETERSON, \*  
WILLIAM C. ALLENBAUGH and NANCY L. \*  
ALLENBAUGH, \*  
Appellants \*  
vs. \* NO. 06-187-CD  
SANDY TOWNSHIP ZONING HEARING BOARD \*  
and SANDY TOWNSHIP BOARD OF SUPERVISORS, \*  
Appellees \*  
vs. \*  
DEVELOPAC, INC., \*  
Intervenor \*

O R D E R

NOW, this 24<sup>th</sup> day of February, 2006, upon consideration of Appellants' Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal, and Intervenor's Response to Appellants' Petition to Stay All Use or Development of Parcel, it is hereby ORDERED that a limited stay be and is hereby entered. Pursuant to this limited stay, no construction of improvements shall commence until this Court enters a final order in this case. This limited stay shall not preclude any authorized person or entity from entering the property, seeking and obtaining governmental approvals and permits relating to the future development of the property at issue in this appeal and conducting soil, water and other such tests.

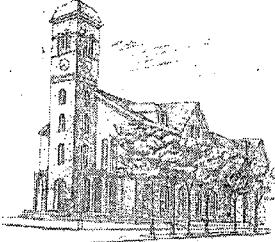
BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

**FILED**  
09:36 AM  
FEB 27 2006  
LM  
William A. Shaw  
Prothonotary/Clerk of Courts

1cc Attns:  
T. Cherry  
Kesner  
Kruk  
Kirk  
Belin

18



## Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

DATE: 2/27/06

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

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. 06-187-CD :  
SANDY TOWNSHIP ZONING HEARING :  
BOARD and SANDY TOWNSHIP BOARD :  
OF SUPERVISORS :

**FILED**

**FEB 17 2006**

*o/a:001 way*

William A. Shaw  
Prothonotary/Clerk of Courts

*ATTY'S  
CHERRY  
KESNER  
KRUK  
DUSTY KIRK  
C. BELLIN.*

O R D E R

AND NOW, this 16th day of February, 2006, following argument on the Motion for Stay filed on behalf of the Appellants, and also in consideration of the Intervenors' Motion for Expedited Disposition of Appeal, it is the ORDER of this Court as follows:

1. The Appellants and the Intervenors shall submit to the Court within no more than five (5) days from this date a proposed order relative the Appellants' request for stay. The Appellants shall provide the Court with two (2) forms of proposed order, one granting the stay in its entirety, and the other containing language relative a limited stay which would permit the Intervenors to proceed with their project without construction being commenced. The Court will accept faxed proposed orders from the parties.

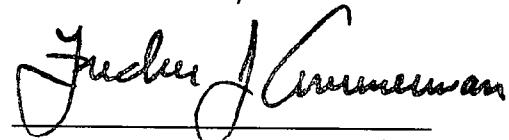
*#17*

2. The Intervenors' Motion for Expedited Disposition of Appeal is hereby granted. The Appellants shall provide the Court with their brief on the merits within no more than forty-five (45) days from this date, which will also contain a proposed order. The Intervenors shall have no more than fifteen (15) days following the receipt of the Appellants' brief in which to respond in kind, and also to include a proposed order.

3. The Sandy Township Supervisors, in the event they would wish to do so, may also file a brief with this Court within the time period as set forth in No. 2 above.

4. Following the Court's review of the parties' briefs on the merits, the Court, at its discretion, may schedule oral argument on the same.

BY THE COURT,



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,

vs.

SANDY TOWNSHIP ZONING HEARING  
BOARD and SANDY TOWNSHIP  
BOARD OF SUPERVISORS,

: No. 06-187-CD  
: Type of Case: Appeal from Zoning Board  
: Decision  
: Type of Pleading: Praeclipe  
: Filed on Behalf of: Sandy Township Zoning  
: Hearing Board  
: Counsel of Record for this Party:  
: Kim C. Kesner, Esquire  
: Supreme Ct. I.D. #28307  
: 23 North Second Street  
: Clearfield, PA 16830  
: (814) 765-1706  
: Other Counsel of Record:  
: Toni M. Cherry, Esquire for Appellants  
: Gleason, Cherry and Cherry, LLP.  
: P.O. Box 505  
: DuBois, PA 15801  
: Gregory Kruk, Esquire for Sandy Twp. Sup.  
: Ferraro, Kruk & Ferraro  
: 690 Main Street  
: Brockway, PA 15824  
: Dusty Elias Kirk, Esquire for Intervenor  
: Pepper Hamilton, LLP  
: One Mellon Center  
: 500 Grant Street, 50<sup>th</sup> Floor  
: Pittsburgh, PA 15219  
: Carl A. Belin, Jr., Esquire for Intervenor  
: Belin & Kubista  
: 15 North Front Street  
: P.O. Box 1  
: Clearfield, PA 16830

**FILED** 109:00 AM  
FEB 16 2006 Atty Kesner  
(Praeclipe only)  
B62  
William A. Shaw  
Prothonotary/Clerk of Courts

#16a

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

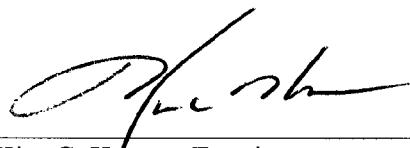
SANDY CITIZENS ARGUING FOR :  
RESPONSIBLE ECONOMIC : No. 06-187-CD  
DEVELOPMENT (S.C.A.R.E.D.), :  
WILLIAM B. CLYDE, GARY A. :  
PETERSON, WILLIAM G. :  
ALLENBAUGH and NANCY L. :  
ALLENBAUGH, :  
vs. :  
: :  
SANDY TOWNSHIP ZONING HEARING :  
BOARD and SANDY TOWNSHIP :  
BOARD OF SUPERVISORS, :  
:

**PRAECIPE**

To: William A. Shaw, Prothonotary

Please file the attached Certificate of Record of Joseph T. Bowser, Chairman with the accompanying record in accordance with your Writ of Certiorari issued on February 3, 2006.

Respectfully Submitted:

  
\_\_\_\_\_  
Kim C. Kesner, Esquire  
Solicitor, Sandy Township Zoning Hearing Board

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

In Re: Validity Challenge 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 regarding  
Real Property being a portion of Clearfield County  
Assessment Map No. 128-C3-108

**CERTIFICATE OF RECORD**

AND NOW, comes the Sandy Township Zoning Hearing Board, by its Chairman, Joseph T. Bowser, who in accordance with 53 P.S. Section 11003-A(b) hereby certifies that the record of the Sandy Township Zoning Hearing Board in the matter in which this appeal has been taken is annexed hereto, filed herewith and consists of:

1. Original Transcript of First Hearing on July 21, 2005 with Exhibits;
2. Original Transcript of Second Hearing on August 9, 2005 with Exhibits;
3. Original Transcript of Final Hearing on September 27, 2005 with Exhibits;
4. Written Decision with Findings of Fact and Conclusions of Law dated January 5, 2006.



Joseph T. Bowser  
Chairman  
Sandy Township Zoning Hearing Board

cc: Toni M. Cherry, Esquire  
Dusty Elias Kirk, Esquire  
Gregory M. Kruk, Esquire

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 C.  
ALLENBAUGH and  
NANCY L. ALLENBAUGH,

NO. 06 - 187 C.D.

**CERTIFICATE OF SERVICE  
OF DOCUMENTS FILED  
FEBRUARY 14, 2006**

Filed on behalf of:

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 No. 143  
One Mellon Center  
500 Grant Street, 50th Floor  
Pittsburgh, PA 15219  
(412) 454-5000

Appellants,

vs.

SANDY TOWNSHIP ZONING HEARING  
BOARD and SANDY TOWNSHIP BOARD  
OF SUPERVISORS,

Appellees,

vs.

DEVELOPAC, INC.,

Intervenor.

**FILED**  
0/8:43pm cc:ATTY  
FEB 16 2006

William A. Shaw  
Prothonotary

#15

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 C. ALLENBAUGH and  
NANCY L. ALLENBAUGH,

NO. 06-187 C.D.

Appellants,

VS.

SANDY TOWNSHIP ZONING HEARING  
BOARD and SANDY TOWNSHIP BOARD  
OF SUPERVISORS,

Appellees,

VS.

DEVELOPAC, INC.,

Intervenor.

**CERTIFICATE OF SERVICE OF DOCUMENTS FILED FEBRUARY 14, 2006**

And now comes Developac, Inc., by and through its attorneys, Pepper Hamilton,  
LLP and Dusty Elias Kirk, Esquire, and files the within Certificate of Service of Documents  
Filed on February 14, 2006.

1. On February 14, 2006, the undersigned, on behalf of Developac, Inc., filed  
the following documents:

- Notice of Intervention Pursuant to 53 PA C.S. 11004-A
- Response to Appellant's Notice of Appeal of Zoning Hearing Board Decision
- Response to Appellant's Petition to Stay All Use or Development of Parcel
- Motion for Expedited Disposition of Appeal

2. The undersigned certifies that true and correct copies of these documents were served upon the following parties via Federal Express, postage prepaid on February 14, 2006:

Toni M. Cherry, Esquire  
Gleason, Cherry and Cherry, L.L.P.  
P.O. Box 505  
One North Franklin Street  
DuBois, PA 15801  
*Attorney for Appellants*

Gregory Kruk, Esquire  
Ferraro, Kruk & Ferraro, LLP  
690 Main Street  
Brockway, PA 15824  
*Solicitor for Sandy Township Board of Supervisors*

Kim C. Kesner, Esquire  
23 North 2<sup>nd</sup> Street  
Clearfield, PA 16830  
*Solicitor for Sandy Township Zoning Hearing Board*

Respectfully submitted,

Dated: February 15, 2006

Dusty Elias Kruk  
Dusty Elias Kruk  
PA I.D. No. 30702  
Sharon F. DiPaolo  
PA I.D. No. 74520  
PEPPER HAMILTON LLP  
Firm No. 143  
One Mellon Center  
500 Grant Street, 50<sup>th</sup> Floor  
Pittsburgh, PA 15219  
*Attorneys for Developac, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Certificate of Service of  
Documents Filed on February 14, 2006 has been served upon the following parties by first class  
mail, postage prepaid, on this 15<sup>th</sup> day of February, 2006.

Toni M. Cherry, Esquire  
Gleason, Cherry and Cherry, L.L.P.  
P.O. Box 505  
One North Franklin Street  
DuBois, PA 15801  
*Attorney for Appellants*

Gregory Kruk, Esquire  
Ferraro, Kruk & Ferraro, LLP  
690 Main Street  
Brockway, PA 15824  
*Solicitor for Sandy Township Board of Supervisors*

Kim C. Kesner, Esquire  
23 North 2<sup>nd</sup> Street  
Clearfield, PA 16830  
*Solicitor for Sandy Township Zoning Hearing Board*

Dusty Elias Kirk  
Dusty Elias Kirk

**FILED**

FEB 16 2006

William A. Shaw  
Prothonotary

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 C.  
ALLENBAUGH and  
NANCY L. ALLENBAUGH,

Appellants,

vs.

SANDY TOWNSHIP ZONING HEARING  
BOARD and SANDY TOWNSHIP BOARD  
OF SUPERVISORS,

Appellees,

vs.

DEVELOPAC, INC.,

Intervenor:

**FILED**

0/8:40 AM  
FEB 16 2006  
JRW

William A. Shaw  
Prothonotary

CIVIL DIVISION

NO. 06 - 187 C.D.

**PRAECIPE FOR ENTRY OF  
APPEARANCE**

Filed on behalf of:

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 No. 143  
One Mellon Center  
500 Grant Street, 50<sup>th</sup> Floor  
Pittsburgh, PA 15219  
(412) 454-5000

Carl A. Belin, Jr., Esquire  
PA I.D. No. 06805  
John R. Ryan, Esquire  
PA I.D. No. 38739  
BELIN & KUBISTA  
15 North Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972

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 C.  
ALLENBAUGH and  
NANCY L. ALLENBAUGH,

CIVIL DIVISION

NO. 06 - 187 C.D.

Appellants,

vs.

SANDY TOWNSHIP ZONING HEARING  
BOARD and SANDY TOWNSHIP BOARD  
OF SUPERVISORS,

Appellees,

vs.

DEVELOPAC, INC.,

Intervenor.

PRAECIPE FOR ENTRY OF APPEARANCE

TO: William A. Shaw, Prothonotary

Kindly enter the appearance of Dusty Elias Kirk, Esquire and Pepper Hamilton  
LLP, and Carl A. Belin, Jr., and Belin and Kubista on behalf of DEVELOPAC, INC.

Respectfully submitted,



Carl A. Belin, Jr.  
PA I.D. No. 06805  
John R. Ryan  
PA I.D. No. 38739  
BELIN & KUBISTA  
15 North Front Street  
P.O. Box 1  
Clearfield, PA 16830

Respectfully submitted,



Dusty Elias Kirk  
PA I.D. No. 30702  
Sharon F. DiPaolo  
PA I.D. No. 74520  
PEPPER HAMILTON LLP  
Firm No. 143  
One Mellon Center  
500 Grant Street, 50<sup>th</sup> Floor  
Pittsburgh, PA 15219

Dated: February 16, 2006

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Praeclipe for Appearance has been served upon the following parties by first class mail, postage prepaid, on this 16th day of February, 2006.

Toni M. Cherry, Esquire  
Gleason, Cherry and Cherry, L.L.P.  
P.O. Box 505  
One North Franklin Street  
DuBois, PA 15801  
*Attorney for Appellants*  
*(VIA HAND DELIVERY)*

Gregory Kruk, Esquire  
Ferraro, Kruk & Ferraro, LLP  
690 Main Street  
Brockway, PA 15824  
*Solicitor for Sandy Township Board of Supervisors*  
*(VIA HAND DELIVERY)*

Kim C. Kesner, Esquire  
23 North 2<sup>nd</sup> Street  
Clearfield, PA 16830  
*Solicitor for Sandy Township Zoning Hearing Board*

Dusty Elias Kirk  
Dusty Elias Kirk

FILED

FEB 16 2006

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CIVIL DIVISION

SANDY CITIZENS ARGUING FOR : No. 06 – 187 C.D.  
RESPONSIBLE ECONOMIC DEVELOPMENT :  
(S.C.A.R.E.D.), WILLIAM B. CLYDE, GARY : Type of Case: APPEAL FROM  
A. PETERSON, WILLIAM G. ALLENBAUGH : ZONING BOARD DECISION  
and NANCY L. ALLENBAUGH, :  
Appellants : Type of Pleading: RESPONSE OF  
vs. : SANDY TOWNSHIP BOARD OF  
SANDY TOWNSHIP ZONING HEARING : SUPERVISORS TO PETITION TO  
BOARD and SANDY TOWNSHIP BOARD : STAY ALL USE OR  
OF SUPERVISORS : DEVELOPMENT OF THE  
: 12.47 ACRE PARCEL  
: PENDING APPEAL  
Appellees : Filed on Behalf of: SANDY  
: TOWNSHIP BOARD OF  
: BOARD OF SUPERVISORS  
: Counsel of Record for Appellee:  
: GREGORY M. KRUK, ESQ.  
: SUPREME COURT NO.: 27048  
: FERRARO, KRUK & FERRARO, LLP  
: 690 MAIN STREET  
: BROCKWAY, PA 15824  
: (814)268-2202

FILED  
01/14/06  
FEB 15 2006  
3 CC  
Atty Kruk  
GK

William A. Shaw  
Prothonotary/Clerk of Courts

13

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CIVIL DIVISION

SANDY CITIZENS ARGUING FOR : No. 06 – 187 C.D.  
RESPONSIBLE ECONOMIC DEVELOPMENT :  
(S.C.A.R.E.D.), WILLIAM B. CLYDE, GARY :  
A. PETERSON, WILLIAM G. ALLENBAUGH :  
and NANCY L. ALLENBAUGH, :

**RESPONSE OF SANDY TOWNSHIP BOARD OF SUPERVISORS  
TO PETITION TO STAY ALL USE OR DEVELOPMENT  
OF THE 12.47 ACRE PARCEL PENDING APPEAL**

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

And now comes the SANDY TOWNSHIP BOARD OF SUPERVISORS by its Attorneys, FERRARO, KRUK & FERRARO, LLP, and responds to the Appellants' PETITION TO STAY ALL USE OR DEVELOPMENT OF THE 12.47 ACRES PARCEL PENDING APPEAL as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Denied. It is specifically denied that the Sandy Township Zoning Hearing Board committed errors of law and abuses of discretion in failing to find that the rezoning is due to illegal spot zoning. On the contrary, the Sandy Township Zoning Hearing Board did not commit any error of law and did not commit any abuse of discretion. The decision of the Sandy Township Zoning Hearing Board is supported by substantial evidence in the record of this matter, said evidence produced at the Hearings held July 21, 2005, August 9, 2005, and September 27, 2005.
6. Denied. It is denied that the taking of this Appeal is not frivolous and it is denied that there is substantial evidence on the record supporting the position that Ordinance No. 04 – 2005 should be vacated because it is illegal spot zoning. On the contrary, Appellee, Sandy Township Board

of Supervisors believes that the evidence is sufficient to support the decision of the Sandy Township Zoning Hearing Board and it believes that the Appeal taken by Appellant is frivolous and not supported by evidence in the record.

7. Admitted.
8. Admitted.
9. Admitted and Denied. It is admitted that if the proceedings are not Stayed, the use and development of the Parcel will be developed as a Wal-Mart Supercenter, but it is denied that this is a sufficient reason for the granting of a Stay in these proceedings. On the contrary, such a reason does not support the granting of Appellants' Petition for Stay.
10. Denied. It is denied that the denial of Appellants' Petition for Stay will prejudice Appellants in litigating the issues. On the contrary, the refusal to grant of Stay does not prejudice Appellants' Appeal rights in this matter.
11. Denied. It is denied that a denial of the Appellants' Petition for Stay will cause Appellants' challenge to be rendered moot. On the contrary, Appellant can still proceed with Appellant's Appeal, although the property in question is being developed for its stated commercial purpose.

Wherefore, Sandy Township Board of Supervisors requests your Honorable Court to deny Appellants' Petition for a Stay and enter judgment in favor of Sandy Township Board of Supervisors and against Appellants.

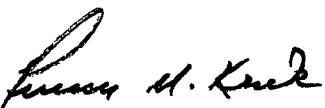
#### **NEW MATTER**

12. Sandy Township Board of Supervisors sets forth herein its responses to paragraphs 1 -11 of Appellants' Petition for a Stay the same as if the same were set forth in full herein.
13. Appellants' Petition To Stay All Use Or Development does not meet the burden for the granting of a Stay because it does not show that Petitioner is likely to prevail on the merits, does not show that Petitioner will suffer irreparable injury without the requested relief, does not show that the granting of the relief will not substantially harm other interested parties and does not show that the issuance of a stay will not adversely affect the public interest.
14. The granting of a Stay in this matter will adversely affect the public interest and specifically the interest of the Sandy Township Board of Supervisors and the Citizens of Sandy Township, because:

- a. Tax Revenues will be lost by Sandy Township.
- b. Jobs will not be occurring as anticipated.
- c. There exists the risk Wal-Mart will decide not to build its Supercenter if these matters are delayed in any manner.

Wherefore, the Sandy Township Board of Supervisors requests your Honorable Court to deny Appellants' Petition for a Stay and enter Judgment in favor of the Sandy Township Board of Supervisors.

Respectfully submitted,  
Ferraro, Kruk & Ferraro, LLP

By:   
\_\_\_\_\_  
Attorney for Sandy Township  
Board of Supervisors

**VERIFICATION**

I, RICHARD CASTONGUAY, Manager of Sandy Township, being authorized to make this Verification on behalf of Sandy Township, do hereby verify that the information set forth in the within is 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 P.a. C.S. Section 4904, relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
RICHARD CASTONGUAY

Dated: February 15, 2006

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 C.  
ALLENBAUGH and  
NANCY L. ALLENBAUGH,

Appellants,

vs.

SANDY TOWNSHIP ZONING HEARING  
BOARD and SANDY TOWNSHIP BOARD  
OF SUPERVISORS,

Appellees,

vs.

DEVELOPAC, INC.,

Intervenor.

NO. 06 - 187 C.D.

**RESPONSE TO APPELLANTS'  
PETITION TO STAY ALL USE OR  
DEVELOPMENT OF PARCEL**

Filed on behalf of:

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 No. 143  
One Mellon Center  
500 Grant Street, 50<sup>th</sup> Floor  
Pittsburgh, PA 15219  
(412) 454-5000

FILED *wo* cc  
01/11/2006  
FEB 15 2006  
(6x)

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 C.  
ALLENBAUGH and  
NANCY L. ALLENBAUGH, : NO. 06- 187 C.D.

Appellants,  
vs.

SANDY TOWNSHIP ZONING HEARING  
BOARD and SANDY TOWNSHIP BOARD  
OF SUPERVISORS, :

Appellees,  
vs.

DEVELOPAC, INC., :

Intervenor.

**RESPONSE TO APPELLANTS' PETITION  
TO STAY ALL USE OR DEVELOPMENT OF PARCEL**

AND NOW, comes Developac, Inc. ("Developac"), by and through its attorneys, Pepper Hamilton LLP and Dusty Elias Kirk, Esquire, and files this Response to Appellants' Petition to Stay All Use or Development of Parcel.

I. INTRODUCTION

With the filing of a Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal (the "Petition to Stay") on February 7, 2006, Appellants, hereinafter collectively referred to as "SCARED," request that this Court stay the use and development of the parcel of land that is the subject of this appeal.

Conspicuously absent from the Petition to Stay is any discussion of who bears the burden of proof with respect to the granting of the requested stay, and the test by which this Court is to determine whether to grant it.

As set forth below, the law is clear that SCARED bears a heavy burden in order to prove that they are entitled to an order further staying the development of the subject property.

A review of the purported reasons why SCARED believes it is entitled to a stay reflects that it fails to satisfy this burden.

Even if SCARED's purported reasons for requesting the stay could entitle it to a one, which they do not, SCARED cannot possibly sustain any harm, at least until a building permit is sought. To the contrary, if a stay is entered before a building permit is sought, it will cause harm only to the parties seeking to keep the development project moving forward. It would not provide any protections to SCARED.

Moreover, as a matter of fairness, SCARED enjoyed an automatic stay for more than seven months during its appeal to the Zoning Hearing Board. After a full and fair hearing before the Zoning Hearing Board, they lost that challenge. SCARED should not enjoy an additional stay of the subject development during the pendency of this appeal. This court should recognize the true reason for the request to stay the development. It is a delay tactic designed to frustrate the development by driving up the cost to develop the subject property. This, of course, is an improper reason to seek a stay.

For all of these reasons, SCARED's request for a stay should be denied.

## II. DISCUSSION

### A. **The Standard for Granting a Stay**

The Municipalities Planning Code ("MPC") expressly states that a party may seek a stay during the pendency of an appeal. See MPC §1003-A(d) ("The filing of an appeal in

court under this section shall not stay the action appealed from, but the appellants may petition the court having jurisdiction of land use appeals for a stay.") However, the MPC provides no comment with respect to the standard that the moving party must meet in order to be entitled to a stay.

Pennsylvania judicial law is clear, however, with respect to the standard for granting a stay. The law on this issue was first enunciated by the Pennsylvania Supreme Court in *Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, 502 Pa. 545, 467 A.2d 805 (1983), wherein it held that the grant of a stay is warranted if the following criteria are met:

1. The petitioner makes a strong showing that it is likely to prevail on the merits.
2. The petitioner has shown that without the requested relief, it will suffer irreparable injury.
3. The issuance of a stay will not substantially harm other interested parties in the proceedings.
4. The issuance of a stay will not adversely affect the public interest.

*Pennsylvania Public Utility Commission v. Process Gas Consumers Group, supra.* The Pennsylvania Supreme Court has applied the *Pennsylvania Public Utility Commission* test to statutory land use appeals to Court. See, e.g. *Chartiers Twp. v. William H. Martin, Inc.* 518 Pa. 181, 542 A.2d 985 (1988). The Commonwealth Court has since agreed that it is the appropriate tests in these circumstances See *Gwynedd Properties, Inc. v. Board of Sup'rs of Lower Gwynedd Twp.* 160 Pa. Commw. 599, 635 A.2d 714 (1993).

When it announced that this test would apply to determine whether a stay is warranted during the pendency of an appeal to Court, the Pennsylvania Supreme Court declared that:

An application for a stay pending appeal always involves a situation in which the merits of the dispute have been fully considered in an adversary setting and a final decree rendered. Under these circumstances, it is essential that the unsuccessful party, who seeks a stay of a final order pending appellate review, make a strong showing under [these four] criteria in order to justify the issuance of a stay.

*Pennsylvania Public Utility Commission, supra.*

In this instance, SCARED had a full and fair opportunity to argue the purported merits of its validity challenge to the Zoning Hearing Board. The Zoning Hearing Board's written decision makes it apparent that the Zoning Hearing Board took this matter very seriously. Only after careful review of the facts and the law did it determine that SCARED's validity challenge should be denied. Under the law of this Commonwealth, it is essential that SCARED make a strong showing under the elements identified above in order to justify the issuance of a stay. As the discussion below reflects, SCARED's assertions of the harm it will sustain if a stay is not entered do not meet the *Pennsylvania Public Utility Commission* test.

**B. SCARED's Purported Reasons as to Why it is Entitled to a Stay are Meritless**

For the most part, SCARED's Petition to Stay is an abridged version of its Notice of Appeal. In both documents, SCARED selectively highlights some of the factual and legal findings of the Zoning Hearing Board. SCARED then asserts in a conclusory fashion that those findings and conclusions support its contention that the Zoning Hearing Board decision should be reversed on appeal.

A careful review of SCARED's Petition to Stay, however, reflects that SCARED believes it is entitled to the stay for these reasons:

If a stay is not granted, the subject property will be developed as a Wal-Mart Supercenter. If that occurs, SCARED will be prejudiced insofar as 1) the use of the land which it seeks to prevent – a commercial use – will have occurred, and part of the dedicated industrial park that SCARED wishes to protect will be lost; and, 2) the issues in this appeal will be rendered moot.

See Petition for Stay, ¶¶9-11.

SCARED's concerns are unwarranted. First, if SCARED is ultimately successful with this appeal, the subject property will revert to being part of the industrial park to which SCARED refers – at least until Developac seeks to have it re-zoned again.

Moreover, SCARED seeks to stay all work to develop the site, including “pre-development” work, which includes the securing of preliminary and final site plan approvals, securing the NPDES Permit, performing soil testing, and any other work that must be performed before ground is broken. It is unreasonable for SCARED to contend that such work – which is done at the expense of those developing the property – could cause any harm to SCARED.

Last, any pre-development work that the interested parties proceed with during the pendency of this appeal will be done at their own peril. The efforts expended toward development, including obtaining the necessary governmental approvals, will have been in vain if it is finally decided that the subject rezoning was unlawful. As such, no amount of development could render this appeal moot.

Therefore, none of these purported reasons for the stay have any merit.

**C. Until A Building Permit is Issued, No Party Could Possibly Sustain Irreparable Harm. If A Stay is Issued, However, It Will Cause Harm to the Parties Interested in the Development**

Importantly, the purported reasons why SCARED believes it will be harmed if a stay is not entered cannot possibly come to pass until ground is broken on the site. It is well settled that a party does not have a right to challenge a zoning request until such time that a building permit is sought: *See Pheasant Run Civic Ass'n v. Board of Commissioners of Penn Twp.*, 60 Pa. Commw. 216, 430 A.2d 1231 (1981); *Association of Concerned Citizens of Butler Valley v. Butler Twp. Bd. of Supervisors*, 135 Pa. Commw. 262, 580 A.2d 470 (1990). By filing an appeal and proceeding to a hearing before the Zoning Hearing Board before it had jurisdiction

over this matter, SCARED obtained an automatic stay for seven months to which it was not entitled.

In line with the *Pheasant Run* cases, because no party can challenge a decision to re-zone a parcel of land until a building permit is sought, it follows that no party is entitled to a stay before the issuance of a building permit.

In the event that this appeal is not resolved when a building permit is sought, then SCARED can return to this Court and seek a stay. Under the *Pheasant Run* line of cases, SCARED should not be heard to claim that it is entitled to a stay any sooner.

It should be noted, however, that the request for a building permit is not itself a sufficient justification for SCARED to obtain a stay. Rather, only after a building permit is sought, and SCARED meets the four elements set forth in *Pennsylvania Public Utility Commission*, will SCARED be entitled to a stay.

Further, as a practical matter, until the issuance of a building permit, any efforts that the parties interested in developing the property undertake (like obtaining the necessary governmental approvals) will have no meaningful effect on the subject property in the event that SCARED is successful and the subject re-zoning is overturned.

It is evident, therefore, that the purported harm that SCARED claims it will sustain if a stay is not entered is ethereal, at least until such time as a building permit is issued. There is no legal or factual basis upon which to grant the stay

On the other hand, if a stay is entered, it will cause the parties opposed to this appeal to sustain additional unwarranted harm. This harm will be in the form of additional costs caused by delay, and additional legal and engineering fees. Delay also ultimately puts Developac's contingent sale of the subject property to Wal-Mart at risk.

Because SCARED cannot possibly sustain any harm at least until a building permit is issued, the request for a stay should be denied.

**D. The Imposition of A Stay Would Be Fundamentally Unfair to the Parties Interested in the Property**

An automatic stay was in place by operation of law during the pendency of SCARED's appeal to the Zoning Hearing Board. Because no building permit was issued when SCARED filed its appeal to the Zoning Hearing Board, the Zoning Hearing Board had no jurisdiction over SCARED's challenge. *See Pheasant Run; Association of Concerned Citizens, supra.* As a result, SCARED already enjoyed an undeserved opportunity to stop the subject development in its tracks for more than seven months while the Zoning Hearing Board appeal was entertained. After a full and fair hearing before the Zoning Hearing Board, they lost that challenge. SCARED should not enjoy an additional stay of the subject development during the pendency of this "appeal of an appeal," especially when such a stay would cause further harm to the parties interested in moving forward with the development.

The true reason why SCARED seeks the stay is not to protect any of their direct interests. Rather, it is a tactical move to cause the parties interested in developing the property unwarranted harm that will result from stopping the development in its tracks. Specifically, it is designed to cause the parties interested in developing the property to sustain additional development costs. SCARED seeks the stay with the hope that a stay will cause strain upon the development project as a whole. These are, of course, improper reasons to seek the stay.

**III. CONCLUSION**

Because SCARED cannot meet any of the four *Pennsylvania Public Utility Commission* elements identified above that must be met in order to be entitled to a stay, and

because SCARED cannot articulate any appreciable harm that may result if this matter is not stayed, its request for a stay should be denied.

Respectfully submitted,

*Dusty Elias Kirk*

Dusty Elias Kirk  
PA I.D. No. 30702  
Sharon F. DiPaolo  
PA I.D. No. 74520  
PEPPER HAMILTON LLP  
Firm No. 143  
One Mellon Center  
500 Grant Street, 50<sup>th</sup> Floor  
Pittsburgh, PA 15219  
*Attorneys for Developac, Inc.*

Dated: February 14, 2006

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within has been served upon the following parties by first class mail, postage prepaid, on this \_\_\_\_\_ day of February, 2006.

Toni M. Cherry, Esquire  
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*Solicitor for Sandy Township Board of Supervisors*

Kim C. Kesner, Esquire  
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*Solicitor for Sandy Township Zoning Hearing Board*

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Dusty Elias Kirk

~~FILED~~

~~FEB 16 2006~~

~~William A. Straw  
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 C.  
ALLENBAUGH and  
NANCY L. ALLENBAUGH,

NO. 06 - 187 C.D.

**RESPONSE TO APPELLANTS' NOTICE  
OF APPEAL OF ZONING HEARING  
BOARD DECISION**

Appellants,

vs.

SANDY TOWNSHIP ZONING HEARING  
BOARD and SANDY TOWNSHIP BOARD  
OF SUPERVISORS,

Appellees,

vs.

DEVELOPAC, INC.,

Intervenor.

Filed on behalf of:

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  
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FEB 15 2006  
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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 C. : NO. 06 - 187 C.D.  
ALLENBAUGH and :  
NANCY L. ALLENBAUGH, :

Appellants,  
vs. :

SANDY TOWNSHIP ZONING :  
HEARING BOARD and SANDY :  
TOWNSHIP BOARD OF SUPERVISORS, :

Appellees,  
vs. :

DEVELOPAC, INC., :

Intervenor.

**RESPONSE TO APPELLANTS' NOTICE OF  
APPEAL OF ZONING HEARING BOARD DECISION**

AND NOW, comes Developac, Inc. ("Developac"), by and through its attorneys, Pepper Hamilton LLP and Dusty Elias Kirk, Esquire, and files the within Response to Appellants' Notice of Appeal of Zoning Hearing Board Decision.

I. INTRODUCTION

Appellants, Sandy Citizens for Responsible Economic Development (S.C.A.R.E.D.), William B. Clyde, Gary A. Peterson, William C. Allenbaugh, and Nancy L. Allenbaugh (collectively, "SCARED") is concerned with the proposed expansion of the DuBois Wal-Mart. This Wal-Mart, which has been serving Sandy Township, the City of Dubois, and the neighboring communities for thirteen years, has outgrown its

present space and needs to expand. In order to do so, Wal Mart Stores, Inc. ("Wal-Mart") wishes to purchase a 12.47 acre parcel of land from the record owner, Developac, Inc. ("Developac") that is adjacent to the existing store. (The subject 12.47 acre parcel is hereinafter referred to as the "Property.") Developac's sale of the Property is contingent upon Developac securing the re-zoning that is at issue in this appeal.

In an effort to disrupt the proposed development, SCARED has repeatedly attempted to derail Developac's efforts to have the property re-zoned. SCARED was unsuccessful, however, before the Sandy Township Board of Supervisors, who ultimately voted to approve the re-zoning request. SCARED was also unsuccessful on appeal to the Sandy Township Zoning Hearing Board, which denied its challenge to the subject re-zoning. SCARED has thus failed twice to thwart the re-zoning. It is now trying its luck in this Court.

## II. PROCEDURAL BACKGROUND

On February 3, 2006, SCARED filed this land use appeal. It has a statutory right to file this appeal pursuant to the Municipalities Planning Code. SCARED appeals the Sandy Township Zoning Hearing Board's (the "Zoning Hearing Board") January 5, 2006 decision to deny its validity challenge to an ordinance passed by the Sandy Township Board of Supervisors (the "Township Supervisors").

The matter before the Zoning Hearing Board was a challenge to Sandy Township's adoption of a zoning ordinance that re-zoned the Property. In that appeal, SCARED asserted that the re-zoning amounted to unconstitutional "spot-zoning."

On appeal to this Court, SCARED again ignores the fact that a zoning ordinance is legislation that is presumed to be constitutionally valid, and that zoning classifications are largely within the discretion and judgment of the legislative body,

which in this case is the Township Supervisors. It also ignores the fact that the Township Supervisors had ample evidence from which to conclude that re-zoning the property was in the public interest, and that the Zoning Hearing Board was not to substitute its judgment for that of the Township Supervisors.

The Zoning Hearing Board's unanimous vote to deny SCARED's validity challenge, and the written decision itself, reflect that the Zoning Hearing Board carefully weighed the evidence and considered all the legal requirements before rendering its decision. Their vote and written decision also reflect that SCARED failed to meet the heavy burden it bears to prove the unconstitutionality of the Township Supervisors' decision to grant the re-zoning request.

The thoughtful decision of the Zoning Hearing Board stands in stark contrast to SCARED's Notice of Appeal. The lack of any merit to SCARED's appeal is underscored by SCARED's strategic decision to throw every conceivable argument at the courthouse wall to see what might stick. In their Notice of Appeal, SCARED contends that the Zoning Hearing Board committed no less than twenty abuses of discretion or legal errors. At the very least, such an approach is an act of desperation. At worst, it is an indication that this appeal was filed simply to attempt to delay the subject property's development. In either case, it reflects the lack of merit of this appeal.

A review of the record below reflects that the Zoning Hearing Board correctly decided this matter. As such, the decision of the Zoning Hearing Board should be affirmed.

### III. FACTUAL BACKGROUND

Developac, Inc. ("Developac") is the record owner of a 196-acre parcel of land situated in Sandy Township, Clearfield County, Pennsylvania known as the

Developac Industrial Park. It is designated as parcel No. 128-C3-108 in the Clearfield County Office of Deed Registry.

On February 7, 2005, Developac presented the Township Supervisors with a request to re-zone the Property, which is a portion of the 196-acre parcel. (See Aug. 9, 2005 Tr. p.24)<sup>1</sup> Developac requested the zoning change after entering into a purchase agreement with Wal-Mart Stores, Inc. ("Wal-Mart") for the Property. The purchase has not been consummated. Rather, it is conditioned upon, among other things, Developac securing the zoning amendment that SCARED is challenging.

On May 2, 2005, the Township Supervisors held a public meeting to hear and consider public comment on the proposed re-zoning of the Property. (See. App. Exh. 3)

On May 16, 2005, after careful consideration of Developac's re-zoning request, the comments of the public, the Township's Comprehensive Plan, and other evidence, the Township Supervisors adopted Ordinance 04-2005 (the "Ordinance").

(See *id.*) The Ordinance re-zones the Property from Industrial to Commercial-Highway. (See *id.*)

On June 20, 2005, thirty-five days after the adoption of the Ordinance, and after the close of business at approximately 7:00 p.m., SCARED presented Sandy Township's Secretary with a Sandy Township Zoning Hearing Board Application (the

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<sup>1</sup> Citations are to the record created before the Zoning Hearing Board. Pursuant to the Municipalities Planning Code §1003-A(b), the Prothonotary of the Court of Common Pleas of Clearfield County is to command the Zoning Hearing Board to forward a copy of its entire record in this matter to this Court.

“Application”) attached to which was a notice of appeal of the Ordinance. (See ZHB’s

Exh. B)

On July 21, August 9, and September 27, 2005, SCARED, Developac and the Township Supervisors presented evidence to the Zoning Hearing Board regarding SCARED’s challenge to the constitutional validity of the Ordinance. Thereafter, the Zoning Hearing Board submitted a briefing schedule to the parties. In accord with the briefing schedule, SCARED and Developac submitted briefs in support of their respective positions.

On January 5, 2006, the Zoning Hearing Board unanimously voted to dismiss SCARED’s validity challenge. On the same day, the Zoning Hearing Board issued a written decision in support of their denial of Appellants’ validity challenge. This appeal followed.

#### IV. ANALYSIS

##### A. This Court’s Standard of Review

This Court’s review is limited to a determination of whether or not the Zoning Hearing Board committed an abuse of discretion or an error of law. *B & B Shoe Products Co. v. Hearing Bd. of Manheim Borough*, 28 Pa. Commw. 475, 368 A.2d 1332 (1977) (citing *Marwood Rest Home, Inc. v. Zoning Board of Adjustment*, 22 Pa. Commw. 567, 349 A.2d 800 (1976)). As the Zoning Hearing Board made its own factual findings and legal conclusions, this Court is not to substitute its own findings and conclusions unless the Zoning Hearing Board capriciously disregarded the evidence or manifestly abused its discretion. *Lower Southampton Township v. B. P. Oil Corp.*, 16 Pa. Commw. 108, 329 A.2d 535 (1974).

**B. The Zoning Hearing Board Understood That the Subject Ordinance Is Presumed to Be Valid, And That Appellants Had The Burden To Prove Otherwise**

**1. The Parties Agree as to the Law to be Applied to a Validity Challenge**

As the Zoning Hearing Board noted in its written decision, the parties in the appeal below agreed on the appropriate standard of review of the Township's decision to pass the subject ordinance. *See* ZHB Decision p.9. When this matter was before the Zoning Hearing Board, the parties agreed that the Zoning Hearing Board was to begin with the presumption that the Ordinance is valid and constitutional, and that SCARED bore the burden of proving otherwise. *See* App. Br. p.4. Moreover, SCARED agreed that they had to *clearly establish* that the Ordinance is arbitrary and unreasonable and had *no relation* to the public health, safety, morals, and general welfare before the Zoning Hearing Board could overturn the decision of the Township Supervisors. *See id.* (emphasis added).

**2. To Prove that the Ordinance Constitutes Impermissible Spot Zoning, SCARED Bears a Heavy Burden**

A zoning ordinance is legislation that is presumed to be constitutionally valid. *Boundary Drive Assoc. v. Shrewsbury Twp. Bd. of Sup'rs.*, 507 Pa. 481, 491 A.2d 86 (1985). Because SCARED asserted that this legislation was unconstitutional, it bore a heavy burden. *See id.*; *Schubach v. Silver*, 461 Pa. 366, 336 A.2d 328 (1975). Zoning classifications are largely within the discretion and judgment of the Township Supervisors. *See Cleaver v. Board of Adj. of Tredyffrin Twp.*, 414 Pa. 367, 375, 200 A.2d 408 (1964). Thus, the Zoning Hearing Board was to presume that the zoning ordinance was valid and constitutional and the burden of proving otherwise was on SCARED. *Schubach*, 461 Pa. at 380-381, 336 A.2d at 335.

Before the Zoning Hearing Board could declare the zoning ordinance unconstitutional, SCARED was to clearly establish that the provision was arbitrary and unreasonable, and had no relation to the public health, safety, morals, and general welfare. *Id.* If the Zoning Hearing Board found that the validity of the ordinance was debatable, it was required to not disturb the legislative judgment of the Township Supervisors. *Id.*

Spot zoning is “[a] singling out of one lot or small area for different treatment from that accorded to similar surrounding land indistinguishable from it in character, for the economic benefit of the owner of that lot or to his economic detriment.” *Appeal of Mulac*, 418 Pa. 207, 210, 210 A.2d 275, 277 (1965). While there is no mathematical formula for determining if a particular situation constitutes spot zoning, guidelines are available. *Id.* The Zoning Hearing Board was to consider, “among other factors, the [Property’s] physical attributes, topography and size, the economic feasibility of a particular use, planning factors, and determine whether the re-zoning is part of a plan which will produce nondiscriminatory zoning when fully implemented.” *Sheerman v. Wilkes-Barre City Zoning Hrg. Bd.*, 42 Pa. Commw. 175, 180, 400 A.2d 1334, 1336 (1979).

Courts employ a two-step analysis for determining whether a zoning amendment constitutes impermissible spot zoning. *Guettner v. Borough of Lansdale*, 21 Pa. Commw. 287, 293, 345 A.2d 306, 309 (1975). Importantly, SCARED was required to prove both steps to be successful in the appeal to the Zoning Hearing Board. *Id.* First, SCARED was required to prove that the Property is being treated differently from similar surrounding land. *Id.*

Second, SCARED was required to prove that the subject re-zoning was done without justification. *Id.* Where there is an honest difference of opinion, and sound policy supports either decision, the Court is not permitted to step in and substitute its judgment for that of the Township Supervisors. In short, "if the validity of the legislation is fairly debatable, the legislative judgment must be allowed to control." *Id.*, 21 Pa.Cmwlth. at 294, 345 A.2d at 310 (citations omitted).

For the reasons discussed below, the record evidence reflects that the Zoning Hearing Board correctly decided this case. Specifically, because there was more than sufficient evidence in the record from which it could reasonably conclude that the Township Supervisors had a rational basis for their decision to re-zone the subject property, the subject legislation must be permitted to stand.

**C. The Record Is Replete With Evidence From Which to Conclude That The Township Supervisors Had a Rational Basis for Their Legislative Action**

A review of the record reflects that it is replete with evidence from which the Zoning Hearing Board could conclude that the Township Supervisors seriously considered the merits of the subject legislation. The Zoning Hearing Board exhaustively reviewed the record before it, and correctly concluded that the Township Supervisors engaged in a comprehensive analysis as to whether it was in the public interest to grant Developac's request to re-zone the Property. This analysis included, but was not limited to, the following:

1. The Township Supervisors conducted an investigation regarding, among other things, whether there would be some detrimental effect upon Sandy Township because it received funding from the Commonwealth of Pennsylvania for the development of the Developac Industrial Park. *See* Sept. 27, 2007 Tr. pg. 84. Before voting to adopt the subject re-zoning, the Township Supervisors secured a letter from the Pennsylvania Department of Community and Economic Development stating that the

requested zoning change would not impact the KOZ status of the industrial park. *See* August 9, 2005 Tr. pp. 133-38.

2. The Township Supervisors sought review and comments from the Sandy Township Planning Commission regarding the rezoning. *See* Sept. 27, 2007 Tr. pg. 84.

3. The Township Supervisors considered public comment. According to Township Supervisor Brady LaBorde, comment was "pretty evenly balanced as to those who spoke positive and negative about the plans to expand Wal-Mart," and that prior to the vote, the "public comments were weighted in favor of the rezoning proposal." Sept. 27, 2007 Tr. pp. 68, 84.

4. The Township Supervisors met with Township Manager Richard Castonguay to discuss comments provided by the Sandy Township Planning Commission to the proposed re-zoning, and also to discuss the current availability of other land zoned for industrial use in the Township. *See* R. Castonguay's testimony regarding his discussions with the Township Supervisors at Aug. 9, 2005 Tr. pp.152, 156. The Township Supervisors and Mr. Castonguay also discussed the fact that it was Mr. Castonguay's opinion, based upon his extensive experience with land use planning, that the absorption rate in industrial parks along the I-80 corridor had been "extremely light" since 1999-2000. Sept. 27, 2007 Tr. p.157.<sup>2</sup>

5. The Township Supervisors also considered evidence regarding the unusual physical characteristics of the Property. *See* Sept. 27, 2007 Tr. pp. 99, 101. Mr. LaBorde noted that the Property needs a great deal of earthwork – approximately \$2,000,000 of it – to make it useable for most users. *Id.* at p. 99. Because the amount of earthwork needed to make the Property developable by a typical industrial user is unusually expensive, he and the other Township Supervisors reasonably concluded that no prospective purchaser would buy the Property for industrial development *Id.* at p. 101.

6. The Township Supervisors considered the fact that approximately 300,000 cubic yards of fill would be made available by the proposed expansion, and that this fill is to be used to improve parcels in the Developac Industrial Park to make them more attractive for industrial development. *See* Sept. 27, 2007 Tr. p.100.

7. Mr. LaBorde discussed with the local Wal-Mart manager the fact that "this [proposed expansion] would create at least another 200 jobs" in Sandy Township. Sept. 27, 2007 Tr. p. 85. He considered the fact that the Property is not presently a

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<sup>2</sup> This opinion was buttressed by the expert opinion of economic consultant Stuart Patz. Mr. Patz, after reviewing data that included regional employment trends and industrial land development trends, concluded that the rezoning of the Property will have no detrimental effect on future industrial development in Sandy Township. *See* Aug. 9, 2005 Tr. 234-43. His expert report is at Developac Exh. O.

taxable property as it is in the KOEZ economic development zone, but that it will become taxable and thus will bring additional tax revenue to the Township and the local school district if the proposed sale and expansion takes place. *See, id.* at pp. 91-92.

8. Mr. LaBorde met with a school board member to discuss the board member's concerns regarding any effect the re-zoning may ultimately have on the school district's property tax rolls. *See Sept. 27, 2007 Tr. p. 77.*

9. The Township Supervisors met to discuss among themselves the merits of the zoning change. *See Sept. 27, 2007 Tr. p. 87.* Only after Mr. LaBorde and the other Township Supervisors reviewed the evidence to their satisfaction did they conclude that that re-zoning the Property from Industrial to Commercial-Highway would fit within the character of the neighborhood – the Route 0255 commercial corridor.

The record evidence makes it abundantly clear that the Township Supervisors considered the character of the neighborhood, the effect of the proposed zoning change may have upon it, and the likely ultimate benefits to the community before voting upon whether to approve the zoning change. The Township Supervisors did not take the matter lightly. The decision to change the zoning from Industrial to Commercial-Highway was not arbitrary and unreasonable but rather, the decision was justified and reasonable, and was only made after careful consideration of the general welfare of the citizens of Sandy Township.

In fact, the record evidence shows that, because of the unusual characteristics of this particular parcel of land, it likely would have been unreasonable not to change the Property's zoning status. *See Garbev v. Township of Upper Darby, 385 Pa. 328, 122 A.2d 682 (1956)* (In a case with strikingly similar facts, the Pennsylvania Supreme Court reversed the trial court, and held that enforcement of the local zoning ordinance upon the appellant was arbitrary, confiscatory, and

unconstitutional, and that the request to change its zoning status should have been granted.)<sup>3</sup>

Because there was more than sufficient evidence in the record from which the Zoning Hearing Board could reasonably conclude that the Township Supervisors had a rational basis for their decision to re-zone the subject property, the subject legislation must be permitted to stand. As such, the Zoning Hearing Board's decision in this case should be affirmed.

**D. Developac Raises Additional Issues Solely for the Purpose of Preserving Them on Appeal**

The Zoning Hearing Board's decision should not be overturned on this appeal. The record makes it clear that, when the Zoning Hearing Board addressed the merits of Appellants' validity challenge, it correctly applied the law with respect to Appellants' burden to prove that the Township Supervisors had no rational basis for their decision, and it correctly concluded that Appellants did not satisfy this burden.

Notwithstanding the fact that the Zoning Hearing Board correctly decided this dispositive issue, the Zoning Hearing Board made errors of law with respect to two preliminary procedural arguments that Developac made before the Zoning Hearing Board. Developac brings these errors to the Court's attention solely to preserve them.

First, The Zoning Board erred when it did not recognize that SCARED's challenge was premature. It is well established that an ordinance to re-zone is a purely legislative act over which neither the Zoning Hearing Board nor the Court has

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<sup>3</sup> This argument and the facts supporting it are set forth in detail in the record below at Developac, Inc.'s Memorandum of Law Regarding Appellants' Challenge to Zoning Ordinance, Proposed Findings of Fact, and Proposed Conclusions of Law at pp. 14-16.

jurisdiction. *See Pheasant Run Civic Ass'n v. Board of Commissioners of Penn Twp.*, 60 Pa. Commw. 216, 430 A.2d 1231 (1981); *Association of Concerned Citizens of Butler Valley v. Butler Twp. Bd. of Supervisors*, 135 Pa. Commw. 262, 580 A.2d 470 (1990).

Only after a landowner actually attempts to take advantage of the rezoning by applying for a building permit is there an actual controversy that is ripe for litigation. *Id.* In this case, as no building permit was sought for the Property, SCARED's appeal to the Zoning Hearing Board was premature and should have been dismissed on that basis.

Second, SCARED filed its appeal more than 30 days after it was enacted. Because SCARED brought a substantive challenge, it was to be brought within 30 days of its enactment. As it was untimely, the Zoning Hearing Board decision should have been dismissed with prejudice.<sup>4</sup>

Additionally, the Zoning Hearing Board erred with respect to an issue relating to the merits of the validity challenge. This error occurred when it concluded that Appellants proved that the Township Supervisors treated the Property differently from the surrounding land. The Zoning Hearing Board failed to consider, among other things, the uncontradicted testimony of Township Supervisor Brady LaBorde, who stated that the subject rezoning was consistent with the Township's considered and deliberate decision to re-zone parcels in the neighborhood to meet the needs of a changing economy (see Sept. 27, 2005 Tr. pp.91-93), and the fact that the Property is presently no more different from the surrounding zoning districts than it was before the enactment of the Ordinance.

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<sup>4</sup> These procedural arguments are set forth in detail in Developac, Inc.'s Memorandum of Law Regarding Procedural Defects, which is part of the record before the Zoning Hearing Board.

While it is customary for Courts to address procedural errors before reaching the purported merits of an appeal, it is unnecessary for this Court to reach the procedural issues identified above if it first reviews the Zoning Hearing Board's reasoning for denying Appellants' validity challenge and finds that the Zoning Hearing Board's decision should be affirmed.

V. CONCLUSION

For the reasons set forth above, the reasoned decision of the Sandy Township Zoning Hearing Board should be affirmed.

Respectfully submitted,

Dusty Elias Kirk

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PA I.D. No. 30702  
Sharon F. DiPaolo  
PA I.D. No. 74520  
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500 Grant Street, 50<sup>th</sup> Floor  
Pittsburgh, PA 15219  
*Attorneys for Developac, Inc.*

Dated: February 14, 2006

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Response to Appellants' Notice of Appeal of Zoning Hearing Board's Decision has been served upon the following parties by first class mail, postage prepaid, on this 14th day of February, 2006.

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Kim C. Kesner, Esquire  
23 North 2<sup>nd</sup> Street  
Clearfield, PA 16830  
*Solicitor for Sandy Township Zoning Hearing Board*

Dusty Elias Kirk  
Dusty Elias Kirk

**FILED**

**FEB 15 2006**

William A. Shaw  
Prothonotary/Clerk of Courts

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 C.  
ALLENBAUGH and  
NANCY L. ALLENBAUGH,

Appellants,

vs.

SANDY TOWNSHIP ZONING HEARING  
BOARD and SANDY TOWNSHIP BOARD  
OF SUPERVISORS,

Appellees,

vs.

DEVELOPAC, INC.,

Intervenor.

CIVIL DIVISION

NO. 06 - 187 C.D.

NOTICE OF INTERVENTION  
PURSUANT TO 53 PA. CONS. STAT.  
11004-A

Filed on behalf of:

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  
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FILED NO cc  
2/11/06  
FEB 15 2006 @  
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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 C. : NO. 06 - 187 C.D.  
ALLENBAUGH and :  
NANCY L. ALLENBAUGH, :

Appellants,  
vs. :

SANDY TOWNSHIP ZONING HEARING :  
BOARD and SANDY TOWNSHIP BOARD :  
OF SUPERVISORS, :

Appellees,  
vs. :

DEVELOPAC, INC., :

Intervenor. :

**NOTICE OF INTERVENTION PURSUANT TO 53 PA. CONS. STAT. 11004-A**

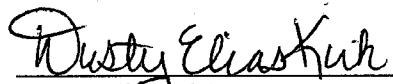
AND NOW, comes Developac, Inc., by and through its attorneys, Pepper  
Hamilton LLP and Dusty Elias Kirk, Esquire, and files the within Petition to Intervene pursuant  
to 53 PA. CONS. STAT. 11004-A, of which the following is a statement:

1. On February 3, 2006, Appellants filed this statutory land use appeal.
  
2. This appeal directly involves a 12.47 acre parcel of property, the record  
owner of which is Developac, Inc.

3. Pursuant to 53 PA. CONS. STAT. 11004-A, Developac, Inc. may intervene in the Land Use Appeal of course by filing a Notice of Intervention, accompanied by proof of service of the same upon each Appellant or upon each Appellant's counsel of record. Such a proof of service is attached to this Notice of Intervention.

WHEREFORE, Developac, Inc. intervenes in this Appeal.

Respectfully submitted,



Dusty Elias Kirk  
PA I.D. No. 30702  
Sharon F. DiPaolo  
PA. I.D. No. 74520  
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Pittsburgh, PA 15219

Dated: February 14, 2006

*Attorneys for Developac, Inc.*

PROOF OF SERVICE

I hereby certify that a true and correct copy of the within Notice of Intervention Pursuant to 53 PA. CONS. STAT. 11004-A has been served upon the following parties by first class mail, postage prepaid, on this 14th day of February, 2006.

Toni M. Cherry, Esquire  
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Kim C. Kesner, Esquire  
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*Solicitor for Sandy Township Zoning Hearing Board*

*Dusty Elias Kirk*  
Dusty Elias Kirk

**FILED**

**FEB 15 2006**

William A. Shaw  
Prothonotary/Clerk of Courts

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 C.  
ALLENBAUGH and  
NANCY L. ALLENBAUGH,

Appellants,  
vs.

SANDY TOWNSHIP ZONING HEARING  
BOARD and SANDY TOWNSHIP BOARD  
OF SUPERVISORS,

Appellees,  
vs.

DEVELOPAC, INC.,

Intervenor.

CIVIL DIVISION

NO. 06 - 187 C.D.

**MOTION FOR EXPEDITED  
DISPOSITION OF APPEAL**

Filed on behalf of:

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 No. 143  
One Mellon Center  
500 Grant Street, 50<sup>th</sup> Floor  
Pittsburgh, PA 15219  
(412) 454-5000

FILED *cc*  
MILLER 2006 *cc* Amy Kirk  
FEB 15 2006

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.), :  
WILLIAM B. CLYDE, GARY A. :  
PETERSON, WILLIAM C. : NO. 06 - 187 C.D.  
ALLENBAUGH and :  
NANCY L. ALLENBAUGH,

Appellants,  
vs.

SANDY TOWNSHIP ZONING HEARING :  
BOARD and SANDY TOWNSHIP BOARD :  
OF SUPERVISORS,

Appellees,  
vs.

DEVELOPAC, INC.,

Intervenor.

**MOTION FOR EXPEDITED DISPOSITION OF APPEAL**

AND NOW, comes Developac, Inc. ("Developac"), by and through its attorneys, Pepper Hamilton LLP and Dusty Elias Kirk, Esquire, and files the within Motion for Expedited Disposition of Appeal, of which the following is a statement:

1. Developac seeks an expedited disposition on the purported merits of Appellants' (hereinafter collectively referred to as "SCARED") appeal of the Sandy Township Zoning Hearing Board's January 5, 2006 decision.
2. SCARED enjoyed an automatic stay for more than seven months while the Zoning Hearing Board entertained the underlying zoning appeal. SCARED enjoyed that

stay even though the Zoning Hearing Board found that SCARED was incorrect in its assertion that the Sandy Township Board of Supervisors made an error of law when it rezoned the 12.47 acre parcel that is the subject of this appeal.

3. Expediting the process by which this appeal is resolved is warranted because: 1) Developac and Sandy Township have already suffered substantial financial and other harm caused by the delay resulting from the meritless appeal that SCARED filed with the Zoning Hearing Board; 2) Developac and Sandy Township will continue to endure such substantial harm if the underlying development project is further delayed; and, 3) as reflected by SCARED's forty-four paragraph Notice of Appeal from Decision of the Sandy Township Zoning Hearing Board ("Notice of Appeal"), SCARED appears to be ready to argue the purported merits of their appeal.

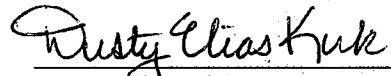
3. A review of SCARED's Notice of Appeal reflects that most of SCARED's contentions in this appeal will be a rehash of the arguments it made to the Zoning Hearing Board. It is apparent from the Notice of Appeal that SCARED is requesting that this court review the record and substitute its judgment for that of the Sandy Township Zoning Hearing Board and the Sandy Township Board of Supervisors. As such, the issues that SCARED will raise are the same as those it presented to the Zoning Hearing Board.

4. While SCARED has a right under the law to file an appeal from the Zoning Hearing Board to this Court, it would be improper for SCARED to exercise this right solely to delay the underlying development project. Because it is in the interest of all litigants to have their cases resolved in a timely fashion, and because SCARED appears to be ready to argue its case, there is no valid reason why this matter should not be resolved on an expedited basis.

5. An expedited hearing will benefit all parties and will not harm SCARED, Developac, or the proposed user of the property.

WHEREFORE, Intervenor, Developac, Inc., respectfully requests that this Honorable Court enter the attached proposed Scheduling Order and thereby expedite the resolution of this statutory appeal.

Respectfully submitted,



Dusty Elias Kirk  
PA I.D. No. 30702  
Sharon F. DiPaolo  
PA. I.D. No. 74520  
PEPPER HAMILTON LLP  
Firm No. 143  
One Mellon Center  
500 Grant Street, 50<sup>th</sup> Floor  
Pittsburgh, PA 15219

*Attorneys for Developac, Inc.*

Dated: February 14, 2006

**FILED**

**FEB 15 2006**

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 C. ALLENBAUGH and NANCY  
L. ALLENBAUGH,

Appellants,

NO. 06-187 C.D.

vs.

SANDY TOWNSHIP ZONING HEARING  
BOARD and SANDY TOWNSHIP BOARD  
OF SUPERVISORS,

Appellees,

vs.

WAL-MART STORES, INC. and  
DEVELOPAC, INC.,

Intervenors.

**ORDER OF COURT**

AND NOW this \_\_\_\_\_ day of \_\_\_\_\_, 2006, upon consideration of

Intervenor Developac, Inc.'s Motion for Expedited Disposition of Appeal, Appellants' Brief in  
Support of this Appeal shall be filed by March 2, 2006. All other parties' Briefs are to be filed  
by March 16, 2006. Any responsive brief may be filed only by leave of Court.

BY THE COURT,

\_\_\_\_\_, J.  
President Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Motion for Expedited Disposition of Appeal has been served upon the following parties by first class mail, postage prepaid, on this \_\_\_\_\_ day of February, 2006:

Toni M. Cherry, Esquire  
Gleason, Cherry and Cherry, L.L.P.  
P.O. Box 505  
One North Franklin Street  
DuBois, PA 15801  
*Attorney for Appellants*

Gregory Kruk, Esquire  
Ferraro, Kruk & Ferraro, LLP  
690 Main Street  
Brockway, PA 15824  
*Solicitor for Sandy Township Board of Supervisors*

Kim C. Kesner, Esquire  
23 North 2<sup>nd</sup> Street  
Clearfield, PA 16830  
*Solicitor for Sandy Township Zoning Hearing Board*

---

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,

Appellants

vs.

SANDY TOWNSHIP ZONING HEARING  
BOARD and SANDY TOWNSHIP BOARD OF  
SUPERVISORS,

Appellees

No. 06-187 C.D.  
**FILED**  
0/11/54 am No. C.  
FEB 14 2006 am

William A. Shaw  
Prothonotary

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of February, 2006, a certified copy of the Order issued by the Court of Common Pleas of Clearfield County, Pennsylvania, scheduling a hearing on Appellants' Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal was served upon all landowners and named parties in this case by mailing the same to the attorney for each of them by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, on February 8, 2006, addressed as follows:

Dusty Elias Kirk, Esq.  
Pepper, Hamilton, LLP  
Attorneys at Law  
One Mellon Bank Center  
50<sup>th</sup> Floor  
Pittsburgh, PA 15219-2502  
Attorney for Developac, Inc.

Jeffrey A. Mills, Esq.  
Pepper, Hamilton, LLP  
Attorneys at Law  
One Mellon Bank Center  
50<sup>th</sup> Floor  
Pittsburgh, PA 15219-2502  
Attorney for Wal-mart  
Stores, Inc., equitable  
landowner

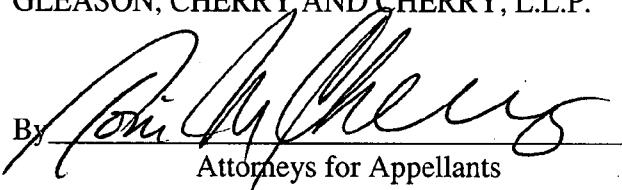
108

Gregory Kruk, Esq.  
Ferraro, Kruk & Ferraro, LLP  
Attorneys at Law  
690 Main Street  
Brockway, PA 15824  
Attorney for Sandy Township  
Board of Supervisors

Kim C. Kesner, Esq.  
Attorney at Law  
23 North 2<sup>nd</sup> Street  
Clearfield, PA 16830  
Attorney for Sandy  
Township Zoning  
Hearing Board

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

By

  
Attorneys for Appellants

Dated: February 8, 2006

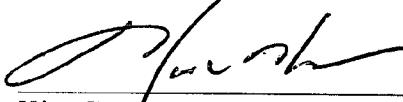
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

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. 06-187-CD  
: :  
SANDY TOWNSHIP ZONING HEARING :  
BOARD and SANDY TOWNSHIP BOARD: :  
OF SUPERVISORS :  
:

**ENTRY OF APPEARANCE**

TO: William A. Shaw, Prothonotary

Kindly enter my appearance for the Sandy Township Zoning Hearing Board for the purposes of this appeal and as Agent for purposes of service. Kindly deliver all future matters required to be served upon the Sandy Township Zoning Hearing Board to the undersigned.



---

Kim C. Kesner, Esquire  
Solicitor for Sandy Township Zoning  
Hearing Board

FILED  FILED  
FEB 09 2006 FEB 09 2006  
0111:40 am  
William A. Shaw  
Prothonotary/Clerk of Courts  
no C/C  
copy to C/A

William A. Shaw  
Prothonotary/Clerk of Courts

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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 ZONING HEARING  
BOARD and SANDY TOWNSHIP BOARD OF  
SUPERVISORS,

Appellees

: No. 06 - 187 C.D.  
: Type of Case: APPEAL FROM ZONING  
: BOARD DECISION  
: Type of Pleading:  
: CERTIFICATE OF SERVICE  
: 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

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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  
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. 06 - 187 C.D.

SANDY TOWNSHIP ZONING HEARING :  
BOARD and SANDY TOWNSHIP BOARD OF :  
SUPERVISORS, :  
Appellees :  
:

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of February, 2006, a true and correct copy of the Notice of Appeal from Decision of the Sandy Township Zoning Hearing Board filed in the above-captioned case was served upon the attorneys for the landowners as required by 53 P.S. §11003-A as well as the attorney for Sandy Township by mailing the same to each of 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:

Dusty Elias Kirk, Esq. Pepper, Hamilton, LLP Attorneys at Law One Mellon Bank Center 50 <sup>th</sup> Floor Pittsburgh, PA 15219-2502 Attorney for Developac, Inc.	Jeffrey A. Mills, Esq. Pepper, Hamilton, LLP Attorneys at Law One Mellon Bank Center 50 <sup>th</sup> Floor Pittsburgh, PA 15219-2502 Attorney for Wal-mart Stores, Inc., equitable landowner	Gregory Kruk, Esq. Ferraro, Kruk & Ferraro, LLP Attorneys at Law 690 Main Street Brockway, PA 15824 Attorney for Sandy Township Board of Supervisors
--	---	--

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

By

John H. Cherry  
Attorneys for Appellants

Dated: February 7, 2006

Proprietary/Other GI Code

William A. Shadwell

FEB 08 2005

FILE

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. 06-187-CD

SANDY TOWNSHIP ZONING HEARING :  
BOARD and SANDY TOWNSHIP BOARD :  
OF SUPERVISORS :  
:

**FILED** *9cc*  
01/09/2006 *Atty T. Cherry*  
**FEB 08 2006** *(indicated*  
*she will*  
*serve)*

William A. Shaw  
Prothonotary/Clerk of Courts

*(initials)*

O R D E R

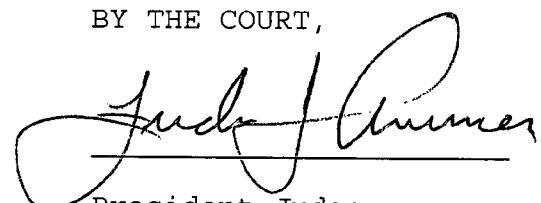
AND NOW, this 8th day of February, 2006, upon consideration of Appellants' Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal and in consideration of the facts set forth therein, a hearing to determine if a final Order should be entered staying all action to subdivide the 12.47 acre parcel from the larger 197.9 acre parcel and staying all use or development of the subject 12.47 acre parcel pending resolution of the Appeal from Zoning Board Decision is scheduled for the 16th day of February, 2006, in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania, at 9:00 a.m.

Notice of this hearing shall be served upon the SANDY TOWNSHIP ZONING HEARING BOARD, as well as upon the SANDY TOWNSHIP BOARD OF SUPERVISORS and both landowners, to wit:

*(initials)*

DEVELOPAC, INC., and WAL-MART STORES, INC., through their  
respective counsel.

BY THE COURT,



J. L. Palmer

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

vs.

SANDY TOWNSHIP ZONING HEARING  
BOARD and SANDY TOWNSHIP BOARD OF  
SUPERVISORS,

Appellees

: No. 06 - 187 C.D.  
:  
: Type of Case: APPEAL FROM ZONING  
: BOARD DECISION  
:  
: Type of Pleading: PETITION TO STAY  
: ALL USE OR DEVELOPMENT OF  
: THE 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  
:  
: 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 *PA*

FEB 08 2006

1847  
William A. Shaw  
Prothonotary/Clerk of Courts

5 Cents to File

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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 ZONING HEARING :  
BOARD and SANDY TOWNSHIP BOARD OF :  
SUPERVISORS, :  
Appellees :  
No. 06 - 187 C.D.

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

TO THE HONORABLE FREDRIC J. AMMERMAN, PRESIDENT JUDGE 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, Clearfield County, Pennsylvania, for commercial purposes, pending resolution  
of the above-captioned Appeal and, in support thereof, aver the following:

1. That Appellants have filed an Appeal to the above-captioned term and number from a decision by the SANDY TOWNSHIP ZONING HEARING BOARD denying their substantive

challenge to the validity of Sandy Township Ordinance No. 04-2005 that rezoned a 12.47 acre parcel of ground out of a larger parcel known as 128-C3-108 in Sandy Township, Clearfield County, Pennsylvania, from an Industrial to a Commercial-Highway district.

2. That Appellants initially brought their substantive challenge before the SANDY TOWNSHIP ZONING HEARING BOARD on the basis that the rezoning constituted illegal "spot zoning".
3. That Appellants presented evidence in support of their contention at hearings held before the SANDY TOWNSHIP ZONING HEARING BOARD on July 21, 2005, August 9, 2005, and September 27, 2005, at which Sandy Township and the legal landowner, Developac, Inc., participated.
4. That the SANDY TOWNSHIP ZONING HEARING BOARD, in its Decision issued January 5, 2006, and attached to Appellant's Appeal and made a part thereof as Exhibit "A", found as a fact that:
  - (a) The premises are a 12.47 acre unsubdivided portion of a 200 acre parcel owned by Developac, Inc., and it along with the larger parcel is known as the Sandy Township/Developac Industrial Park. (See Findings of Fact Nos. 1 and 2.)
  - (b) That the 12.47 acre parcel is one of six (6) lots constituting Phase I of said Park, for the development of which SANDY TOWNSHIP received an Infrastructure Development Program Grant from the Pennsylvania Department of Commerce in the sum of \$700,000.00. (See Findings of Fact Nos. 5 and 6.)
  - (c) That in 2001, Developac, Inc., sought and was granted KOEZ designation for such premises by Sandy Township, the County of Clearfield and the DuBois Area School District

under the provisions of the Keystone Opportunity Expansion Zone Act, 73 P.S. §820.101 for the purposes of providing tax exemptions, deductions, abatements and credits to businesses that locate within those designated zones as an economic development tool and in the case of the instant property, to spur new industrial development. (See Findings of Fact Nos. 13 through 16, inclusive.)

(d) That the action of SANDY TOWNSHIP BOARD OF SUPERVISORS in rezoning the 12.47 acre parcel was at the request of and predominantly for the economic benefit of Developac, Inc., the owner of the premises, and Wal-Mart Stores, Inc., the vendee, for the purposes of the construction of a Super Center and was not part of an overall plan for the township. (See Conclusion of Law No. 1.)

(e) That the premises were singled out for different treatment from the surrounding larger premises of which it was a part. (See Conclusion of Law No. 2.)

(f) That by letter dated February 28, 2005, Wal-Mart Stores, Inc., notified Sandy Township that it was applying for an NPDES Permit for storm water discharges associated with construction activities to DEP and did provide Sandy Township with a copy of that completed permit application. (See Findings of Fact No. 39.)

5. That Appellants believe and therefore aver that the SANDY TOWNSHIP ZONING HEARING BOARD committed errors of law and abuses of discretion in failing to find that the rezoning constituted illegal "spot zoning" because its own Findings of Fact and the substantial evidence presented on the record support such a finding of illegal "spot zoning".

6. That the taking of this Appeal by Appellants is not frivolous as there is substantial evidence on the record presented before the SANDY TOWNSHIP ZONING HEARING

BOARD that Ordinance No. 04-2005 should be vacated because it constitutes illegal "spot zoning".

7. That the filing of the instant Appeal from the decision of the SANDY TOWNSHIP ZONING HEARING BOARD does not stay the use or development of the subject 12.47 acre parcel automatically and such use or development can only be stayed on Order from Your Honorable Court after Petition.

8. That despite knowing that the instant Appeal has been taken, at their meeting held on Monday, February 5, 2006, the SANDY TOWNSHIP SUPERVISORS approved a subdivision/lot consolidation request and land development plan submitted by Developac, Inc., and Wal-Mart allowing them to subdivide the 12.47 acre parcel from the larger 197.9 acre parcel and further allowed the consolidation of 8.20 acres of that 12.47 acre parcel with land already owned by Wal-Mart so that Wal-Mart can begin construction of the Super Center immediately.

9. That if all matters emanating from the actions taken by the SANDY TOWNSHIP BOARD OF SUPERVISORS in enacting Ordinance No. 04-2005 rezoning the subject premises and now granting subdivision and consolidation of such 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 and the land will be developed as a Wal-Mart Super Center.

10. If the premises are developed as a Wal-Mart Super Center and any other use permitted in a commercial-highway district, Appellants will be prejudiced in litigating the issues raised by them on this Appeal because it is the use and development of the land for commercial purposes that Appellants seek to prevent since the property was originally zoned as industrial as part of a dedicated industrial park.

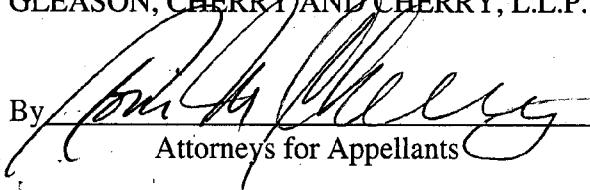
11. That if the stay is not granted by Your Honorable Court, the property will be developed for the stated commercial purpose of a Wal-Mart Super Center and the question of whether the **SANDY TOWNSHIP BOARD OF SUPERVISORS** engaged in impermissible and invalid "spot zoning" through the enactment of Ordinance No. 04-2005 and Appellants' substantive challenge thereto 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,

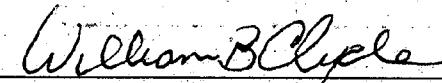
GLEASON, CHERRY AND CHERRY, L.L.P.

By

  
Attorneys for Appellants

## VERIFICATION

I, WILLIAM B. CLYDE, one of the Appellants named in the foregoing Petition, being authorized to make this Verification on behalf of all of the Appellants, verify that the information provided in the foregoing Petition to Stay All Use and Development of the 12.47 Acre Parcel Pending Appeal is 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.



William B. Clyde

DATED: February 7, 2006

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. 06 - 187 C.D.
Appellants	:	
vs.	:	
SANDY TOWNSHIP ZONING HEARING	:	
BOARD and SANDY TOWNSHIP BOARD OF	:	
SUPERVISORS,	:	
Appellees	:	

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of February, 2006, a true and correct copy of the Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal filed in the above-captioned case was served upon all landowners and named parties in this case by mailing a copy of the same to the attorney for each of 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:

Dusty Elias Kirk, Esq.  
Pepper, Hamilton, LLP  
Attorneys at Law  
One Mellon Bank Center  
50<sup>th</sup> Floor  
Pittsburgh, PA 15219-2502  
Attorney for Developac, Inc.

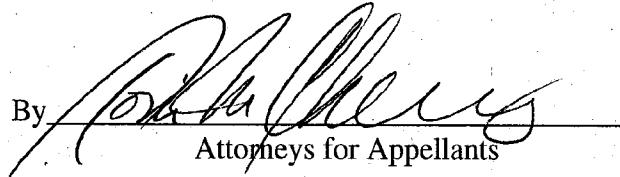
Jeffrey A. Mills, Esq.  
Pepper, Hamilton, LLP  
Attorneys at Law  
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Township Zoning  
Hearing Board

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

By

  
Attorneys for Appellants

Dated: February 7, 2006

**FILED**  
FEB 08 2013  
William A. Flynn  
Prothonotary/Clerk of Courts

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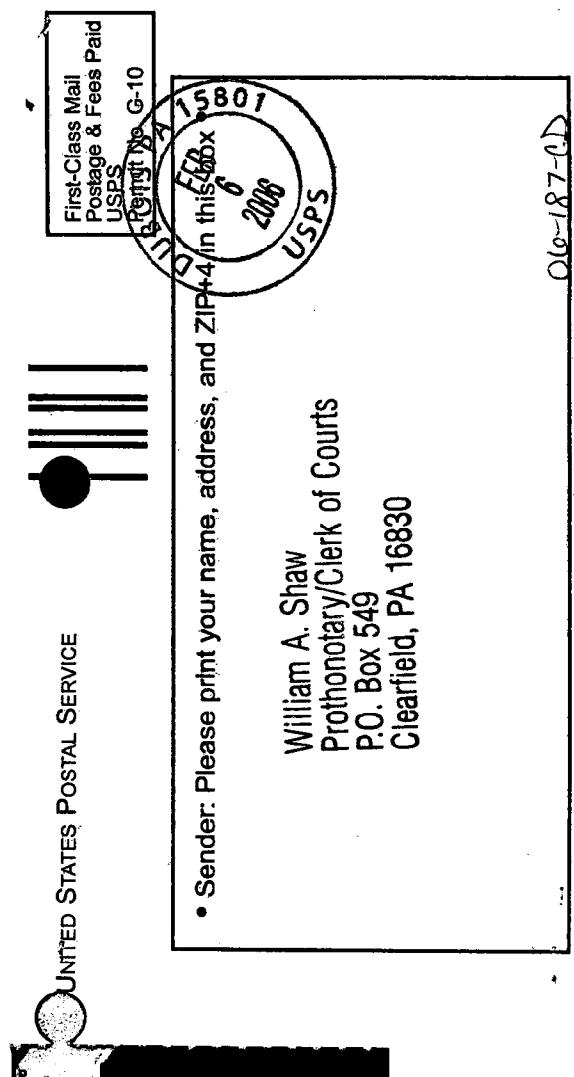
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#3



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William A. Shaw  
Prothonotary/Clerk of Courts

1 Writ of Certiorari &  
One CC Notice of Appeal  
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Zoning Board 2/3/06

#2

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 ZONING HEARING  
BOARD and SANDY TOWNSHIP BOARD OF  
SUPERVISORS.

## Appellees

No. 06 - 187 - C.D.

Type of Case: APPEAL FROM ZONING BOARD DECISION

Type of Pleading: NOTICE OF APPEAL FROM DECISION OF THE SANDY TOWNSHIP ZONING HEARING BOARD

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:

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SUPREME COURT NO.: 30205

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**FILED** 12 CCA Atty T. Cherry  
02/03/2006 Atty pd. 85.00  
FEB 03 2006

William A. Shaw Prothonotary/Clerk of Courts 11 W. 21<sup>st</sup> Street, Room 200, New York, N.Y. 10001-3102  
20th Floor, One Penn Plaza, New York, N.Y. 10119-3102  
Telephone: (212) 557-1100, Telex: 23-71100, Fax: (212) 557-1101  
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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. 06 - \_\_\_\_\_ C.D.  
Appellants :  
:

vs.

SANDY TOWNSHIP ZONING HEARING  
BOARD and SANDY TOWNSHIP BOARD OF  
SUPERVISORS,

**NOTICE OF APPEAL FROM DECISION OF THE SANDY  
TOWNSHIP ZONING HEARING BOARD**

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 in  
accordance with the provisions of §1002 of the Pennsylvania Municipalities Planning Code  
(53 P.S. §11002-A) and, in support of which, aver the following:

## PARTIES:

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,

Clearfield County, 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 in the Commonwealth of Pennsylvania.

3. Appellant, GARY A. PETERSON, is an adult individual who resides at 723 Monroe Street, DuBois, Clearfield County, 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 immediately adjacent to the 12.47 acre parcel which is the subject of Sandy Township Ordinance No. 4-2005 adopted on May 16, 2005, and taking effect on May 21, 2005, which land is the subject of this Appeal.

5. Appellee, SANDY TOWNSHIP ZONING HEARING BOARD, is a municipal board whose members have been duly appointed by the governing body of Sandy Township in accordance with the provisions of Section 901 of the Pennsylvania Municipalities Planning Code (hereinafter referred to as MPC) found at 53 P.S. §10901 and the provisions of Section 601 of the Zoning Ordinance for the Township of Sandy, 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. Appellee, SANDY TOWNSHIP BOARD OF SUPERVISORS, is the governing body of Sandy Township, a Second Class Township organized and existing under the laws of the Commonwealth of Pennsylvania, having its municipal office in the Sandy Township Municipal Building, R. D. #3, DuBois, with a mailing address of P. O. Box 267, DuBois, Pennsylvania 15801.

**STANDING:**

7. Appellants having standing to bring this Appeal from a Decision of the SANDY TOWNSHIP ZONING HEARING BOARD denying them relief from their substantive validity challenge to Sandy Township Ordinance 4-2005 which rezoned a 12.47 acre portion of a larger 200 acre parcel of land in Sandy Township because they have demonstrated that they are persons aggrieved by the proposed use of said parcel and have appeared before the Sandy Township Zoning Hearing Board on the challenge they brought which led to this Appeal.

**JURISDICTION:**

8. The Court of Common Pleas of Clearfield County, Pennsylvania has jurisdiction under Section 1002-A of the MPC (53 P.S. §11002-A) to hear appeals from a decision of the Sandy Township Zoning Hearing Board deciding a validity challenge brought under Section 909.1(a)(1) of the MPC (53 P.S. §10909.1(a)(1)).

## **HISTORY OF THE APPEAL:**

9. That at a meeting held on February 3, 2005, arranged by H. F. Lenz Company, agent for Wal-Mart Stores, Inc. (hereinafter referred to as Wal-Mart), the Board of Supervisors of Sandy Township, through its agents and employees, learned that Wal-Mart had interest in acquiring and developing a 12.47 acre unsubdivided portion of a larger 200 acre parcel of ground owned by Developac, Inc., and located in the Township of Sandy adjacent to land already owned by Wal-Mart upon which it operates a Wal-Mart Store.

10. That at said meeting, Wal-Mart advised Sandy Township, through its agents, that Wal-Mart desired to acquire the premises for the purpose of establishing thereon a Wal-Mart Super Center and was advised by the Sandy Township Zoning Officer that the 12.47 acre parcel would have to be rezoned from Industrial to Commercial-Highway in order to accommodate the desires of Wal-Mart.

11. That by letter dated February 4, 2005, Wal-Mart formally requested that the Sandy Township Board of Supervisors rezone the 12.47 acre parcel from Industrial to Commercial-Highway and such request was presented at the meeting of the Board of Supervisors held on February 7, 2005.

12. That at the time of such request, Developac, Inc., had a pending Agreement of Sale with Wal-Mart for the purchase of the 12.47 acre parcel expressly conditioned upon the rezoning of said parcel so as to permit Wal-Mart's intended use.

13. That after being presented with such rezoning request and in accordance with the provisions of the MPC, the Board of Supervisors of Sandy Township did refer such rezoning request to the Sandy Township Planning Commission for its review and recommendation.

14. That at its meetings held on February 16, 2005, and March 16, 2005, the Sandy Township Planning Commission did review and discuss Wal-Mart's request to rezone the 12.47 acre parcel from Industrial district to Commercial-Highway district and did vote unanimously to recommend to the Sandy Township Board of Supervisors that the request to rezone the 12.47 acre parcel from Industrial to Commercial-Highway district be denied and recommended that the 12.47 acre parcel remain zoned Industrial.

15. That the 12.47 acre parcel is also part of what is known as Phase I of a dedicated industrial park known as the Sandy Township/Developac Industrial Park identified by Clearfield County Assessment Map No. 128-C3-108.

16. That in 1995, Sandy Township received an Infrastructure Development Program Grant from the Pennsylvania Department of Commerce in the sum of \$700,000.00 which was secured for the express purpose of creating the infrastructure of Phase I of said Industrial Park of which the subject 12.47 acre parcel is a part.

17. That in 1996, Sandy Township applied for and subsequently secured additional federal and state monies of over \$600,000.00 for the development of Phase II of the 200 acre Industrial Park.

18. In 2001, Developac sought and was granted by Sandy Township, the County of Clearfield and the DuBois Area School District, KOEZ designation for Phases I, II and III of said Industrial Park, making said 200 acre parcel a Keystone Opportunity Expansion Zone under the Keystone Opportunity Expansion Zone Act, 73 P.S. §820.101 with all of the tax exemptions, deductions, abatements and credits allowed to all businesses within such KOEZ as said Act allows for the purposes of encouraging economic development.

19. That on May 2, 2005, the Sandy Township Board of Supervisors held a public hearing to secure public opinion at which time Appellants did appear and object to the granting of the request.

20. That immediately after the public hearing, the Sandy Township Board of Supervisors did hold a regular meeting at which time they voted four to one to rezone 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 only the 12.47 acre portion of the 200 acre parcel known as No. 128-C3-108 from an Industrial zoned district to a Commercial-Highway zoned district.

21. That on May 16, 2005, the Sandy Township Board of Supervisors passed Ordinance No. 4-2005, changing the zoning classification of the 12.47 acre portion of Parcel No. 128-C3-108 in Sandy Township from an Industrial zoned district to a Commercial-Highway zoned district and said Ordinance became effective on May 21, 2005.

22. That on June 20, 2005, Appellants timely filed a substantive challenge to the validity of Ordinance No. 4-2005 before the Sandy Township Zoning Hearing Board in accordance with Section 909.1(a)(1) of the MPC (53 P.S. §10909.1(a)(1)) and in accordance with Section 608(1) of the Zoning Ordinance for the Township of Sandy, alleging that the rezoning was illegal and invalid “spot zoning”.

23. That hearings were subsequently held before the Sandy Township Zoning Hearing Board on July 21, 2005; August 9, 2005; and September 27, 2005, at which Developac, Inc., Sandy Township and Appellants participated.

24. That all of the three participating parties granted the Sandy Township Zoning Hearing Board an extension of time in which to render its decision through January 5, 2006, as allowed under 53 P.S. §10908(9).

25. That at a public meeting held on January 5, 2006, the Zoning Hearing Board denied Appellants' validity challenge to Sandy Township Ordinance No. 04-2005 and did unanimously adopt the Findings of Fact and Conclusions of Law and written Decision which is attached hereto and made a part hereof as Exhibit "A".

26. That Appellants now bring this timely appeal from the Decision issued by the Sandy Township Zoning Hearing Board on January 5, 2006, in accordance with the provisions of Section 1002-A of the MPC requiring that appeals from decisions rendered pursuant to Article IX be taken to the court of common pleas of the judicial district wherein the land is located within 30 days after entry of the decision. (53 P.S. §11002-A).

#### **GROUNDS FOR APPEAL ON WHICH APPELLANTS RELY:**

27. Spot zoning has been defined as "[a] singling out of one lot or a small area for different treatment from that accorded to similar surrounding land indistinguishable from it in character, for the economic benefit of the owner of that lot or to his economic detriment." Mulac Appeal, 418 Pa. 207, 210, 210 A.2d 275, 277 (1965), quoting Putney v. Abington Township, 176 Pa.Super.Ct. 463, 474, 108 A.2d 134, 140 (1954).

28. The SANDY TOWNSHIP ZONING HEARING BOARD abused its discretion by failing to conclude that the SANDY TOWNSHIP BOARD OF SUPERVISORS engaged in illegal "spot zoning" through the enactment of Ordinance No. 4-2005 after concluding that:

1. The Township's rezoning was at the request and predominately for the economic benefit of Developac and Wal-Mart and not part of an overall plan for the Township.
2. The Premises were singled out for different treatment.

(P. 17 of Exhibit "A")

29. The SANDY TOWNSHIP ZONING HEARING BOARD abused its discretion when it determined that it could not conclude that the treatment accorded this 12.47 acre parcel was unjustifiable or unreasonable in light of its own Findings of Fact and previous Conclusions of Law.

30. The SANDY TOWNSHIP BOARD OF SUPERVISORS abused its discretion in concluding that the evidence presented by Appellants at the hearing before the Board did not sustain Appellants' burden that the rezoning bore no relationship to the public health, safety or welfare. (See Conclusion of Law No. 3, p. 17, Exhibit "A".)

31. The SANDY TOWNSHIP ZONING HEARING BOARD abused its discretion in failing to conclude that the rezoning bore no relationship to the public health, safety or welfare when it made no Findings of Fact that such rezoning bore any relationship to the public health, safety or welfare or in any way benefited the public health, safety or welfare.

32. The SANDY TOWNSHIP ZONING HEARING BOARD abused its discretion in failing to declare that the rezoning was invalid "spot zoning" when its own Findings of Fact supported such a conclusion.

33. The SANDY TOWNSHIP ZONING HEARING BOARD committed an error of law in concluding that the treatment afforded the 12.47 acre parcel was neither unjustifiable nor unreasonable when its own Findings of Fact supported a conclusion to the contrary.

34. The SANDY TOWNSHIP ZONING HEARING BOARD committed an error of law in concluding that the evidence submitted by Appellants did not sustain their burden of proving that the action of the SANDY TOWNSHIP BOARD OF SUPERVISORS in enacting Ordinance No. 04-2005 was illegal "spot zoning".

35. The SANDY TOWNSHIP ZONING HEARING BOARD committed an error of law in concluding that Appellants had the burden of showing that the rezoning bore no relationship to the public health, safety or welfare.

36. The SANDY TOWNSHIP ZONING HEARING BOARD committed an error of law in concluding that the evidence presented by Appellants did not sustain their burden, if that burden was theirs, of showing that the rezoning bore no relationship to the public health, safety or welfare when the Board made no findings that the rezoning was done for the public health, safety or welfare.

37. The SANDY TOWNSHIP ZONING HEARING BOARD committed an error of law in concluding that Appellants did not present sufficient evidence to sustain their burden, if such burden exists, of showing that the rezoning bore no relationship to the public health, safety or welfare when the Findings of Fact made by the Board support a contrary conclusion.

38. The SANDY TOWNSHIP ZONING HEARING BOARD committed an error of law in failing to conclude that the SANDY TOWNSHIP BOARD OF SUPERVISORS failed to make a full and fair examination of the impact of rezoning the 12.47 acre parcel when it was not in conformance with the stated goals of the Township's comprehensive plan and removed industrial land from a dedicated industrial park that had been developed with taxpayer monies.

39. That the SANDY TOWNSHIP ZONING HEARING BOARD'S performance of its fact-finding function deprived Appellants of a fundamentally fair proceeding for the following reasons:

- (a) In refusing to allow Appellants to put in their engineer's report or to allow said engineer to testify to matters that would support the conclusion that said rezoning bore no relation to the public health, safety or welfare;
- (b) In failing to find that the SANDY TOWNSHIP BOARD OF SUPERVISORS engaged in illegal and invalid "spot zoning" when its Findings of Fact and two of three Conclusions of Law overwhelmingly support such a conclusion;
- (c) In failing to make findings that the rezoning bore no relation to the public health, safety or welfare;
- (d) In concluding that Appellants had not presented sufficient evidence to sustain Appellants' burden that the rezoning bore no relationship to the public health, safety or welfare when it made no findings that the rezoning bore any relationship to the public health, safety or welfare;
- (e) In failing to find that the different treatment afforded the 12.47 acre parcel was unjustifiable or unreasonable in light of the evidence presented before the Board;
- (f) In failing to find those facts that would support a conclusion that the rezoning bore no relationship to the public health, safety or welfare when the evidence to support the finding of such facts was on the record.

40. That the SANDY TOWNSHIP ZONING HEARING BOARD abused its discretion in failing to find that Ordinance No. 04-2005 is arbitrary and unreasonable and has no relation to the public health, safety, morals and general welfare.

41. That the particular necessary findings of the SANDY TOWNSHIP ZONING HEARING BOARD that the validity of Ordinance No. 04-2005 is debatable, although minimally supported by record evidence, capriciously and without reasonable explanation disregards the overwhelming evidence having a contrary import.

42. The particular necessary findings of the SANDY TOWNSHIP ZONING HEARING BOARD, to wit, that the rezoning bears no relationship to the public health, safety, morals and general welfare, although arguably minimally supported by record evidence, capriciously and without reasonable explanation disregards the overwhelming evidence having a contrary import.

43. That in failing to make the necessary finding that the rezoning bears no relationship to the public health, safety or welfare, the SANDY TOWNSHIP ZONING HEARING BOARD capriciously and without reasonable explanation disregarded the overwhelming evidence having a contrary import and its own findings of fact which supported a finding to the contrary.

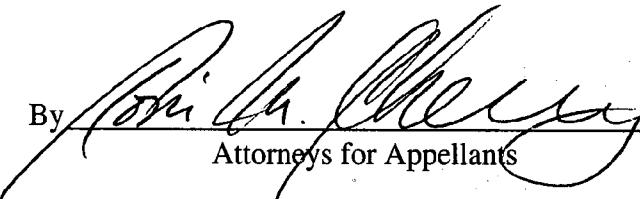
44. That the written findings and decision of the SANDY TOWNSHIP ZONING HEARING BOARD taken as a whole demonstrate that the SANDY TOWNSHIP ZONING HEARING BOARD capriciously and without reasonable explanation abused its discretion and disregarded overwhelming evidence supporting the conclusion that Ordinance 4-2005 constitutes illegal "sport zoning".

WHEREFORE, Appellants respectfully request Your Honorable Court to:

- (a) declare the rezoning of the 12.47 acre tract to be invalid and illegal as "sport zoning";
- (b) declare that Ordinance No. 4-2005 be vacated;
- (c) declare that Appellants be reimbursed for the costs of the hearing before the SANDY TOWNSHIP ZONING HEARING BOARD that they were made to incur by the SANDY TOWNSHIP BOARD OF SUPERVISORS; and
- (d) declare that the SANDY TOWNSHIP BOARD OF SUPERVISORS be responsible for payment of all records costs.

Respectfully submitted,

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

By   
John H. Gleason  
Attorneys for Appellants

COMMONWEALTH OF PENNSYLVANIA

: SS.

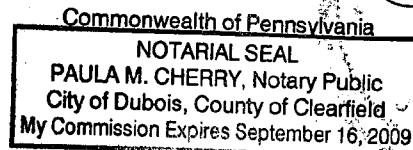
COUNTY OF CLEARFIELD

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 2<sup>nd</sup> day of February, 2006.



BEFORE THE SANDY TOWNSHIP ZONING HEARING BOARD

In Re: Validity Challenge 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 regarding  
Real Property being a portion of Clearfield County  
Assessment Map No. 128-C3-108

**WRITTEN FINDINGS AND DECISION OF**  
**THE SANDY TOWNSHIP ZONING HEARING BOARD**

**I. Procedural History**

1. This is a substantive validity challenge to Sandy Township Ordinance 4-2005 ("Ordinance") which rezoned a 12.47 acre portion ("Premises") of the 200 acre Sandy Township/Developac Industrial Park, identified by Clearfield County Assessment Map Number 128-C3-108 from Industrial to Commercial-Highway. (See Board Exhibit "B"; Appellants' Brief at page 1)
2. Appellants challenge the rezoning as illegal "spot zoning".
3. After due and proper notice, the Board scheduled hearing on Appellants' challenge on July 21, 2005.
4. Subsequent hearings were held on August 9, 2005 and September 27, 2005 with agreement of the parties.
5. Parties in interest participating in the hearings were Appellants, Developac, Inc. ("Developac") and Sandy Township ("Township"). No other parties in interest appeared and/or participated.

6. Prior to commencement of the hearing on July 21, 2005, Developac challenged the timeliness of the filing of Appellants' validity challenge. A ruling on this issue was deferred by the Board to allow the parties to brief it.

7. The parties in interest granted the Board an extension of time to render a decision under 53 P.S. §10908(9) through January 5, 2006.

## **II. Jurisdiction**

The Board has jurisdiction over this validity challenge under Section 909.1(a)(1) of the Pennsylvania Municipalities Planning Code (MPC), 53 P.S. §10909.1(a)(1) and Section 609(1) of the Sandy Township Zoning Ordinance, dated June 1996, as amended ("Zoning Ordinance").

## **III. Findings of Fact**

1. The Premises are a 12.47 acre unsubdivided portion of a 200 acre parcel owned by Developac.

2. The Premises and the 200 acre tract owned by Developac of which it is a part constitute what is known as the Sandy Township/Developac Industrial Park.

3. The intent of Sandy Township to develop with Developac an industrial park was publicly announced in November of 1993 in conjunction with application for Federal and State funds.

4. The conceptual plan for the Industrial Park provides for development in three phases.

5. The Premises were one of six lots in Phase 1.

6. In 1995, Sandy Township received an Infrastructure Development Program Grant from the Pennsylvania Department of Commerce in the sum of \$700,000.00 which was used to construct roads, sewer and water lines in Phase 1 of the Industrial Park which were dedicated to Sandy Township.

7. The Premises were in the I-Industrial District under Article III of the Zoning Ordinance enacted on June 19, 1996. ("Zoning Ordinance").

8. In 1996, Sandy Township applied for and subsequently secured additional Federal and State monies of over \$600,000.00 for development of the 60 acres constituting Phase 2 of the Industrial Park.

9. In applying for these funds, Developac predicted that because of the lack of industrial space in the DuBois/Sandy Township Area, the parcels in Phase 1 constituting 45 acres were expected to be sold to and/or occupied by manufacturing companies within a period of 12 to 18 months.

10. In applying for funding for Phase 2, Sandy Township asserted that there was significant community need for development of the Industrial Park as there was little or no potential for future industrial growth in other existing industrial parks and areas in the DuBois/Sandy Township area.

11. The Township also asserted that of the 1,700 acres zoned Industrial in Sandy Township other than the Industrial Park, only two areas were potentially developable and both lacked infrastructure, whereas Phase 1 was being developed with the Infrastructure Development Program grant funds as a site for manufacturing.

12. In applying for Phase 2 funding, Sandy Township asserted that development of the Industrial Park was consistent with the Township's Comprehensive Plan, the Township Zoning Ordinance and the 1991 Clearfield County Comprehensive Plan update.

13. In 2001, Developac sought and was granted by Sandy Township, Clearfield County and the DuBois Area School District, KOEZ designation for Phases 1, 2 and 3 of the Industrial Park.

14. A KOEZ Zone is a Keystone Opportunity Expansion Zone under the Keystone Opportunity Expansion Zone Act, 73 P.S. §820.101.

15. This statute authorizes local governments and school districts to provide tax exemptions, deductions, abatements and credits to businesses within designated zones as an economic development tool.

16. In requesting a KOEZ designation for the Industrial Park, Developac contended that with the loss of industrial base in the DuBois/Sandy Township area, inclusion of the industrial park to spur new industrial development was of community benefit.

17. The Premises is bounded on the south by a parcel owned by Wal-Mart Stores, Inc. ("Wal-Mart") which is occupied by a Wal-Mart Store.

18. At a meeting on February 3, 2005, arranged by H.F. Lenz Company, agent for Wal-Mart, Sandy Township learned for the first time that Wal-Mart had interest in acquiring and developing the Premises as the site for a new Wal-Mart Supercenter.

19. At that meeting, Wal-Mart learned from the Township Zoning Officer that a rezoning of the Premises would be required.

20. By letter dated February 4, 2005, Wal-Mart requested that Sandy Township consider rezoning the Premises to Commercial-Highway at the Township's February 7, 2005 meeting.

21. Developac has a pending agreement of sale with Wal-Mart which is expressly conditioned upon zoning permitting Wal-Mart's intended use.

22. At a meeting on March 21, 2005, the Board of Supervisors of Sandy Township discussed Wal-Mart's request and accepted public comments on the subject.

23. On May 2, 2005, the Board of Supervisors of Sandy Township conducted a public hearing on the rezoning request.

24. On May 16, 2005, the Board of Supervisors of Sandy Township adopted the Ordinance which rezoned the Premises from Industrial to Commercial-Highway.

25. The sole subject of the Ordinance was the Premises.

26. The Supervisors did not consider reclassifying any other areas of the Industrial Park and/or reclassifying any other industrial areas in the Township to Commercial-Highway.

27. Sandy Township's last Comprehensive Plan Update was adopted in 1981 ("Comprehensive Plan").

28. Under the Comprehensive Plan, the Premises were a part of the Industrial Zone.

29. The Comprehensive Plan states that 75% of the industrial land in the Township was developed with the remainder expected to be used for expansion of existing industries.

30. The Comprehensive plan predicted an expanding industrial base and set as a goal the need to upgrade infrastructure to support industrial development.

31. Sandy Township made three other zoning map changes prior to enactment of the Ordinance.

32. The first change was enacted on April 7, 1999 rezoning 35.8 acres from Industrial to Commercial for construction of The Commons, a retail shopping center.

33. The second, on October 18, 1999 was a rezoning of 20 acres from Residential-Agricultural to Commercial-Highway to accommodate the Roadside Creamery and Café.

34. This rezoning actually returned the area to Commercial-Highway after it had been previously rezoned to allow it to be strip mined.

35. The third change was enacted on September 8, 2004 which rezoned three parcels from Commercial to Commercial-Highway to permit a hotel/motel chain to occupy the premises.

36. The meeting on February 3, 2005 at which the Township Zoning Officer learned of Wal-Mart's plans was termed a "pre-application meeting" because it was in anticipation of the

filling of necessary permits for Wal-Mart's intended use of the Premises of construction of a Wal-Mart Supercenter.

37. In addition to the Township Zoning Officer, the meeting was attended by a representative of the Clearfield County Conservation District and the Pennsylvania Department of Environmental Protection (DEP).

38. The focus of the meeting was site development and construction including excavation plans by Wal-Mart, parking and safety concerns, stormwater management and sewage for the intended development.

39. By letter dated February 28, 2005, Wal-Mart notified Sandy Township that it was applying for an NPDES Permit for stormwater discharges associated with construction activities to DEP and provided Sandy Township with a copy of the completed permit application.

40. Prior to the rezoning, Wal-Mart sought and received confirmation from Sandy Township of sufficient approved sewer capacity for its planned Supercenter.

41. Prior to its granting of Wal-Mart's request for rezoning of the Premises, the Board of Supervisors of Sandy Township did not request that Wal-Mart consider any other areas within the Township zoned Commercial-Highway.

42. Prior to adoption of the Ordinance, the Board of Supervisors of Sandy Township did not consider any other areas for rezoning.

#### **IV. Issues**

1. Was Appellants' substantive validity challenge timely filed?
2. Does Sandy Township Ordinance 04-2005 constitute arbitrary and unjustifiably discriminatory zoning?

#### **V. Discussion of Issues**

1. Timeliness of Appeal

Developac and the Township argue that Appellants' validity challenge was untimely filed and should be dismissed. Appellants filed their application for relief with the Sandy Township Zoning Hearing Board on the application form provided for such purposes by the Board on June 20, 2005. Ordinance 04-2005 was enacted by the Board of the Township Supervisors on May 16, 2005. Under Section IV, the Ordinance was effective five (5) days after enactment. It was therefore effective on May 21, 2005. Appellants' Application for Relief was filed thirty-five (35) days after the adoption of the Ordinance but within thirty (30) days from its effective date.

Developac and the Township contend that the application for relief was required to be filed within thirty (30) days from enactment of the Ordinance citing Glenden Civil Association vs. Borough of Glenden, 132 Pa. Cmwlth. 307, 572 A2d 852 (1990). Alternatively, Developac and the Township contend that this appeal is premature under 53 P.S. Section 10914.1 which they contend prevents the making of a substantive challenge to a zoning ordinance until a building permit or use or occupancy permit has been requested or issued.

By its terms, Section 909.1 of the MPC, 53 Pa. C.S. §10909.1 permits procedural challenges to be filed within thirty (30) days from the effective date of a land use ordinance, but is silent with respect to the time limitation for challenges to the substantive validity of the ordinance. This is incongruent and unexplainable. In Glenden Civic Association vs. Borough of Glenden, which involved a substantive validity challenge to a zoning ordinance, the trial court ruled that the applicable limitation was 42 Pa. C.S. §5571(c)(5) which provides: "questions relating to an alleged defect in the process of enactment or adoption of any ordinance...of a political subdivision shall be raised by appeal commenced within thirty days after the effective date of the ordinance." The party asserting that the appeal was untimely filed argued to the Commonwealth Court that the MPC sets a thirty (30) day requirement for both procedural and substantive challenges. The Commonwealth Court did not address the trial court's reliance on

42 Pa. C.S. §5571(c)(5) – although by its terms this section appears like §909.1(a)(2) of the MPC to apply only to procedural challenges – but instead relied on §914.1(a) of the MPC, 53 P.S. §10914.1(a) to hold that the appeal was untimely filed. This section reads in pertinent part:

No person shall be allowed to file any proceeding...later than thirty (30) days after an application for development, preliminary or final, has been approved by an appropriate municipal officer, agency or body if such a proceeding is designed to secure reversal or to limit the approval in any manner.

While not clear from the Panel's written decision, the Court's reliance on §914.1(a) implies that an application for development had been filed after the rezoning and that the validity challenge had not been filed within thirty (30) days thereafter. Thus, Glenden Civic Association vs. Borough of Glenden does nothing to address the issue here where no application for subdivision or land development has been filed with Sandy Township. Moreover, it is clear that both the Trial Court and the Commonwealth Court were hard pressed to find a suitable statute of limitations. Here, Developac and the Township can point to no decisional authority for the proposition that a substantive challenge must be filed within thirty (30) days from the enactment of a rezoning ordinance rather than from the effective date.

It is incongruent that the MPC would set the time for filing procedural challenges to a Land Use Ordinance and the time for appeals to any application for development or other action by the zoning officer but not set a time limitation for substantive challenges to a Land Use Ordinance. This appears to be a legislative oversight. As Developac and the Township can point to no decisional authority for a time limitation less than thirty (30) days from the effective date of the Ordinance, this Board finds that the filing here was timely.

The alternate argument put forth by Developac and the Township is that under decisional authority a “necessary precondition” to a substantive zoning ordinance challenge is the existence of “a specific use to which the property is sought to be developed”. They argue that because no

building permit or use or occupancy permit has been sought or issued for the premises, that no substantive challenge can yet be made.

This Board finds that in this case there was the existence of a specific use to which the property is sought to be developed at the time the appeal was filed. While no application for subdivision or land development has yet been filed, Wal-Mart's intended use of the premises as a site for a Super Center is a conditional reality not a theoretic possibility. Immediately after advising the Township of its plans, Wal-Mart moved quickly into site development including making application in February for the required NPDES Permit for construction of storm water discharges as well as confirming sewage capacity with the Township. Applying for a building permit would do little more to illustrate the specific use to which Wal-Mart intends to develop the property. The record here demonstrates sufficient facts to satisfy the precondition to a substantive challenge to the Ordinance. See Sharp vs. Zoning Hearing Board of the Township of Radnor, 620 A2d 1223 (Pa. Cmwlth. 1993).

## 2. Validity Challenge

Rendering a decision in this case has been a substantial challenge to this Board. The Board believes that it is a close case with significant factors weighing for both sides. The history of this case and the pertinent facts are largely undebatable. The Board believes that the conclusions to be drawn from the facts however are debatable.

The parties are in virtual agreement as to the general principles of law applicable to this decision. In a validity challenge, a zoning hearing board must presume the validity of an ordinance and the burden of proving its invalidity rest upon the party challenging it. Cleaver v. Board of Adjustment, 414 Pa. 367, 200 A.2d 408 (1964). The challenging party must clearly establish that the ordinance is arbitrary and unreasonable with no relation to the public health, safety, morals and general welfare, and if the validity is debatable, the board is to defer to the

legislative judgment of the Township Supervisors. Schubach v. Silver, 461 Pa. 366, 336 A.2d 328 (1975).

In order to determine whether or not a board of supervisors is engaged in invalid "spot zoning", it must first be determined whether or not the rezoned tract is being treated differently from similarly surrounding land and whether or not such differential treatment, if found is justifiable. Guentner v. Borough of Lansdale, Montgomery County, 21 Pa. Cmwlth. 287, 345 A.2d 306 (1975). Our Supreme Court has held that "(p)ossibly the most important factor in an analysis of a spot zoning question is whether the rezoned land is being treated unjustifiably different from similar surrounding land." Schubach v. Silver, *supra* at page 336. In addition, the Board must consider the areas physical attributes, topography and size, the economic feasibility of a particular use, planning factors and must determine whether the rezoning is a part of a plan which will produce nondiscriminatory zoning when fully implemented. Sheerman v. Wilkes-Barre City Zoning Hearing Board, 42 Pa. Cmwlth. 175, 400 A.2d 1334 (1979).

The Supreme Court has defined "spot zoning" as "a singling out of one lot or a small area for different treatment from that accorded to similar surrounding land indistinguishable from it in character, for the economic benefit of the owner of that lot or to his economic detriment..." Mulac Appeal, 418 Pa. 207, 210, 210 A.2d 275, 277 (1965). There is no precise formula for determining whether a classification of property constitutes spot zoning. Case law provides for the weighing of a number of factors.

However, the Supreme Court has stated that before this Board may declare a zoning ordinance unconstitutional, Appellants must clearly establish that the provision is arbitrary and unreasonable and has no relation to the public health, safety, morals and general welfare. Schubach v. Silver, *Id.* If the validity is debatable, the judgment of the Supervisors is to control. *Id.*

This Board in rendering this decision has considered the following factors:

(1) Was this rezoning for the economic benefit of a particular land owner or part of an overall plan? Baker v. Chartiers Township Zoning Hearing Board, 677 A.2d 1274 (Pa. Cmwlth. 1996)

(2) Was the rezoning in accord with the Township's Comprehensive plan? Pace Resources, Inc. vs. Shrewsbury Township Planning Commission, 89 Pa. Cmwlth. 468, 492 A.2d 818 (1985); Fisher v. Cranberry Township Zoning Hearing Board, 819 A.2d 181 (Pa. Cmwlth. 2003).

(3) Was the Premises singled out for unjustifiably different treatment? Schubach v. Silver, 461 Pa. 366, 336 A.2d 328 (1975); Cleaver v. Board of Adjustment, 414 Pa. 367, 200 A.2d 408 (1964).

(4) Have the Appellants clearly established that the rezoning bears no relationship to the public health, safety, morals, and general welfare? Sharp v. Zoning Hearing Board of the Township of Radner, 628 A.2d 1223 (Pa. Cmwlth. 1993); Knight v. Lind Township Zoning Hearing Board, 568 A.2d 1372 (Pa. Cmwlth. 1990).

(1) The analysis here weighs heavily in favor of Appellants. As the Commonwealth Court observed in Baker v. Chartiers Township Zoning Hearing Board, *supra*, at page 1274:

In Township of Plymouth v. County of Montgomery, 109 Pa. Cmwlth. 200, 521 A.2d 49, 57 (1987), Appeal denied, 520 Pa. 622, 554 A.2d 513 (1988), Cert. Denied, 490 U.S. 1021, 109 S. Ct. 1748, 104 L. Ed.2d 184 (1989), Judge Craig defined illegal spot zoning as "zoning provisions adopted to control the use of a specific area of land without regard to the relationship of those land use controls to the overall plan and the general welfare of the community."

...

The key point is when a municipal governing body puts on blinders and confines its vision to just one isolated place or problem within the community, disregarding a community wide perspective, that body is not engaged in lawful zoning, which necessarily requires that the picture of the whole community be

kept in mind while dividing it into compatibly related zones by ordinance enactments. In other words, legislating as to a spot is the antithesis of zoning... Township of Plymouth, 531 A.2d at 57.

Also, as the Supreme Court stated in In Re: Appeal of Realen Valley Forge Greens Associates, 576 Pa. 1115, 838 A.2d 718 (2003):

Spot zoning challenges have at their conceptual core the principle that lawful zoning must be directed towards the community as a whole, concerned with the public interest generally, and justified by a balancing of community costs and benefits. These considerations have been summarized as requiring that zoning be in conformance with a comprehensive plan for the growth and development of the community. Spot zoning is the antithesis of lawful zoning in this sense. In spot zoning, the legislative focus narrows to a single property and the costs and benefits to be balanced are those of particular property owners.

In this case, the sole impetus of the rezoning from receipt of the request in February of 2005 to fulfillment of it in May of 2005 was the requirements of Wal-Mart. It is difficult to conceive of a more situational basis for a rezoning.

The rezoning was not a part of any considered plan. There was no consideration of any rezoning of the Industrial Park until Wal-Mart made its request. The exclusive subject of the Ordinance was the parcel desired by Wal-Mart for its intended purposes. In the language of Realen Valley Forge Greens Associates, *supra*, the legislative focus here was restricted to a single property and the impetus for the change was the economic benefit to Developac and Wal-Mart.

(2) This in the least is a neutral factor and in the most weighs for Appellants. As the Supreme Court observed in Realen Valley Forge Greens Associates, *supra*, the essence of legal zoning is conformity with "a comprehensive plan for the growth and development of the community." In Pace Resources, Inc. v. Shrewsbury Township Planning Commission, 89 Pa. Cmwlth. 468, 492 A.2d 818 (1985) the irregularity of the zoning procedures, which showed that the governing body had not thoroughly reviewed the proposed rezoning, was a significant factor,

along with other factors, including inconsistency with the comprehensive plan which resulted in the Commonwealth Court ruling that the proposed rezoning there constituted arbitrary and unjustifiably discriminatory spot zoning.

Here, there is little to suggest that the Comprehensive Plan played any significant factor in the Supervisors decision. Being a quarter century old, the Supervisors apparently deemed it of little relevance in making their decision. As the Township Manager testified, comprehensive plans to be vital should be reviewed at least every 10 years. It is respectfully submitted that Sandy Township could be even more aggressive in doing strategic land use planning.

The Township concedes that the Premises is shown in its Comprehensive Plan as being in an area for industrial use. Gamely, Developac's counsel argues that the Future Land Use map of the 1981 Comprehensive Plan suggests that the Premises are adjacent to a commercial zone predicted to expand. It takes a leap of faith to adopt this view, but even if the point is valid, it is irrelevant because no one can reasonably contend that the rezoning here was driven by the Township's Comprehensive Plan.

It begs credulity not to recognize that the compulsion for the rezoning – from conception to execution – was the desire of Wal-Mart to construct a new, better and bigger store on the adjoining parcel. The deliberation from February through May centered on whether or not to accept the changed use in light of the Township's development of the Industrial Park not whether the action was a part of an overall plan for growth and development of the Township. The rezoning was unquestionably a reaction not approval based on strategic planning.

To buttress the Township's action, Developac's counsel suggests that if there was not a plan in concept, there was a plan in effect because the action here was "...consistent with the Township's considered and deliberate decision to rezone parcels in the property's neighborhood

to meet the needs of a changing economy." Developac's Brief at page 19. This contention will be analyzed in the next section.

(3) On page 5 of its Brief, Developac states:

The Courts employ a two-step analysis for determining whether a zoning amendment constitutes impermissible spot zoning. Guettner v. Borough of Lansdale, 21 Pa. Cmwlth. 287, 293, 345 A.2d 306, 309 (1975). In order to prove their case, the Appellants must first prove that the Property is being treated differently from similar surrounding land. Id. If the Board finds that the Appellants have proven that the Property was treated differently from surrounding land, then the Appellants must prove that it was done so without justification. Id.

Here, the Premises have been clearly singled out for different treatment. The rezoning only applies to the property which Wal-Mart wishes to purchase. The Ordinance didn't reclassify any other properties. It rezoned the Premises so that it could be subdivided out of the Sandy Township/Developac Industrial Park for sale to Wal-Mart for commercial use. Thus, the Premises were singled out for different treatment from the other industrial land in the Park. The impetus of this was the request of Wal-Mart and Developac and doesn't reflect any prior strategic thinking. Until Wal-Mart requested the change, there had been no update to the 1981 Comprehensive Plan suggesting reclassification of the Premises or any other portion of the Industrial Park nor was there any other form of planning for its reclassification. Moreover, the rezoning was incongruent with the Township's promotion and development of the Industrial Park. As late as 1996, the Township was promoting Phase 1 of the Park as the "logical solution to the industrial development needs" of the DuBois area.

In the face of this, Developac points to other map changes that the Township made since 1999 which it argues demonstrates "...the Township's considered and deliberate decision to rezone parcels in the property's neighborhood to meet the needs of a changing economy."

Appellants on the other hand argue that the Township has been engaged in a series of illegal "down zonings". It argues that the previous map changes have all been situational to

accommodate specific landowners and provide no support for this rezoning. As Appellants point out in their Brief (Page 7), the Supreme Court in Schubach v. Zoning Board of Adjustment (Philadelphia), 270 A.2d at page 400 (Pa. 1970) stated that the validity of a rezoning cannot rest on "down zoning" of borderline areas. This suggests that planning must precede "natural creep" for rezoning to be valid to reflect such forces. However, in the earlier case of Cleaver vs. Board of Adjustment, 414 Pa. 367, 200 A.2d 408 (1964), the Supreme Court sanctioned down zoning because the use permitted under the rezoning was "...substantially similar to those permitted on numerous adjoining properties." 200 A.2d at page 415.

Here, the Premises were singled out for different treatment from the other Industrial land in the Park. However, the Premises as rezoned are compatible with the adjoining land in the Commercial-Highway District including the existing Wal-Mart. Developac is correct that properties to the south of the Premises are zoned Commercial-Highway and that along the western boundary, the Premises abuts a Commercial-Highway Zone in the City of DuBois. Therefore the Premises is not a "island" and as Developac argues, it is now no more of a "peninsula" of a zoning district than it was before the rezoning. Thus, as was the case in Cleaver, the Premises as rezoned is the same as numerous adjoining properties in the Township and City of DuBois. Certainly, this has occurred more by fortune than design.

While the abrupt change in treatment of the Premises by the Supervisors certainly stands out in this case, the wisdom of a change in policies was for the Supervisors to decide (and not for this Board to second guess) and a zoning change by the Supervisors must be upheld by this Board unless it is arbitrary and unreasonable. As the Pennsylvania Supreme Court stated in Schubach v. Silver, 336 A.2d at page 338 "...to promote the orderly development of a community, the zoning authorities must be allowed to put a piece of property to the use which is most beneficial to the comprehensive plan, i.e. establish a land use which best blends in with

surrounding different uses." While it would be disingenuous for the Supervisors in this case to suggest that the rezoning was driven by its Comprehensive Plan or any strategic planning on its part, it is true that as in Cleaver, the Premises as rezoned blends in with the adjoining Commercial-Highway property in the Township and City. Thus, the fact that the Township switched gears so abruptly on the preferred use of the Premises is relevant only to the first prong of the test stated in Guettner, i.e. was the premises treated situationally? The Board must still reach the issue of whether the different treatment was without reasonable justification.

(4) As stated above, this Board finds that the Premises have been dealt with situationally and the Township's rezoning was not reflective of strategic thinking which is the essence of zoning. However, as Developac points out on page 5 of its Brief, the second step of the analysis is to determine if the Township has abused its discretion by acting without justification. This requires a finding that the rezoning bears no relationship to the public health, safety or welfare. The history of this situation is what it is. However, the history of the rezoning request and the arguable lack of foresight and planning aside, the ultimate issue is whether this Board can conclude that the change was unjustifiable, viz. bears no relationship to the public health, safety or welfare.

Certainly more by luck than design, this clear example of situational zoning cannot be said to be unreasonable because the new permitted use does blend in with the adjoining Commercial-Highway District in the Township and City. In short, while there was no case made of need for a Supercenter similar to that found in Sharp v. Zoning Hearing Board of the Township of Radnor, Id., this Board finds no sufficient detriment to the rezoning to brand it unconstitutional and illegal. The Supervisors action has sufficiently arguable benefit that Board believes that it is constrained to defer to the Supervisors judgment. This is not a judgment that the Board has reached easily.

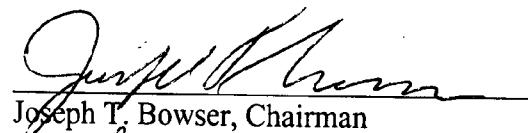
**VI. Conclusions of Law**

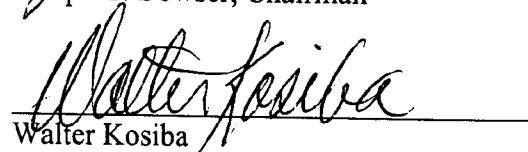
1. The Township's rezoning was at the request and predominately for the economic benefit of Developac and Wal-Mart and not part of an overall plan for the Township.
2. The Premises were singled out for different treatment.
3. This Board cannot conclude that this treatment was unjustifiable or unreasonable and the evidence presented did not sustain Appellants' burden that the rezoning bore no relationship to the public health, safety or welfare.

**VII. Decision**

Appellants' validity challenge to Ordinance 04-2005 is denied.

We, the following members of the Sandy Township Zoning Hearing Board declare this to be our decision this 5<sup>th</sup> day of January, 2006.

  
Joseph T. Bowser, Chairman

  
Walter Kosiba

  
Larry Marteney

**FILED**

**FEB 03 2006**

William A. Shaw  
Prothonotary/Clerk of Courts

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

Plaintiff(s)

Vs.

Sandy Township Zoning Hearing Board and  
Sandy Township Board of Supervisors

\* No. 2006-00187-CD

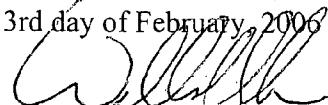
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TO: Sandy Township Zoning Hearing Board

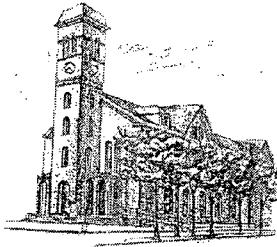
On February 3, 2006, the Appellants in the above action have duly filed a Land Use Appeal Notice on the decisions of January 5, 2006, regarding the rezoning of the 12.47 acre tract and Ordinance No. 4-2005. A copy of said Notice is hereby attached.

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 or the Commission at the time this Writ is received by you.

WITNESS THE HAND AND SEAL OF  
WILLIAM A. SHAW, PROTHONOTARY,  
3rd day of February, 2006



WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2010  
Clearfield Co. Clearfield, PA



## Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw  
Prothonotary/Clerk of Courts

David S. Ammerman  
Solicitor

Jacki Kendrick  
Deputy Prothonotary

Bonnie Hudson  
Administrative Assistant

CC.Y

Fredric J. Ammerman, P.J.  
Court of Common Pleas  
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Clearfield, PA 16830

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Gregory M. Kruk, Esq.  
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Brockway, PA 15824

Carl A. Belin, Jr., Esq.  
15 N. Front Street  
Clearfield, PA 16830

FILED

09/13/01  
JUL 28 2006

William A. Shaw  
Prothonotary/Clerk of Courts

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

Sandy Township Zoning Hearing Board and Sandy Township Board of Supervisors  
AND  
Developac, Intervenor

Court No. 06-187-CD; Commonwealth Court No. 1162 CD 2006

Dear Counsel:

Please be advised that a supplement to the above referenced record, including the transcript of Appellants' Petition to Stay, was forwarded to the Commonwealth Court of Pennsylvania on July 28, 2006. Please see attached summary sheet for the details of the supplement.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

Date: 07/28/2006

Time: 09:14 AM

Page 1 of 1

**Garfield County Court of Common Pleas**

ROA Report

Case: 2006-00187-CD

User: BHUDSON

Current Judge: Fredric Joseph Ammerman

**Civil Other**

Date	Selected Items	Judge
07/11/2006	Cover letter (copy) for transferring case to Commonwealth Court, July 11, 2006. Certified Mail Receipts, appeal mailed to Commonwealth Court (three parts).	Fredric Joseph Ammerman
07/14/2006	Domestic Return Receipts (3), received by Commonwealth Court of PA on July 12, 2006.	Fredric Joseph Ammerman
07/27/2006	Notice, Re: If no objections are made to the text of the transcript within five days of notice, transcript will become part of the record upon filing in the Prothonotary's Office, filed by s/Cathy Warrick Provost, RMR, Official Court Reporter No CC Transcript of Proceedings, Appellants' Petition to Stay, held before the Honorable Fredric J. Ammerman, P.J., February 16, 2006, filed.	Fredric Joseph Ammerman

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

**No. 06-187-CD**

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

**Sandy Township Zoning Hearing Board and Sandy Township Board of Supervisors**

**Developac, Intervenor**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
	07/11/06	**APPEAL MAILED TO COMMONWEALTH COURT**	
27	07/11/06	Cover letter (copy) for transferring case to Commonwealth Court July 11, 2006	01
28	07/11/06	Certified Mail Receipts, appeal mailed to Commonwealth Court (three parts)	01
29	07/14/06	Domestic Return Receipts (three) received by Commonwealth Court on July 12, 2006	01
30	07/27/06	Notice, Re: objections to text of transcript to be made within five days	01
31	07/27/06	Transcript of Proceedings, Appellants' Petition to Stay, held before Honorable Fredric J. Ammerman, P.J., February 16, 2006	Separate Cover

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

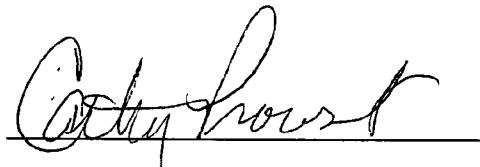
CIVIL DIVISION

SANDY CITIZENS ARGUING FOR :  
RESPONSIBLE ECONOMIC DEVELOP- :  
MENT (S.C.A.R.E.D.), WILLIAM B. :  
CLYDE, GARY A. PETERSON, :  
WILLIAM G. ALLENBAUGH and :  
NANCY L. ALLENBAUGH :  
VS. : NO. 06-187-CD  
SANDY TOWNSHIP ZONING HEARING :  
BOARD and SANDY TOWNSHIP BOARD :  
OF SUPERVISORS :  
:

N O T I C E

In accordance with the Rules of Appellate Procedure Rule 1922, Notice is hereby given that if no objections are made to the text of the transcript within five (5) days after such notice, the transcript in the above-captioned matter will become part of the record upon being filed in the Prothonotary's Office.

DATE: July 17, 2006

  
\_\_\_\_\_  
CATHY WARRICK PROVOST, RMR

Official Court Reporter

FILED NOCC  
JUL 27 2006  
2006-146-301

W.A. Shaw  
Prothonotary/Clerk of Courts  


23

**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:**

Commonwealth Court of PA  
Irvis Office Building  
6<sup>th</sup> Floor, Room 624  
Commonwealth Ave & Walnut St.  
Harrisburg, PA 17120

06-187-CD

**2. Article Number**

(Transfer from service label)

7002 2030 0004 5014 8118

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY****A. Signature**X *AP*

Agent  
 Addressee

**B. Received by (Printed Name)**C. Date of Delivery  
JUL 12 2006

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

**3. Service Type**

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

**4. Restricted Delivery? (Extra Fee)**

Yes

06-187-CD

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mho:2784  
JUL 14 2006

William A. Shaw  
Prothonotary/Clerk of Courts

Parts 1,2,3

**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.
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**1. Article Addressed to:**

Commonwealth Court of PA  
Irvis Office Building  
6<sup>th</sup> Floor, Room 624  
Commonwealth Ave & Walnut St.  
Harrisburg, PA 17120

06-187-CD

**2. Article Number**

(Transfer from service label)

7002 2030 0004 5014 8132

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY****A. Signature**X *AP*

Agent  
 Addressee

**B. Received by (Printed Name)**C. Date of Delivery  
JUL 12 2006

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

**3. Service Type**

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

**4. Restricted Delivery? (Extra Fee)**

Yes

X 21

**2. Article Number**

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7002 2030 0004 5014 8125

PS Form 3811, February 2004

Domestic Return Receipt

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Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 12.00

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06-187-CD

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Commonwealth Court of PA - Irvis Office B1dg  
Street, Apt. No.  
or PO Box No. 6<sup>th</sup> Floor, Room 624, Comm. Ave. & Walnut St.  
City, State, ZIP+4 Harrisburg, PA 17120

PS Form 3800, June 2002 See Reverse for Instructions

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Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 9.85

**CLEARFIELD PA 16830**  
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06-187-CD

Sent To  
Commonwealth Court of PA - Irvis Office B1dg  
Street, Apt. No.  
or PO Box No. 6<sup>th</sup> Floor, Room 624, Comm. Ave. & Walnut St.  
City, State, ZIP+4 Harrisburg, PA 17120

PS Form 3800, June 2002 See Reverse for Instructions

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Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 10.40

**CLEARFIELD PA 16830**  
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USPS

06-187-CD

Sent To  
Commonwealth Court of PA - Irvis Office B1dg  
Street, Apt. No.  
or PO Box No. 6<sup>th</sup> Floor, Room 624, Comm. Ave. & Walnut St.  
City, State, ZIP+4 Harrisburg, PA 17120

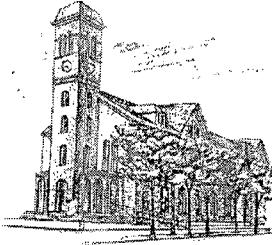
PS Form 3800, June 2002 See Reverse for Instructions

**FILED**

014:00 PM  
JUL 11 2006

*WAS*  
William A. Shaw  
Prothonotary/Clerk of Courts

*28*



## Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw  
Prothonotary/Clerk of Courts

David S. Ammerman  
Solicitor

Jacki Kendrick  
Deputy Prothonotary

Bonnie Hudson  
Administrative Assistant



**COPY**

July 11, 2006

Commonwealth Court of Pennsylvania  
Irvis Office Building  
6<sup>th</sup> Floor, Room 624  
Commonwealth Ave. & Walnut St.  
Harrisburg, PA 17120

**FILED**

07/11/2006  
JUL 11 2006  
W.A. Shaw

William A. Shaw  
Prothonotary/Clerk of Courts

Re: Sandy Citizens Arguing for Responsible Economic Development (S.C.A.R.E.D.),  
William B. Clyde, Gary A. Peterson, William C. Allenbaugh and Nancy L. Allenbaugh  
Vs.  
Sandy Township Zoning Hearing Board and Sandy Township Board of Supervisors  
Developac, Intervenor

No. 06-187-CD  
Commonwealth Court No. 1162 CD 2006

Dear Prothonotary:

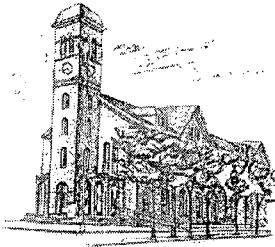
Enclosed you will find the above referenced complete record appealed to your office. There are two separate cover items, the first of which is composed of four separate parts in addition to exhibits.

Please note this appeal is being transferred in three separate mailings.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

1 of 3-7002 2030 0004 5014 8118  
2 of 3-7002 2030 0004 5014 8125  
3 of 3-7002 2030 0004 5014 8132



Bind & File: Supp. Recd

## Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw  
Prothonotary/Clerk of Courts

David S. Ammerman  
Solicitor

Jacki Kendrick  
Deputy Prothonotary

Bonnie Hudson  
Administrative Assistant

July 28, 2006

Commonwealth Court of Pennsylvania  
Office of the Prothonotary  
1 South Office Building  
Harrisburg, PA 17120-0029.

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

VS.

Sandy Township Zoning Hearing Board and Sandy Township Board of Supervisors

AND

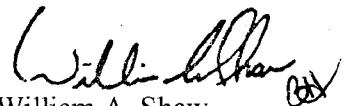
Developac, Intervenor

No. 06-187-CD  
Commonwealth Court No. 1162 CD 2006

Dear Prothonotary:

Enclosed, please find a supplement to the above referenced record, including the transcript that was outstanding when the record was mailed to your office.

Sincerely,

  
William A. Shaw  
Prothonotary/Clerk of Courts

22 18 31 D 1200Z

RECEIVED & FILED  
CO. MUSQUEALI TH CO. 11-1-1  
OF PENNSYLVANIA

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

**No. 06-187-CD**

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

**Sandy Township Zoning Hearing Board and Sandy Township Board of Supervisors**

**Developac, Intervenor**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
	07/11/06	**APPEAL MAILED TO COMMONWEALTH COURT**	
27	07/11/06	Cover letter (copy) for transferring case to Commonwealth Court July 11, 2006	01
28	07/11/06	Certified Mail Receipts, appeal mailed to Commonwealth Court (three parts)	01
29	07/14/06	Domestic Return Receipts (three) received by Commonwealth Court on July 12, 2006	01
30	07/27/06	Notice, Re: objections to text of transcript to be made within five days	01
31	07/27/06	Transcript of Proceedings, Appellants' Petition to Stay, held before Honorable Fredric J. Ammerman, P.J., February 16, 2006	Separate Cover
32	07/28/06	Letters to Counsel of Record: T. Cherry, K. Kesner, G. Kruk, D. Kirk, C. Belin. Docket sheet and docket summary sheet attached.	03

Date: 07/28/2006

Time: 09:33 AM

Page 1 of 1

**Clearfield County Court of Common Pleas**

User: BHUDSON

**ROA Report**

**Case: 2006-00187-CD**

**Current Judge: Fredric Joseph Ammerman**

**Civil Other**

Date	Selected Items	Judge
07/11/2006	Cover letter (copy) for transferring case to Commonwealth Court, July 11, 2006. Certified Mail Receipts, appeal mailed to Commonwealth Court (three parts).	Fredric Joseph Ammerman
07/14/2006	Domestic Return Receipts (3), received by Commonwealth Court of PA on July 12, 2006.	Fredric Joseph Ammerman
07/27/2006	Notice, Re: If no objections are made to the text of the transcript within five days of notice, transcript will become part of the record upon filing in the Prothonotary's Office, filed by s/Cathy Warrick Provost, RMR, Official Court Reporter No CC Transcript of Proceedings, Appellants' Petition to Stay, held before the Honorable Fredric J. Ammerman, P.J., February 16, 2006, filed.	Fredric Joseph Ammerman
07/28/2006	July 28, 2006, Mailed Supplement (including Transcript) to Commonwealth Court. July 28, 2006, Letters, Re: Notification of mailing supplement mailed to Toni M. Cherry, Esq.; Kim C. Kesner, Esq.; Gregory M. Kruk, Esq.; Dusty Elias Kirk, Esq.; and Carl A. Belin, Jr., Esq. with copies of docket sheet and summary of docket entries.	Fredric Joseph Ammerman



## Supreme Court of Pennsylvania

John A. Vaskov, Esq.  
Deputy Prothonotary  
Patricia A. Nicola  
Chief Clerk

Western District  
March 31, 2008

801 City-County Building  
Pittsburgh, PA 15219  
412-565-2816  
[www.aopc.org](http://www.aopc.org)

Mr. William A. Shaw  
Prothonotary  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830

RE:     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, Petitioners

v.

Sandy Township Zoning Hearing Board and Sandy Township Board  
of Supervisors and Developac, Inc., Respondents  
Commonwealth Docket Number - 1162 CD 2006

Trial Court/Agency Dkt. Number: No. 06-187-CD  
No. 176 WAL 2008

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: March 29, 2008

Disposition:

Date:

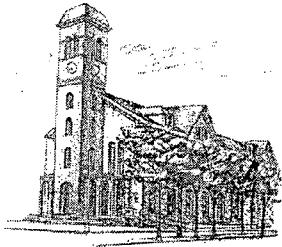
Reargument/Reconsideration Disposition:

Reargument/Reconsideration  
Disposition Date:

/kao

FILED  
APR 01 2008  
WAS

William A. Shaw  
Prothonotary/Clerk of Courts



## Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw  
Prothonotary/Clerk of Courts

David S. Ammerman  
Solicitor

Jacki Kendrick  
Deputy Prothonotary

Bonnie Hudson  
Administrative Assistant



CC. ✓

July 28, 2006

Commonwealth Court of Pennsylvania  
Office of the Prothonotary  
1 South Office Building  
Harrisburg, PA 17120-0029

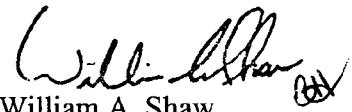
Re: Sandy Citizens Arguing for Responsible Economic Development (S.C.A.R.E.D.), William B. Clyde, Gary A. Peterson, William C. Allenbaugh and Nancy L. Allenbaugh  
VS.  
Sandy Township Zoning Hearing Board and Sandy Township Board of Supervisors  
AND  
Developac, Intervenor

No. 06-187-CD  
Commonwealth Court No. 1162 CD 2006

Dear Prothonotary:

Enclosed, please find a supplement to the above referenced record, including the transcript that was outstanding when the record was mailed to your office.

Sincerely,

  
William A. Shaw  
Prothonotary/Clerk of Courts

FILED  
07/30/2006  
JUL 28 2006  
(610)

William A. Shaw  
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

**No. 06-187-CD**

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

**Sandy Township Zoning Hearing Board and Sandy Township Board of Supervisors**

**Developac, Intervenor**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
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Date: 07/28/2006

Time: 09:33 AM

Page 1 of 1

**Clearfield County Court of Common Pleas**

User: BHUDSON

ROA Report

Case: 2006-00187-CD

Current Judge: Fredric Joseph Ammerman

**Civil Other**

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07/28/2006	July 28, 2006, Mailed Supplement (including Transcript) to Commonwealth Court. July 28, 2006, Letters, Re: Notification of mailing supplement mailed to Toni M. Cherry, Esq.; Kim C. Kesner, Esq.; Gregory M. Kruk, Esq.; Dusty Elias Kirk, Esq.; and Carl A. Belin, Jr., Esq. with copies of docket sheet and summary of docket entries.	Fredric Joseph Ammerman

FILED

AUG 01 2006

01 8:30 AM

William A. Shaw

Prothonotary/Clerk of Courts

06-187-CD

0002 2030 0004 0005 0014 0170

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Postage	\$
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Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.32
Street, Apt. No. of PO Box No./Off. Fl.	Commonwealth of PA Commonwealth Avenue Walnut St Harrisburg PA 17100
City, State, Zip+4	
PS Form 3800, June 2002	
See Reverse for Instructions	

06-187-CD

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Harrisburg PA 17100  
JUL 2 2006  
CLEARFIELD PA 16830

**SENDER: COMPLETE THIS SECTION**

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**1. Article Addressed to:**

Comm. Court of PA  
Ervis Office Building  
6th Floor, Room 604  
Commonwealth Ave. & Walnut St.  
Harrisburg PA 17120

Suppl. 06-187-CD

**COMPLETE THIS SECTION ON DELIVERY****A. Signature**

X *William A. Shaw*

- Agent
- Addressee

**B. Received by (Printed Name)****C. Date of Delivery**

JUL 31 2006

**D. Is delivery address different from item 1?**

If YES, enter delivery address below:

- Yes
- No

**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**

(Transfer from service label)

1111 7002 2030 0004 5014 8170

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**FILED**

06-10-23-07  
AUG 02 2006

*(Signature)*

William A. Shaw  
Prothonotary/Clerk of Courts

06-187-CD

IN THE COMMONWEALTH COURT OF 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 v. Sandy Township Zoning Hearing Board and Sandy Township Board of Supervisors and Developac, Inc.

FILED  
MILLER, 2008  
JAN 09 2008

William A. Shaw  
Prothonotary/Clerk of Courts  
(6K)

No. 1162 C.D. 2006

Argued: December 12, 2006

BEFORE: HONORABLE DORIS A. SMITH-RIBNER, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE KELLEY

FILED: January 7, 2008

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 (collectively, Citizens) appeal from an order of the Court of Common Pleas of Clearfield County (Trial Court) which dismissed Citizens' appeal from and approved an order of the Sandy Township Zoning Hearing Board (ZHB) that denied a challenge to the validity of a Sandy

Township ordinance rezoning a parcel of land from Industrial to Commercial-Highway. We affirm.

Appellee Developac is the record owner of an Industrial Park situated in Sandy Township, Clearfield County, Pennsylvania. On February 7, 2005, Developac presented Appellee Sandy Township Board of Supervisors (Supervisors) with a request to rezone a 12.47 acre parcel of its existing industrial park (the Property) from Industrial to Commercial-Highway, as a condition of Developac's negotiation of a contingent sale agreement with Wal-Mart. Wal-Mart sought to obtain the Property, if rezoned, to construct a Super Wal-Mart. The Property adjoins an existing Wal-Mart store that sits in a Commercial-Highway zoning district.

Following public hearings to consider the rezoning request, accept public comment thereon, and examine the Township's Comprehensive Plan, the Supervisors adopted Ordinance 04-2005<sup>1</sup> (the Ordinance), on May 16, 2005, rezoning the Property as requested. The Ordinance became effective on May 21, 2005.

On June 20, 2005, Citizens filed with the ZHB a challenge to the validity of the Ordinance, asserting that it constituted illegal spot zoning. Hearings before the ZHB were thereafter held, at which Citizens, Developac, and the Township were represented by counsel, and offered evidence and argument. On

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<sup>1</sup> See Reproduced Record (R.R.) at 704a-709a.

January 5, 2006, the ZHB issued a decision setting forth factual findings and legal conclusions, and an order dismissing Citizens' challenge.

In brief summation, the ZHB concluded that the Citizens' challenge had been timely filed within thirty days of the Ordinance's effective date, as opposed to the Ordinance's date of enactment. In regards to the substantive validity challenge, the ZHB noted that the case was a close one with significant factors weighing for both sides. The ZHB concluded, *inter alia*, that the rezoning was not a part of the township's Comprehensive Plan, and was restricted solely and exclusively to the Property itself. The ZHB further concluded that the Property had been singled out for different treatment, in relation to the surrounding land, and then turned to the question of whether or not that different zoning treatment was without reasonable justification. On that issue, the ZHB ultimately stated that "[t]his Board cannot conclude that this treatment was unjustifiable or unreasonable and the evidence presented did not sustain [Citizens'] burden that rezoning bore no relation to the public health, safety or welfare." ZHB Opinion at 14-17. Under that reasoning, the ZHB denied Citizens' challenge to the Ordinance.

Citizens thereafter timely appealed the ZHB's order to the Trial Court, which considered the matter without receiving any additional evidence. By order<sup>2</sup> dated May 18, 2006, the Trial Court concluded that the ZHB's findings and conclusions were supported by substantial evidence, and that the ZHB had not committed any errors of law or abused its discretion. The Trial Court

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<sup>2</sup> The Trial Court did not file an opinion in support of its order.

concomitantly dismissed Citizens' appeal, and Citizens now appeal the Trial Court's order hereto.

In an appeal of a zoning matter, where the trial court has not taken any additional evidence, this Court's scope of review is limited to a determination of whether the zoning hearing board committed an error of law or abused its discretion. Hill District Project Area Committee, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh, 638 A.2d 278 (Pa. Cmwlth.), petition for allowance of appeal denied, 538 Pa. 629, 646 A.2d 1182 (1994). An abuse of discretion will only be found where the zoning board's findings are not supported by substantial evidence. Id. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Teasers, Inc. v. Zoning Board of Adjustment of the City of Philadelphia, 682 A.2d 856 (Pa. Cmwlth. 1996).

It has been well established in our courts that:

[An] ordinance cannot create an 'island' of more or less restricted use within a district zoned for a different use or uses, where there are no differentiating relevant factors between the 'island' and the district . . . Thus, singling out of one lot or a small area for different treatment from that accorded to similar surrounding land indistinguishable from it in character, for the economic benefit of the owner of that lot or his economic detriment, is invalid 'spot' zoning.

Schubach v. Silver, 461 Pa. 366, 382, 336 A.2d 328, 336 (1975) (citations omitted). Additionally, our case law has established the following presumption and burdens in cases such as the matter *sub judice*:

A reviewing court when faced with a challenge to a zoning measure must be mindful of certain basic principles. First, a court must presume the zoning ordinance is valid and constitutional and the burden of proving otherwise is on the challenging party. See Cleaver v. Board of Adjustment [of Tredyffrin Township], 414 Pa. 367, 200 A.2d 408 (1964). . . Moreover, before a court may declare a zoning ordinance unconstitutional, the challenging party must clearly establish the provisions are arbitrary and unreasonable and have no relation to the public health, safety, morals, and general welfare and if the validity is debatable the legislative judgment is allowed to control.

Id., 461 Pa. at 381, 336 A.2d at 335 (citations omitted).

In the case before us, the parties do not dispute that the Property was treated differently from certain similar surrounding land. Citizens, however, do argue that the Trial Court erred in failing to conclude that the zoning treatment at issue was unjustifiable or unreasonable. Developac, the Supervisors, and the ZHB argue that the Trial Court correctly concluded that Citizens failed to satisfy its burden to clearly establish that the rezoning bore no relation to the public health, safety or welfare.

We first note that Citizens place considerable emphasis, in its argument hereto, on the shape of the rezoning at issue. Primarily, Citizens cite to Schubach v. Zoning Board of Adjustment (Philadelphia), 440 Pa. 249, 270 A.2d 397 (1970), for the proposition that the borders of a rezoned parcel cannot solely be relied upon as a justification for rezoning, particularly when those borders constitute a 'peninsula', as opposed to an 'island', or when 'down zoning' or 'creep zoning' is permitted whereby neighboring borders are extended into a

dissimilar zoning area. However, Citizens misread the applicability of those aspects of the holding in Shubach v. Philadelphia to the instant matter. Herein, the record is clear that the ZHB did not rely solely, or even primarily, on the shape of the rezoning in its decision; as the following discussion of the evidence of record makes clear, the rezoning decision took into consideration far more evidence regarding the impact of the rezoning than simply the shape of the Property at issue. As such, we find Citizens' arguments on this narrow facet of this case to be unavailing.

We agree with the Trial Court, and with the ZHB, that Citizens' evidence, when taken individually and collectively, does not satisfy its burden in this matter. In its appeal hereto, Citizens place their emphasis on their own evidence in isolation from the evidence offered in opposition thereto, and without acknowledgment of our courts' precedents.

Citizens emphasize that the ZHB acknowledged that the rezoning at issue herein was solely at Wal-Mart's request, and was solely for Wal-Mart's benefit. We have held, however, that where a rezoning of one particular tract of land has been made by a municipality, at the sole request of a single land owner, "[t]his fact does not in and of itself invalidate the rezoning." Schubach v. Silver, 461 Pa. at 384, 336 A.2d at 337. Further, the record shows that benefits inure to parties other than Wal-Mart as a result of the rezoning.

In its review of the evidence and argument presented, the Supervisors considered: the fact that the proposed rezoned use would generate considerable land fill material that would be used to improve other industrial parcels in the Park,

thus making them more salable to an industrial user (R.R. at 536a-537a); that the proposed rezoned use would create at least another 200 jobs in the Township (R.R. at 522a-523a, 527a); the conversion of over 12 acres of currently untaxable vacant property into a taxable property (R.R. at 308a-318a, 513a-515a, 528a); the opportunity to improve a dangerous traffic condition in the existing Wal-Mart's layout (R.R. at 508a.), and; most generally stated, that the rezoning would fit within the character of the Route 0255 Commercial Corridor, and was in the best interests of the citizens of the Township (R.R. at 527a-534a).

Citizens next argue that the rezoning was unjustifiable due to the Property's location within a 200 acre Keystone Opportunity Expansion Zone (KOEZ), a designation assigned thereto by the General Assembly<sup>3</sup> in order to make the Industrial Park attractive to manufacturing businesses by exempting those businesses from paying certain sales, property and corporate income taxes through the year 2010. However, again Citizens ignore the contrary evidence of record in addressing the justifiability of the rezoning on this basis. The record shows that the Supervisors considered the KOEZ designation, and the monies granted in part in connection therewith, prior to making the rezoning decision. R.R. at 513a. Further, the Supervisors concluded the KOEZ status of the Property would not preclude the rezoning at issue, and that Wal-Mart had pledged that it would not

---

<sup>3</sup> See the Keystone Opportunity Zone, Keystone Opportunity Expansion Zone and Keystone Opportunity Improvement Zone Act, Act of October 6, 1998, P.L. 705, as amended, 73 P.S. §§ 820.101 -820.1309.

seek tax-exempt status in its move to the rezoned Property. R.R. at 308a-318a, 513a-515a, 528a. Citizens' point on this issue is without merit.

Citizens next argue that the ZHB made no findings that the Property was no longer suited for industrial development, and, generally, that nothing about the Property merits the rezoning from its prior zoning as industrial. Again, the voluminous record in the matter belies Citizens' arguments on these points.

In conjunction with the ZHB's findings, the records shows that the Supervisors engaged in a comprehensive analysis of the Property, specifically in relation to the points raised by Citizens on this issue. In brief summation, and in addition to the evidence cited above, the record includes evidence regarding Citizens' first general assertion on this issue that: the Supervisors considered evidence regarding the unusual characteristics of the Property, including the prohibitive cost to earthwork that would be necessary for industrial use and the concomitant conclusion that no prospective buyer would therefore buy this land for industrial use (R.R. at 536a-538a, 616a, 634a); the distinct lack of demand for industrially-zoned land in the Industrial Park, and the unlikelihood that the Property would be used for industrial purposes (R.R. at 538a); and the Industrial Park's lack of any development or use applications for the Property in particular, or the Park in general, in recent years (R.R. at 518a). Further, the record shows that: the Property is located between an extensive two-mile retail district along State Route 0255, and an industrial park, with extensive retail located in the immediate vicinity (R.R. at 1082a.), and approximately 50% of the Property is adjacent to commercially zoned land, and 50% abuts industrially zoned land (R.R.

at 197a-198a, 263a-269a). Again, Citizens' narrow focus upon their limited evidence presented below, and their failure to acknowledge the opposing evidence of record notwithstanding Citizens' bare assertions of the lack thereof, belie their arguments on this issue.

Citizens next argue that the rezoning at issue contradicts the 1981 Comprehensive Plan adopted, and subsequently reaffirmed, by the Township. That Plan, Citizens assert, designates the area including the Property exclusively for industrial development, and no efforts or evidence of any revised plan stating other goals for Township zoning priorities and actions exists or has been undertaken.

Our Supreme Court has held that municipalities' zoning and land development plans should not be considered rigid and static in zoning matters where subsequent decisions may not completely harmonize with an existing plan:

A comprehensive plan does not contemplate or require a 'master-plan' which *rigidly* provides for or attempts to answer in minute detail every possible question regarding land utilization or restriction. Neither a zoning ordinance nor a comprehensive plan is absolutely rigid, static and unchangeable; either or both may be amended, supplemented, changed, modified or repealed-in the sound discretion of the legislative body and in accordance with statutory and other pertinent legal and Constitutional requirements-as conditions or changing circumstances may require...

\* \* \*

A Comprehensive Plan, we repeat, need not and indeed should not be required to fix the zoning map of the Township in a rigid and immutable mold.

Cleaver, 414 Pa. at 375-777, 200 A.2d at 413-414 (citations omitted).

Additionally, the record shows that the Supervisors did not simply ignore the 1981 Comprehensive Plan, but rather examined that Plan in relation to the Township's changing and more contemporary needs. The record contains evidence and testimony that the rezoning is consistent with the Township's deliberate and considered decision to rezone parcels in this particular area to match the needs of a changing economy, and to promote commerce along State Route 0255. R.R. at 527a-530a. Further, there is evidence of record that since the 1981 Plan's adoption, there have been significant population changes, and growth and development, of the commercial area at issue. R.R. at 297a. Finally on this issue, the Plan's Future Land Use map itself, as read by the Township Manager, arguably anticipates that the neighborhood where the Property is situated could be used for commercial purposes in the future. R.R. at 298a - 300a.

Citizens' arguments as articulated in the foregoing analysis essentially amount to a reliance upon selected, preferred evidence of record without recognition or address of the opposing and sometimes contradictory evidence of record. In regards to the value of that selected evidence, we agree with the ZHB's acknowledgment that significant factors weighed on both sides of this issue.

However, we emphasize that in our appellate capacity, we must presume that a zoning ordinance is valid and constitutional. Schubach v. Silver. Further, as noted, the burden of proving otherwise is solely and squarely on the challenging party. Id. Citizens, as the challenging parties to the Ordinance herein, have not clearly established that the rezoning is arbitrary and unreasonable and has no relation to the public health, safety, morals, and general welfare. We agree with

the ZHB's assertion that Citizens have failed to demonstrate any detriment from the rezoning, other than Citizens' disagreement with the Supervisors' policy judgment regarding the evolving zoning needs of the Township. We emphasize that if the validity of the rezoning at issue is debatable, the legislative judgment is allowed to control. Id. As such, the Trial Court did not err as a matter of law.

Finally, Citizens argue, in their second stated issue, that the ZHB deprived Citizens of a fundamentally fair proceeding because its findings capriciously disregarded Citizens' evidence. We disagree.

A capricious disregard of evidence is a deliberate and baseless disregard of apparently reliable evidence, and occurs only when a fact-finder deliberately ignores such relevant, competent evidence. Taliaferro v. Darby Township Zoning Hearing Board, 873 A.2d 807 (Pa. Cmwlth.), petition for allowance of appeal denied, 585 Pa. 692, 887 A.2d 1243 (2005).

We find no such deliberate disregard of evidence in the instant matter. The ZHB's Opinion as a whole clearly addresses Citizens' arguments, and in its summations thereof, the evidence supporting those arguments. As opposed to any disregard thereof, the depth of the ZHB's address of both parties' general theories and evidence demonstrates that it did not deliberately ignore any evidence, but rather carefully weighed the offers presented thereto, finding each with some degree of merit. As we have written:

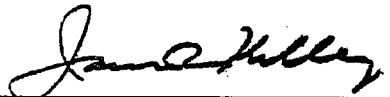
The express consideration and rejection of this evidence, by its definition, is not capricious disregard. . . Further, although the Board did not specifically mention the testimony of Objectors' lay witnesses, it was not required to do so. As noted by the trial court, "[w]hile the Board's

[f]indings and [c]onclusions do not reference every item of testimony submitted during the numerous hearings before the Board ... there is no legal requirement that such be done. Instead the Board's ... opinion reference[s] the facts it deemed essential to making its determination of the application."

Id., 873 A.2d at 815 (citation omitted).

As in Taliaferro, our thorough review of the record in the instant matter reveals that the testimony and evidence of Citizens were indeed considered by the ZHB, that said consideration is reflected to the extent required within its opinion, and that therefore no capricious disregard of any relevant, competent evidence occurred herein. Contrary to Citizens' assertions, the ZHB was not required to make findings regarding every evidentiary matter addressed by Citizens in the prior proceedings.

Accordingly, we affirm.



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JAMES R. KELLEY, Senior Judge

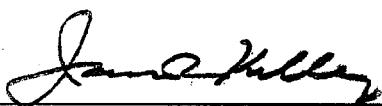
Judge Smith-Ribner dissents.

IN THE COMMONWEALTH COURT OF 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 :  
v. :  
No. 1162 C.D. 2006 :  
Sandy Township Zoning Hearing :  
Board and Sandy Township Board :  
of Supervisors and Developac, Inc. :  
:

**O R D E R**

AND NOW, this 7th day of January, 2008, the order of the Court of  
Common Pleas of Clearfield County, dated May 18, 2006, at No. 06-187-CD, is  
affirmed.

  
\_\_\_\_\_  
JAMES R. KELLEY, Senior Judge

Certified from the Record

JAN 07 2008

and Order Exit

06-187-00

IN THE SUPREME COURT OF PENNSYLVANIA  
WESTERN DISTRICT

FILED

NOV 05 2008

11:45 AM (610)  
S William A. Shaw  
Prothonotary/Clerk of Courts

SANDY CITIZENS ARGUING FOR : No. 176 WAL 2008  
RESPONSIBLE ECONOMIC :  
DEVELOPMENT (S.C.A.R.E.D), WILLIAM :  
B. CLYDE, GARY A. PETERSON, : Petition for Allowance of Appeal from the  
WILLIAM G. ALLENBAUGH, AND NANCY : Order of the Commonwealth Court  
L. ALLENBAUGH, :  
Petitioners :  
: v.  
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: Respondents :  
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ORDER

PER CURIAM:

AND NOW, this 16<sup>th</sup> day of October, 2008, the Petition for Allowance of Appeal is  
hereby DENIED.

A True Copy Patricia Nicola

As of: October 16, 2008

Attest: *Patricia Nicola*  
Chief Clerk

Supreme Court of Pennsylvania



## Supreme Court of Pennsylvania

Western District

November 3, 2008

John A. Vaskov, Esq.  
Deputy Prothonotary  
Patricia A. Nicola  
Chief Clerk

801 City-County Building  
Pittsburgh, PA 15219  
412-565-2816  
[www.aopc.org](http://www.aopc.org)

Mr. William A. Shaw  
Prothonotary  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830

RE:     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, Petitioners

v.

Sandy Township Zoning Hearing Board and Sandy Township Board  
of Supervisors and Developac, Inc., Respondents  
Commonwealth Docket Number - 1162 CD 2006

Trial Court/Agency Dkt. Number: No. 06-187-CD

No. 176 WAL 2008

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: March 29, 2008

Disposition: Order Denying Petition for Allowance of Appeal  
Date: October 16, 2008

Reargument/Reconsideration Disposition:

Reargument/Reconsideration  
Disposition Date:

/kao

06-187-C



## Commonwealth Court of Pennsylvania

Kristen W. Brown  
 Prothonotary  
 Michael Krimmel, Esq.  
 Chief Clerk of Commonwealth Court

November 10, 2008

Irvis Office Building, Room 624  
 Harrisburg, PA 17120  
 717-255-1650

### Certificate of Remittal/Remand of Record

TO:

RE: SCARED et al v. Sandy Twp ZHB et al

No. 1162 CD 2006

Trial Court/Agency Dkt. Number: 06-187 C.D.

Trial Court/Agency Name: Clearfield County Court of Common Pleas

Intermediate Appellate Court Number:

Annexed hereto pursuant to Pennsylvania Rules of Appellate Procedure 2571 and 2572 is the entire record for the above matter.

#### Contents of Original Record:

Original Record Item	Filed Date	Description
TRIAL COURT RECORD	July 13, 2006	1 STACK
Supplemental Record	July 31, 2006	1 w/record

Date of Remand of Record:

ORIGINAL RECIPIENT ONLY - Please acknowledge receipt by signing, dating, and returning the enclosed copy of this certificate to our office. Copy recipients (noted below) need not acknowledge receipt.

Signature

WILLIAM A. SHAW  
 Prothonotary  
 My Commission Expires  
 1st Monday in Jan. 2010  
 Clearfield Co., Clearfield, PA

Printed Name

Date

FILED  
 m14:00 PM  
 NOV 13 2008  
 S  
 William A. Shaw  
 Prothonotary/Clerk of Courts

IN THE SUPREME COURT OF PENNSYLVANIA  
WESTERN DISTRICT

SANDY CITIZENS ARGUING FOR : No. 176 WAL 2008  
RESPONSIBLE ECONOMIC :  
DEVELOPMENT (S.C.A.R.E.D), WILLIAM :  
B. CLYDE, GARY A. PETERSON, : Petition for Allowance of Appeal from the  
WILLIAM G. ALLENBAUGH, AND NANCY : Order of the Commonwealth Court  
L. ALLENBAUGH, :  
Petitioners :  
v. :  
SANDY TOWNSHIP ZONING HEARING :  
BOARD AND SANDY TOWNSHIP :  
BOARD OF SUPERVISORS AND :  
DEVELOPAC, INC., :  
Respondents :  
:

ORDER

**PER CURIAM:**

AND NOW, this 16<sup>th</sup> day of October, 2008, the Petition for Allowance of Appeal is  
hereby DENIED.

A True Copy Patricia Nicola  
As of: October 16, 2008  
Attest: *Patricia Nicola*  
Chief Clerk  
Supreme Court of Pennsylvania

FILED  
m 14:00:01  
NOV 13 2008

*S*  
William A. Shaw  
Prothonotary/Clerk of Courts

MTC



## Supreme Court of Pennsylvania

Western District

November 3, 2008

John A. Vaskov, Esq.  
Deputy Prothonotary  
Patricia A. Nicola  
Chief Clerk

801 City-County Building  
Pittsburgh, PA 15219  
412-565-2816  
[www.aopc.org](http://www.aopc.org)

Michael Kimmel, Esq.  
Chief Clerk of Commonwealth Court  
Irvis Office Building, Room 624  
Sixth Floor  
Harrisburg, PA 17120

RE: 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, Petitioners

v.

Sandy Township Zoning Hearing Board and Sandy Township Board  
of Supervisors and Developac, Inc., Respondents  
Commonwealth Docket Number - 1162 CD 2006

Trial Court/Agency Dkt. Number: No. 06-187-CD

No. 176 WAL 2008

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: March 29, 2008

Disposition: Order Denying Petition for Allowance of Appeal

Date: October 16, 2008

Reargument/Reconsideration Disposition:

Reargument/Reconsideration

Disposition Date:

/kao

RECEIVED  
NOV 10 2008  
CLERK OF COURT  
SUPREME COURT OF PENNSYLVANIA  
PA

## In the Commonwealth Court of 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

v.

Sandy Township Zoning Hearing  
Board and Sandy Township Board  
of Supervisors and Developac, Inc.

No.: 1162 CD 2006

FILED

NOV 13 2008

5  
William A. Shaw  
Prothonotary/Clerk of Courts

ORDER

NOW, February 28, 2008, having considered appellants' application for reargument, and the answers filed by Sandy Township Zoning Hearing Board, Developac, Inc., and Sandy Township Board of Supervisors, the application is denied.

BY THE COURT:

Bonnie B. Leadbetter  
Bonnie Brigance Leadbetter,  
President Judge

Certified from the Record

FEB 28 2008

and Order 

## IN THE COMMONWEALTH COURT OF 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 v. Sandy Township Zoning Hearing Board and Sandy Township Board of Supervisors and Developac, Inc.

FILED  
mju:0062  
NOV 13 2008  
S William A. Shaw  
Prothonotary/Clerk of Courts  
60

BEFORE: HONORABLE DORIS A. SMITH-RIBNER, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE KELLEY

FILED: January 7, 2008

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 (collectively, Citizens) appeal from an order of the Court of Common Pleas of Clearfield County (Trial Court) which dismissed Citizens' appeal from and approved an order of the Sandy Township Zoning Hearing Board (ZHB) that denied a challenge to the validity of a Sandy

Township ordinance rezoning a parcel of land from Industrial to Commercial-Highway. We affirm.

Appellee Developac is the record owner of an Industrial Park situated in Sandy Township, Clearfield County, Pennsylvania. On February 7, 2005, Developac presented Appellee Sandy Township Board of Supervisors (Supervisors) with a request to rezone a 12.47 acre parcel of its existing industrial park (the Property) from Industrial to Commercial-Highway, as a condition of Developac's negotiation of a contingent sale agreement with Wal-Mart. Wal-Mart sought to obtain the Property, if rezoned, to construct a Super Wal-Mart. The Property adjoins an existing Wal-Mart store that sits in a Commercial-Highway zoning district.

Following public hearings to consider the rezoning request, accept public comment thereon, and examine the Township's Comprehensive Plan, the Supervisors adopted Ordinance 04-2005<sup>1</sup> (the Ordinance), on May 16, 2005, rezoning the Property as requested. The Ordinance became effective on May 21, 2005.

On June 20, 2005, Citizens filed with the ZHB a challenge to the validity of the Ordinance, asserting that it constituted illegal spot zoning. Hearings before the ZHB were thereafter held, at which Citizens, Developac, and the Township were represented by counsel, and offered evidence and argument. On

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<sup>1</sup> See Reproduced Record (R.R.) at 704a-709a.

January 5, 2006, the ZHB issued a decision setting forth factual findings and legal conclusions, and an order dismissing Citizens' challenge.

In brief summation, the ZHB concluded that the Citizens' challenge had been timely filed within thirty days of the Ordinance's effective date, as opposed to the Ordinance's date of enactment. In regards to the substantive validity challenge, the ZHB noted that the case was a close one with significant factors weighing for both sides. The ZHB concluded, *inter alia*, that the rezoning was not a part of the township's Comprehensive Plan, and was restricted solely and exclusively to the Property itself. The ZHB further concluded that the Property had been singled out for different treatment, in relation to the surrounding land, and then turned to the question of whether or not that different zoning treatment was without reasonable justification. On that issue, the ZHB ultimately stated that "[t]his Board cannot conclude that this treatment was unjustifiable or unreasonable and the evidence presented did not sustain [Citizens'] burden that rezoning bore no relation to the public health, safety or welfare." ZHB Opinion at 14-17. Under that reasoning, the ZHB denied Citizens' challenge to the Ordinance.

Citizens thereafter timely appealed the ZHB's order to the Trial Court, which considered the matter without receiving any additional evidence. By order<sup>2</sup> dated May 18, 2006, the Trial Court concluded that the ZHB's findings and conclusions were supported by substantial evidence, and that the ZHB had not committed any errors of law or abused its discretion. The Trial Court

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<sup>2</sup> The Trial Court did not file an opinion in support of its order.

concomitantly dismissed Citizens' appeal, and Citizens now appeal the Trial Court's order hereto.

In an appeal of a zoning matter, where the trial court has not taken any additional evidence, this Court's scope of review is limited to a determination of whether the zoning hearing board committed an error of law or abused its discretion. Hill District Project Area Committee, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh, 638 A.2d 278 (Pa. Cmwlth.), petition for allowance of appeal denied, 538 Pa. 629, 646 A.2d 1182 (1994). An abuse of discretion will only be found where the zoning board's findings are not supported by substantial evidence. Id. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Teasers, Inc. v. Zoning Board of Adjustment of the City of Philadelphia, 682 A.2d 856 (Pa. Cmwlth. 1996).

It has been well established in our courts that:

[An] ordinance cannot create an 'island' of more or less restricted use within a district zoned for a different use or uses, where there are no differentiating relevant factors between the 'island' and the district . . . Thus, singling out of one lot or a small area for different treatment from that accorded to similar surrounding land indistinguishable from it in character, for the economic benefit of the owner of that lot or his economic detriment, is invalid 'spot' zoning.

Schubach v. Silver, 461 Pa. 366, 382, 336 A.2d 328, 336 (1975) (citations omitted). Additionally, our case law has established the following presumption and burdens in cases such as the matter *sub judice*:

A reviewing court when faced with a challenge to a zoning measure must be mindful of certain basic principles. First, a court must presume the zoning ordinance is valid and constitutional and the burden of proving otherwise is on the challenging party. See Cleaver v. Board of Adjustment [of Tredyffrin Township], 414 Pa. 367, 200 A.2d 408 (1964). . . Moreover, before a court may declare a zoning ordinance unconstitutional, the challenging party must clearly establish the provisions are arbitrary and unreasonable and have no relation to the public health, safety, morals, and general welfare and if the validity is debatable the legislative judgment is allowed to control.

Id., 461 Pa. at 381, 336 A.2d at 335 (citations omitted).

In the case before us, the parties do not dispute that the Property was treated differently from certain similar surrounding land. Citizens, however, do argue that the Trial Court erred in failing to conclude that the zoning treatment at issue was unjustifiable or unreasonable. Developac, the Supervisors, and the ZHB argue that the Trial Court correctly concluded that Citizens failed to satisfy its burden to clearly establish that the rezoning bore no relation to the public health, safety or welfare.

We first note that Citizens place considerable emphasis, in its argument hereto, on the shape of the rezoning at issue. Primarily, Citizens cite to Schubach v. Zoning Board of Adjustment (Philadelphia), 440 Pa. 249, 270 A.2d 397 (1970), for the proposition that the borders of a rezoned parcel cannot solely be relied upon as a justification for rezoning, particularly when those borders constitute a 'peninsula', as opposed to an 'island', or when 'down zoning' or 'creep zoning' is permitted whereby neighboring borders are extended into a

dissimilar zoning area. However, Citizens misread the applicability of those aspects of the holding in Shubach v. Philadelphia to the instant matter. Herein, the record is clear that the ZHB did not rely solely, or even primarily, on the shape of the rezoning in its decision; as the following discussion of the evidence of record makes clear, the rezoning decision took into consideration far more evidence regarding the impact of the rezoning than simply the shape of the Property at issue. As such, we find Citizens' arguments on this narrow facet of this case to be unavailing.

We agree with the Trial Court, and with the ZHB, that Citizens' evidence, when taken individually and collectively, does not satisfy its burden in this matter. In its appeal hereto, Citizens place their emphasis on their own evidence in isolation from the evidence offered in opposition thereto, and without acknowledgment of our courts' precedents.

Citizens emphasize that the ZHB acknowledged that the rezoning at issue herein was solely at Wal-Mart's request, and was solely for Wal-Mart's benefit. We have held, however, that where a rezoning of one particular tract of land has been made by a municipality, at the sole request of a single land owner, "[t]his fact does not in and of itself invalidate the rezoning." Schubach v. Silver, 461 Pa. at 384, 336 A.2d at 337. Further, the record shows that benefits inure to parties other than Wal-Mart as a result of the rezoning.

In its review of the evidence and argument presented, the Supervisors considered: the fact that the proposed rezoned use would generate considerable land fill material that would be used to improve other industrial parcels in the Park,

thus making them more salable to an industrial user (R.R. at 536a-537a); that the proposed rezoned use would create at least another 200 jobs in the Township (R.R. at 522a-523a, 527a); the conversion of over 12 acres of currently untaxable vacant property into a taxable property (R.R. at 308a-318a, 513a-515a, 528a); the opportunity to improve a dangerous traffic condition in the existing Wal-Mart's layout (R.R. at 508a.), and; most generally stated, that the rezoning would fit within the character of the Route 0255 Commercial Corridor, and was in the best interests of the citizens of the Township (R.R. at 527a-534a).

Citizens next argue that the rezoning was unjustifiable due to the Property's location within a 200 acre Keystone Opportunity Expansion Zone (KOEZ), a designation assigned thereto by the General Assembly<sup>3</sup> in order to make the Industrial Park attractive to manufacturing businesses by exempting those businesses from paying certain sales, property and corporate income taxes through the year 2010. However, again Citizens ignore the contrary evidence of record in addressing the justifiability of the rezoning on this basis. The record shows that the Supervisors considered the KOEZ designation, and the monies granted in part in connection therewith, prior to making the rezoning decision. R.R. at 513a. Further, the Supervisors concluded the KOEZ status of the Property would not preclude the rezoning at issue, and that Wal-Mart had pledged that it would not

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<sup>3</sup> See the Keystone Opportunity Zone, Keystone Opportunity Expansion Zone and Keystone Opportunity Improvement Zone Act, Act of October 6, 1998, P.L. 705, as amended, 73 P.S. §§ 820.101 -820.1309.

seek tax-exempt status in its move to the rezoned Property. R.R. at 308a-318a, 513a-515a, 528a. Citizens' point on this issue is without merit.

Citizens next argue that the ZHB made no findings that the Property was no longer suited for industrial development, and, generally, that nothing about the Property merits the rezoning from its prior zoning as industrial. Again, the voluminous record in the matter belies Citizens' arguments on these points.

In conjunction with the ZHB's findings, the records shows that the Supervisors engaged in a comprehensive analysis of the Property, specifically in relation to the points raised by Citizens on this issue. In brief summation, and in addition to the evidence cited above, the record includes evidence regarding Citizens' first general assertion on this issue that: the Supervisors considered evidence regarding the unusual characteristics of the Property, including the prohibitive cost to earthwork that would be necessary for industrial use and the concomitant conclusion that no prospective buyer would therefore buy this land for industrial use (R.R. at 536a-538a, 616a, 634a); the distinct lack of demand for industrially-zoned land in the Industrial Park, and the unlikelihood that the Property would be used for industrial purposes (R.R. at 538a); and the Industrial Park's lack of any development or use applications for the Property in particular, or the Park in general, in recent years (R.R. at 518a). Further, the record shows that: the Property is located between an extensive two-mile retail district along State Route 0255, and an industrial park, with extensive retail located in the immediate vicinity (R.R. at 1082a.), and approximately 50% of the Property is adjacent to commercially zoned land, and 50% abuts industrially zoned land (R.R.

at 197a-198a, 263a-269a). Again, Citizens' narrow focus upon their limited evidence presented below, and their failure to acknowledge the opposing evidence of record notwithstanding Citizens' bare assertions of the lack thereof, belie their arguments on this issue.

Citizens next argue that the rezoning at issue contradicts the 1981 Comprehensive Plan adopted, and subsequently reaffirmed, by the Township. That Plan, Citizens assert, designates the area including the Property exclusively for industrial development, and no efforts or evidence of any revised plan stating other goals for Township zoning priorities and actions exists or has been undertaken.

Our Supreme Court has held that municipalities' zoning and land development plans should not be considered rigid and static in zoning matters where subsequent decisions may not completely harmonize with an existing plan:

A comprehensive plan does not contemplate or require a 'master-plan' which *rigidly* provides for or attempts to answer in minute detail every possible question regarding land utilization or restriction. Neither a zoning ordinance nor a comprehensive plan is absolutely rigid, static and unchangeable; either or both may be amended, supplemented, changed, modified or repealed-in the sound discretion of the legislative body and in accordance with statutory and other pertinent legal and Constitutional requirements-as conditions or changing circumstances may require . . .

\* \* \*

A Comprehensive Plan, we repeat, need not and indeed should not be required to fix the zoning map of the Township in a rigid and immutable mold.

Cleaver, 414 Pa. at 375-777, 200 A.2d at 413-414 (citations omitted).

Additionally, the record shows that the Supervisors did not simply ignore the 1981 Comprehensive Plan, but rather examined that Plan in relation to the Township's changing and more contemporary needs. The record contains evidence and testimony that the rezoning is consistent with the Township's deliberate and considered decision to rezone parcels in this particular area to match the needs of a changing economy, and to promote commerce along State Route 0255. R.R. at 527a-530a. Further, there is evidence of record that since the 1981 Plan's adoption, there have been significant population changes, and growth and development, of the commercial area at issue. R.R. at 297a. Finally on this issue, the Plan's Future Land Use map itself, as read by the Township Manager, arguably anticipates that the neighborhood where the Property is situated could be used for commercial purposes in the future. R.R. at 298a - 300a.

Citizens' arguments as articulated in the foregoing analysis essentially amount to a reliance upon selected, preferred evidence of record without recognition or address of the opposing and sometimes contradictory evidence of record. In regards to the value of that selected evidence, we agree with the ZHB's acknowledgment that significant factors weighed on both sides of this issue.

However, we emphasize that in our appellate capacity, we must presume that a zoning ordinance is valid and constitutional. Schubach v. Silver. Further, as noted, the burden of proving otherwise is solely and squarely on the challenging party. Id. Citizens, as the challenging parties to the Ordinance herein, have not clearly established that the rezoning is arbitrary and unreasonable and has no relation to the public health, safety, morals, and general welfare. We agree with

the ZHB's assertion that Citizens have failed to demonstrate any detriment from the rezoning, other than Citizens' disagreement with the Supervisors' policy judgment regarding the evolving zoning needs of the Township. We emphasize that if the validity of the rezoning at issue is debatable, the legislative judgment is allowed to control. *Id.* As such, the Trial Court did not err as a matter of law.

Finally, Citizens argue, in their second stated issue, that the ZHB deprived Citizens of a fundamentally fair proceeding because its findings capriciously disregarded Citizens' evidence. We disagree.

A capricious disregard of evidence is a deliberate and baseless disregard of apparently reliable evidence, and occurs only when a fact-finder deliberately ignores such relevant, competent evidence. *Taliaferro v. Darby Township Zoning Hearing Board*, 873 A.2d 807 (Pa. Cmwlth.), *petition for allowance of appeal denied*, 585 Pa. 692, 887 A.2d 1243 (2005).

We find no such deliberate disregard of evidence in the instant matter. The ZHB's Opinion as a whole clearly addresses Citizens' arguments, and in its summations thereof, the evidence supporting those arguments. As opposed to any disregard thereof, the depth of the ZHB's address of both parties' general theories and evidence demonstrates that it did not deliberately ignore any evidence, but rather carefully weighed the offers presented thereto, finding each with some degree of merit. As we have written:

The express consideration and rejection of this evidence, by its definition, is not capricious disregard. . . Further, although the Board did not specifically mention the testimony of Objectors' lay witnesses, it was not required to do so. As noted by the trial court, "[w]hile the Board's

[f]indings and [c]onclusions do not reference every item of testimony submitted during the numerous hearings before the Board ... there is no legal requirement that such be done. Instead the Board's ... opinion reference[s] the facts it deemed essential to making its determination of the application."

Id., 873 A.2d at 815 (citation omitted).

As in Taliaferro, our thorough review of the record in the instant matter reveals that the testimony and evidence of Citizens were indeed considered by the ZHB, that said consideration is reflected to the extent required within its opinion, and that therefore no capricious disregard of any relevant, competent evidence occurred herein. Contrary to Citizens' assertions, the ZHB was not required to make findings regarding every evidentiary matter addressed by Citizens in the prior proceedings.

Accordingly, we affirm.



JAMES R. KELLEY, Senior Judge

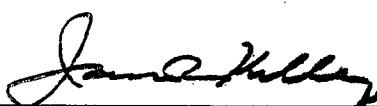
Judge Smith-Ribner dissents.

IN THE COMMONWEALTH COURT OF 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	:	
	:	
v.	:	No. 1162 C.D. 2006
	:	
Sandy Township Zoning Hearing	:	
Board and Sandy Township Board	:	
of Supervisors and Developac, Inc.	:	

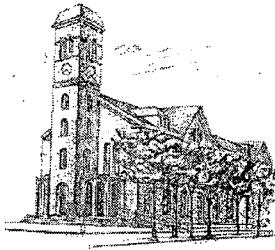
**O R D E R**

AND NOW, this 7th day of January, 2008, the order of the Court of Common Pleas of Clearfield County, dated May 18, 2006, at No. 06-187-CD, is affirmed.



---

JAMES R. KELLEY, Senior Judge



## Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw  
Prothonotary/Clerk of Courts

David S. Ammerman  
Solicitor

Jacki Kendrick  
Deputy Prothonotary

Bonnie Hudson  
Administrative Assistant

Fredric J. Ammerman, P.J.  
Court of Common Pleas  
230 E. Market Street  
Clearfield, PA 16830

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23 North Second Street  
Clearfield, PA 16830

Dusty Elias Kirk, Esq.  
500 Grant St., 50<sup>th</sup> Floor  
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PO Box 505  
1 North Franklin Street  
DuBois, PA 15801

Gregory M. Kruk, Esq.  
690 Main Street  
Brockway, PA 15824

Carl A. Belin, Jr., Esq.  
15 N. Front Street  
Clearfield, PA 16830

Sandy Citizens Arguing for Responsible Economic Development (S.C.A.R.E.D.),  
William B. Clyde, Gary A. Peterson, William C. Allenbaugh and Nancy L. Allenbaugh  
VS.  
Sandy Township Zoning Hearing Board and Sandy Township Board of Supervisors  
AND  
Developac, Intervenor

Court No. 06-187-CD; Commonwealth Court No. 1162 CD 2006

Dear Counsel:

Please be advised that a supplement to the above referenced record, including the transcript of Appellants' Petition to Stay, was forwarded to the Commonwealth Court of Pennsylvania on July 28, 2006. Please see attached summary sheet for the details of the supplement.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

Date: 07/28/2006

Time: 09:14 AM

Page 1 of 1

**Clearfield County Court of Common Pleas**

ROA Report

Case: 2006-00187-CD

User: BHUDSON

Current Judge: Fredric Joseph Ammerman

**Civil Other**

Date	Selected Items	Judge
07/11/2006	Cover letter (copy) for transferring case to Commonwealth Court, July 11, 2006. Certified Mail Receipts, appeal mailed to Commonwealth Court (three parts).	Fredric Joseph Ammerman
07/14/2006	Domestic Return Receipts (3), received by Commonwealth Court of PA on July 12, 2006.	Fredric Joseph Ammerman
07/27/2006	Notice, Re: If no objections are made to the text of the transcript within five days of notice, transcript will become part of the record upon filing in the Prothonotary's Office, filed by s/Cathy Warrick Provost, RMR, Official Court Reporter No CC Transcript of Proceedings, Appellants' Petition to Stay, held before the Honorable Fredric J. Ammerman, P.J., February 16, 2006, filed.	Fredric Joseph Ammerman

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

**No. 06-187-CD**

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

**Sandy Township Zoning Hearing Board and Sandy Township Board of Supervisors**

**Developac, Intervenor**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
	07/11/06	**APPEAL MAILED TO COMMONWEALTH COURT**	
27	07/11/06	Cover letter (copy) for transferring case to Commonwealth Court July 11, 2006	01
28	07/11/06	Certified Mail Receipts, appeal mailed to Commonwealth Court (three parts)	01
29	07/14/06	Domestic Return Receipts (three) received by Commonwealth Court on July 12, 2006	01
30	07/27/06	Notice, Re: objections to text of transcript to be made within five days	01
31	07/27/06	Transcript of Proceedings, Appellants' Petition to Stay, held before Honorable Fredric J. Ammerman, P.J., February 16, 2006	Separate Cover

FILED  
JULY 11 2006  
William A. Shaw  
Prothonotary/Clerk of Courts

cc: y

Fredric J. Ammerman, P.J.  
Court of Common Pleas  
230 E. Market Street  
Clearfield, PA 16830

Kim C. Kesner, Esq.  
23 North Second Street  
Clearfield, PA 16830

Dusty Elias Kirk, Esq.  
500 Grant St., 50<sup>th</sup> Floor  
Pittsburgh, PA 15219

Toni M. Cherry, Esq.  
PO Box 505  
1 North Franklin Street  
DuBois, PA 15801

Gregory M. Kruk, Esq.  
690 Main Street  
Brockway, PA 15824

Carl A. Belin, Jr., Esq.  
15 N. Front Street  
Clearfield, PA 16830

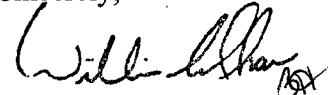
Sandy Citizens Arguing for Responsible Economic Development (S.C.A.R.E.D.),  
William B. Clyde, Gary A. Peterson, William C. Allenbaugh and Nancy L. Allenbaugh  
VS.  
Sandy Township Zoning Hearing Board and Sandy Township Board of Supervisors  
AND  
Developac, Intervenor

Court No. 06-187-CD; Commonwealth Court No. 1162 CD 2006

Dear Counsel:

Please be advised that the above referenced record was forwarded to the  
Commonwealth Court of Pennsylvania on July 11, 2006.

Sincerely,



William A. Shaw  
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

**No. 06-187-CD**

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

**Sandy Township Zoning Hearing Board and Sandy Township Board of Supervisors**

**Developac, Intervenor**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
01	02/03/06	Notice of Appeal from Decision of the Sandy Township Zoning Hearing Board; Writ of Certiorari	32
02	02/06/06	Certified mail receipt sent to Sandy Township Zoning Hearing Board	01
03	02/07/06	Domestic Return Receipt	01
04	02/08/06	Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal	09
05	02/08/06	Order, Re: hearing scheduled on Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal	02
06	02/08/06	Certificate of Service	02
07	02/09/06	Praeclipe for Entry of Appearance	01
08	02/14/06	Certificate of Service, Order scheduling a hearing	02
09	02/15/06	Motion for Expedited Disposition of Appeal	06
10	02/15/06	Notice of Intervention Pursuant to 53 Pa. Cons. Stat. 11004-A	04
11	02/15/06	Response to Appellants' Notice of Appeal of Zoning Hearing Board Decision	15
12	02/15/06	Response to Appellants' Petition to Stay All Use or Development of Parcel	10
13	02/15/06	Response of Sandy Township Board of Supervisors to Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal	05
14	02/16/06	Praeclipe for Entry of Appearance, Re: Developac, Inc.	03
15	02/16/06	Certificate of Service	04
16a	02/16/06	Praeclipe to file attached Certificate of Record of Joseph T. Bowser, Chairman, with accompanying record and Certificate of Record	03
16b	02/16/06	Record, four parts: Part One: Original Transcript of First Hearing on July 21, 2005, with Exhibits Part Two: Original Transcript of Second Hearing on August 9, 2005, with Exhibits Part Three: Original Transcript of Final Hearing on September 27, 2005, with Exhibits Part Four: Written Decision with Findings of Fact and Conclusions of Law dated January 5, 2006	Separate Cover
17	02/17/06	Order, Re: Motion for Stay and Intervenor's Motion for Expedited Disposition of Appeal	02
18	02/27/06	Order, Re: upon consideration of Appellants' Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal and Intervenor's Response to Appellants' Petition	02
19	04/20/06	Certificate of Service	02
20	05/19/06	Order, Re: decision of the Sandy Township Zoning Hearing Board be approved; appeal filed on behalf of Appellants is Dismissed	02
21	06/16/06	Notice of Appeal to Commonwealth Court	07
22	06/21/06	Order, Re: concise statement to be filed	01
23	06/22/06	Notice of Docketing Appeal from Commonwealth Court, Appeal Number 1162 CD 2006	02
24a	06/27/06	Praeclipe, Re: filing Certification of Township Secretary, Sandy Township Ordinance 1-2006, Sandy Township Ordinance 2-2006, and Sandy Township Zoning Ordinance—Chapter 27 of General Code Publishers General Code of Sandy Township Ordinances	08
24b	06/27/06	Filing: Zoning, Chapter 27, Township of Sandy: Certification of Township Secretary, Sandy Township Ordinance 1-2006, Sandy Township Ordinance 2-2006, and Sandy Township Zoning Ordinance—Chapter 27 of General Code Publishers General Code of Sandy Township Ordinances	Separate Cover
25	07/03/06	Statement of Matters Complained of	04

Date: 07/10/2006

Time: 04:53 PM

Page 1 of 3

**Clearfield County Court of Common Pleas**

**ROA Report**

Case: 2006-00187-CD

User: BHUDSON

Current Judge: Fredric Joseph Ammerman

**Civil Other**

Date	Judge	
02/03/2006	New Case Filed.  Filing: Notice of Appeal From Decision of the Sandy Township Zoning Hearing Board Paid by: Cherry, Toni M. (attorney for Sandy Citizens Arguing For Responsible Economic De) Receipt number: 1912351 Dated: 02/03/2006 Amount: \$85.00 (Check) 12 CC Atty T. Cherry, 1 Writ & 1CC to Sandy Twp. Zoning Hearing Board 92/3/06	No Judge No Judge
02/06/2006	Certified Mail Receipt, sent to Sandy Township Zoning Hearing Board. 1 Writ & One CC Notice of Appeal mailed to Sandy Twp. Zoning Board 2/3/06	Fredric Joseph Ammerman
02/07/2006	Domestic Return Receipt # 7002 2030 0004 5014 7982, Writ of Certiorari and Certified Notice of Appeal.	Fredric Joseph Ammerman
02/08/2006	Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal, filed by Atty. Cherry.  Order, NOW, this 8th day of Feb., 2006, upon consideration of Appellants' Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal, a hearing is scheduled for the 16th day of Feb., 2006 in Courtroom No 1 of the Clearfield County Courthouse, at 9:00 a.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 9 CC Atty. Cherry, indicated she will serve.  Certificate of Service, on 7th day of Feb., 2006, served a copy of the Notice Fredric Joseph Ammerman of Appeal from Decision of the Sandy Township Zoning Hearing Board upon: Dusty Elias Kirk, Esquire; Jeffrey A. Mills, Esquire; and Gregory Kruk, Esquire. Filed by s/ Toni M. Cherry, Esquire. 1CC to Atty	No Judge Fredric Joseph Ammerman
02/09/2006	Praecipe For Entry of Appearance, filed by Atty. Kesner on behalf of Sandy Township Zoning Hearing Board. no cert. copies copy to C/A	Fredric Joseph Ammerman
02/14/2006	Certificate of Service, filed. That on this 8th day of February, 2006, a certified copy of the Order issued by the Court of Commons Pleas of Clearfield County, Pennsylvania, scheduling a hearing on Appellants' Petition to Stay All Use of Development of the 12.47 Acre Parcel Pending Appeal was served upon all landowners and named parties in this case and the same to the attorney for each of them to Dusty Elias Kirk Esq., Jeffrey A. Mills Esq., Gregory Kruk Esq., Kim C. Kesner Esq., filed by s/ Toni M. Cherry Esq. No CC.	Fredric Joseph Ammerman
02/15/2006	Motion For Expedited Disposition of Appeal, filed by s/ Dusty Elias Kirk, Esquire. 1CC Atty. Kirk  Notice of Intervention Pursuant to 53 Pa. Cons. Stat. 11004-A, filed by s/ Dusty Elias Kirk. No CC  Response To Appellants' Notice of Appeal of Zoning Hearing Board Decision, filed by s/ Dusty Elias Kirk, esquire. No CC  Response To Appellants' Petition to Stay All Use or Development of Parcel, filed by s/ Dusty Elias Kirk, Esquire. No CC  Response of Sandy Township Board of Supervisors to Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal, filed by s/ Gregory M. Kruk, Esquire. 3CC Atty. Kruk	Fredric Joseph Ammerman Fredric Joseph Ammerman Fredric Joseph Ammerman Fredric Joseph Ammerman Fredric Joseph Ammerman
02/16/2006	Praecipe For Entry of Appearance, filed. Kindly enter the appearance of Dusty Elias Kirk Esq., and Pepper Hamilton LLP, and Carl A. Belin, Jr. and Belin and Kubista on behalf of Developac, Inc., filed by s/ Carl A. Belin Jr. Esq. and s/ Dusty Elias Kirk Esq. 1CC Atty Kirk.	Fredric Joseph Ammerman

Date: 07/10/2006

Time: 04:53 PM

Page 2 of 3

**Clearfield County Court of Common Pleas**

ROA Report

Case: 2006-00187-CD

User: BHUDSON

Current Judge: Fredric Joseph Ammerman

Civil Other

Date	Judge
02/16/2006	<p>Certificate of Service of Documents filed February 14, 2006, filed. Notice of Fredric Joseph Ammerman Intervention Pursuant to 53 PA C.S. 11004-A; Response to Appellant's Notice of Appeal of Zoning Hearing Board Decision; Response to Appellant's Petition to Stay All Use or Development of Parcel; Motion for Expedited Disposition of Appeal to Toni M. Cherry Esq., Gregory Kruk Esq., Kim C. Kesner Esq., filed by s/ Dusty Elias Kirk Esq. 1CC Atty Kirk.</p> <p>Praecipe to file attached Certificate of Record of Joseph T. Bowser, Chairman, with the accompanying record in accordance with your Writ of Certiorari issued February 3, 2006, filed by s/Kim C. Kesner, Esq. One CC (Praecipe only)</p> <p>Certificate of Record, filed s/Joseph T. Bowser, Chairman, Sandy Township Zoning Hearing Board. Four parts: 1. Original Transcript of First Hearing on July 21, 2005 with Exhibits; 2. Original Transcript of Second Hearing on August 9, 2005 with Exhibits; 3. Original Transcript of Final Hearing on September 27, 2005 with Exhibits; 4. Written Decision with Findings of Fact and Conclusions of Law dated January 5, 2006.</p>
02/17/2006	<p>Order, filed Cert. to Atty's T. Cherry, K. Kesner, G. Kruk, D. Kirk and C. Belin</p> <p>NOW, this 16th day of February, 2006, RE: Motion for Stay and Intervenor's Motion for Expedited Disposition of Appeal. See Original Order.</p>
02/27/2006	<p>Order NOW, this 24th day of February 2006, upon consideration of Appellants' Petition to Stay All Use or Development of the 12.47 Arce Parcel Pending Appeal, and Intervenor's Response to Appellants' Petition to Stay All Use or Development of Parcel, it is hereby ORDERED that a limited stay be and is hereby entered. Pursuant to this limited stay, no construction of improvements shall commence until this Court enters a final order in this case. This Limited stay shall be preclude any authorized person or entity from entering the property, seeking and obtaining governmental approval and permits relating to future development of the property at issued in the appeal and conducting soil, water and other such tests. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: T. Cherry, Kesner, Kruk, Kirk and Belin.</p>
04/20/2006	<p>Certificate of Service, filed. That on this, the 19th day of April 2006 a true and correct copy of Sandy Township's Brief in the above-captioned matter was sent to Toni M. Cherry Esq. and Dusty Elias Kirk Esq., filed by Gregory M. Kruk Esq. NO CC.</p>
05/19/2006	<p>Order, NOW, this 18th day of may, 2006, this Court notes the following: (see original). It is the Order of this Court that the decision of the Sandy Township Zoning Hearing Board be approved, and the appeal filed on behalf of the Appellants is Dismissed. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: T. Cherry, Kesner, Kruk, D. Kirk, Belin</p>
06/16/2006	<p>Filing: Notice of Appeal to Commonwealth Court Paid by: Cherry, Toni M. Fredric Joseph Ammerman (attorney for Allenbaugh, Nancy L.) Receipt number: 1914330 Dated: 06/16/2006 Amount: \$45.00 (Check) 8 CC Attorney Cherry</p>
06/21/2006	<p>Order, NOW, this 19th day of June, 2006, the Court having been notified of Appeal to the Commonwealth Court of Pennsylvania, it is the Order of this Court that William B. Clyde, Gary A Peterson, William C. Allenbaugh and Nancy L. Allenbaugh, Appellants, file a concise statement of the matters complained of on said Appeal no later than fourteen days herefrom. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: T. Cherry, Kesner, Kruk, D. Kirk, Belin</p>

Date: 07/10/2006

Time: 04:53 PM

Page 3 of 3

**Clearfield County Court of Common Pleas**

ROA Report

Case: 2006-00187-CD

User: BHUDSON

Current Judge: Fredric Joseph Ammerman

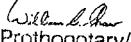
Civil Other

Date	Judge
06/22/2006	From Commonwealth Court of Pennsylvania, Notice of Docketing Appeal, Fredric Joseph Ammerman Notice to Counsel, filed. Commonwealth Court Number: 1162 CD 2006
06/27/2006	Praecipe, Re: filing of Certification of Township Secretary, Sandy Township Fredric Joseph Ammerman Ordinance 1-2006, Sandy Township Ordinance 2-2006, and Sandy Township Zoning Ordinance--Chapter 27 of General Code Publishers General Code of Sandy Township Ordinances, filed by s/ Gregory M. Kruk, Esquire. Part 1 of 2. No CC  Filing, Re: Zoning, Chapter 27, Township of Sandy, filed. Part 2 of 2. Fredric Joseph Ammerman Certification of Township Secretary, Sandy Township Ordinance 1-2006, Sandy Township Ordinance 2-2006, and Sandy Township Zoning Ordinance--Chapter 27 of General Code Publishers General Code of Sandy Township Ordinances
07/03/2006	Statement of Matters Complained of, filed by s/Toni M. Cherry, Esq. One Fredric Joseph Ammerman CC Attorney T. Cherry

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

JUL 11 2006

Attest.

  
Prothonotary/  
Clerk of Courts

Date: 07/28/2006

Time: 09:02 AM

Page 1 of 1

**Clearfield County Court of Common Pleas**

ROA Report

Case: 2006-00187-CD

User: BHUDSON

Current Judge: Fredric Joseph Ammerman

**Civil Other**

Date	Selected Items	Judge
07/11/2006	21 Cover letter (copy) for transferring case to Commonwealth Court, July 11, 2006. 26 Certified Mail Receipts, appeal mailed to Commonwealth Court (three parts).	\ Fredric Joseph Ammerman
07/14/2006	28 Domestic Return Receipts (3), received by Commonwealth Court of PA on July 12, 2006.	\ Fredric Joseph Ammerman
07/27/2006	30 Notice, Re: If no objections are made to the text of the transcript within five days of notice, transcript will become part of the record upon filing in the Prothonotary's Office, filed by s/Cathy Warrick Provost, RMR, Official Court Reporter No CC 31 Transcript of Proceedings, Appellants' Petition to Stay, held before the Honorable Fredric J. Ammerman, P.J., February 16, 2006, filed.	\ Fredric Joseph Ammerman SJC

Date: 06/29/2006

Time: 09:46 AM

Page 1 of 3

**Clearfield County Court of Common Pleas**

ROA Report

User: BHUDSON

Case: 2006-00187-CD

Current Judge: Fredric Joseph Ammerman

**Civil Other**

Date	Judge
02/03/2006	New Case Filed. No Judge
①	Filing: Notice of Appeal From Decision of the Sandy Township Zoning Hearing Board Paid by: Cherry, Toni M. (attorney for Sandy Citizens Arguing For Responsible Economic De) Receipt number: 1912351 Dated: 3/2 02/03/2006 Amount: \$85.00 (Check) 12 CC Atty T. Cherry, 1 Writ & 1CC to Sandy Twp. Zoning Hearing Board 92/3/06
02/06/2006	② Certified Mail Receipt, sent to Sandy Township Zoning Hearing Board. 1 1 Fredric Joseph Ammerman Writ & One CC Notice of Appeal mailed to Sandy Twp. Zoning Board 2/3/06
02/07/2006	③ Domestic Return Receipt # 7002 2030 0004 5014 7982, Writ of Certiorari Fredric Joseph Ammerman and Certified Notice of Appeal. 1
02/08/2006	④ Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Q No Judge Appeal, filed by Atty. Cherry. Order, NOW, this 8th day of Feb., 2006, upon consideration of Appellants' Fredric Joseph Ammerman Petition to Stay All Use or Development of the 12.47 Acre Parcel Pending Appeal, a hearing is scheduled for the 16th day of Feb., 2006 in Courtroom 2 No 1 of the Clearfield County Courthouse, at 9:00 a.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 9 CC Atty. Cherry, indicated she will serve. Certificate of Service, on 7th day of Feb., 2006, served a copy of the Notice Fredric Joseph Ammerman of Appeal from Decision of the Sandy Township Zoning Hearing Board upon: Dusty Elias Kirk, Esquire; Jeffrey A. Mills, Esquire; and Gregory Kruk, Esquire. Filed by s/ Toni M. Cherry, Esquire. 1CC to Atty
02/09/2006	⑤ Praeclipe For Entry of Appearance, filed by Atty. Kesner on behalf of Sandy Fredric Joseph Ammerman Township Zoning Hearing Board. no cert. copies copy to C/A
02/14/2006	⑥ Certificate of Service, filed. That on this 8th day of February, 2006, a Fredric Joseph Ammerman certified copy of the Order issued by the Court of Commons Pleas of Clearfield County, Pennsylvania, scheduling a hearing on Appellants' 2 Petition to Stay All Use of Development of the 12.47 Acre Parcel Pening Appeal was served upon all landowners and named parties in this case and the same to the attorney for each of them to Dusty Elias Kirk Esq., Jeffrey A. Mills Esq., Gregory Kruk Esq., Kim C. Kesner Esq., filed by s/ Toni M. Cherry Esq. No CC.
02/15/2006	⑦ Motion For Expedited Disposition of Appeal, filed by s/ Dusty Elias Kirk, 10 Fredric Joseph Ammerman Esquire. 1CC Atty. Kirk ⑧ Notice of Intervention Pursuant to 53 Pa. Cons. Stat. 11004-A, filed by s/ 4 Fredric Joseph Ammerman Dusty Elias Kirk. No CC ⑨ Response To Appellants' Notice of Appeal of Zoning Hearing Board 5 Fredric Joseph Ammerman Decision, filed by s/ Dusty Elias Kirk, esquire. No CC ⑩ Response To Appellants' Petition to Stay All Use or Development of Parcel, Fredric Joseph Ammerman filed by s/ Dusty Elias Kirk, Esquire. No CC 10 ⑪ Response of Sandy Township Board of Supervisors to Petition to Stay All Fredric Joseph Ammerman Use or Development of the 12.47 Acre Parcel Pending Appeal, filed by s/ 5 Gregory M. Kruk, Esquire. 3CC Atty. Kruk
02/16/2006	⑫ Praeclipe For Entry of Appearance, filed. Kindly enter the appearance of Fredric Joseph Ammerman Dusty Elias Kirk Esq., and Pepper Hamilton LLP, and Carl A. Belin, Jr. and Belin and Kubista on behalf of of Developac, Inc., filed by s/ Carl A. Belin Jr. Esq. and s/ Dusty Elias Kirk Esq. 1CC Atty Kirk. 3

## Civil Other

Date	Judge
02/16/2006	Certificate of Service of Documents filed February 14, 2006, filed. Notice of Fredric Joseph Ammerman Intervention Pursuant to 53 PA C.S. 11004-A; Response to Appellant's 15 Notice of Appeal of Zoning Hearing Board Decision; Response to Appellant's Petition to Stay All Use or Development of Parcel; Motion for Expedited Disposition of Appeal to Toni M. Cherry Esq., Gregory Kruk Esq., Kim C. Kesner Esq., filed by s/ Dusty Elias Kirk Esq. 1CC Atty Kirk. 4
	Praecipe to file attached Certificate of Record of Joseph T. Bowser, Fredric Joseph Ammerman Chairman, with the accompanying record in accordance with your Writ of Certiorari issued February 3, 2006, filed by s/Kim C. Kesner, Esq. One CC 3 (Praecipe only)
	<u>Certificate of Record, filed s/Joseph T. Bowser, Chairman, Sandy Township</u> <u>Zoning Hearing Board, Four parts: 1. Original Transcript of First Hearing on</u> 16b- record <u>July 21, 2005 with Exhibits; 2. Original Transcript of Second Hearing on</u> <u>August 9, 2005 with Exhibits; 3. Original Transcript of Final Hearing on</u> <u>September 27, 2005 with Exhibits; 4. Written Decision with Findings of Fact</u> <u>and Conclusions of Law dated January 5, 2006.</u> S/C
02/17/2006	Order, filed Cert. to Atty's T. Cherry, K. Kesner, G. Kruk, D. Kirk and C. Belin Fredric Joseph Ammerman
	17 NOW, this 16th day of February, 2006, RE: Motion for Stay and Intervenors Motion for Expedited Disposition of Appeal. See Original 2 Order.
02/27/2006	Order NOW, this 24th day of February 2006, upon consideration of Fredric Joseph Ammerman Appellants' Petition to Stay All Use of Development of the 12.47 Acre Parcel Pending Appeal, and Intervenor's Response to Appellants' Petition to Stay All Use of Development of Parcel, it is hereby ORDERED that a 18 limited stay be and is hereby entered. Pursuant to this limited stay, no construction of improvements shall commence until this Court enters a final 2 order in this case. This Limited stay shall be preclude any authorized person or entity from entering the property, seeking and obtaining governmental approval and permits relating to future development of the property at issued in the appeal and conducting soil, water and other such tests. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: T. Cherry, Kesner, Kruk, Kirk and Belin.
04/20/2006	Certificate of Service, filed. That on this, the 19th day of April 2006 a true Fredric Joseph Ammerman and correct copy of Sandy Township's Brief in the above-captioned matter 2 19 was sent to Toni M. Cherry Esq. and Dusty Elias Kirk Esq., filed by Gregory M. Kruk Esq. NO CC.
05/19/2006	Order, NOW, this 18th day of may, 2006, this Court notes the following: (see original). It is the Order of this Court that the decision of the Sandy Township Zoning Hearing Board be approved, and the appeal filed on behalf of the Appellants is Dismissed. By The Court, /s/ Fredric J. 2 Ammerman, Pres. Judge. 1CC Attys: T. Cherry, Kesner, Kruk, D. Kirk, Belin
06/16/2006	Filing: Notice of Appeal to Commonwealth Court Paid by: Cherry, Toni M. Fredric Joseph Ammerman 20 (attorney for Allenbaugh, Nancy L.) Receipt number: 1914330 Dated: 06/16/2006 Amount: \$45.00 (Check) 8 CC Attorney Cherry 7

Date: 06/29/2006

Time: 09:46 AM

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**Clearfield County Court of Common Pleas**

**ROA Report**

**Case: 2006-00187-CD**

User: BHUDSON

Current Judge: Fredric Joseph Ammerman

**Civil Other**

**Date**

**Judge**

06/21/2006 Order, NOW, this 19th day of June, 2006, the Court having been notified of Appeal to the Commonwealth Court of Pennsylvania, it is the Order of this

(22) Court that William B. Clyde, Gary A Peterson, William C. Allenbaugh and Nancy L. Allenbaugh, Appellants, file a concise statement of the matters complained of on said Appeal no later than fourteen days herefrom. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty: T. Cherry, Kesner, Kruk, D. Kirk, Belin

06/22/2006 From Commonwealth Court of Pennsylvania, notice of Docketing Appeal, Fredric Joseph Ammerman

(23) notice to Counsel, filed 2

Date: 07/05/2006

Time: 02:25 PM

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**Clearfield County Court of Common Pleas**

User: BHUDSON

**ROA Report**

Case: 2006-00187-CD

Current Judge: Fredric Joseph Ammerman

**Civil Other**

Date	Selected Items	Judge
06/27/2006	24a Praecipe, filed by s/ Gregory M. Kruk, Esquire. Part 1 of 2. No CC 8 24b Zoning, Chapter 27, Township of Sandy, filed. Part 2 of 2. SJC	Fredric Joseph Ammerman
07/03/2006	Statement of Matters Complained of, filed by s/Toni M. Cherry, Esq. One CC Attorney T. Cherry	Fredric Joseph Ammerman
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