

06-1759-CD  
City of DuBois vs RHJ Med. Center Inc.

City of DuBois vs RHJ Medical Center  
2006-1759-CD

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

CITY OF DUBOIS,

Plaintiff

vs.

RHJ MEDICAL CENTER, INC.,

Defendant

: No. 06 - 1759 C.D.

: Type of Case: ACTION IN EQUITY TO  
: ENFORCE THE PROVISIONS OF THE  
: PENNSYLVANIA MUNICIPALITIES  
: PLANNING CODE AND THE PROVISIONS  
: OF THE CITY OF DUBOIS ZONING  
: ORDINANCE

: Type of Pleading: COMPLAINT

: Filed on Behalf of: CITY OF DUBOIS,  
: Plaintiff

: Counsel of Record for this Party:

: 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** pd. \$85.00 Att  
O/9:00Lm 2cc Att, T. Cherry  
**OCT 27 2006** dm

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CITY OF DUBOIS,

Plaintiff

vs.

RHJ MEDICAL CENTER, INC.,

Defendant

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No. 06 - \_\_\_\_\_ C.D.

**NOTICE**

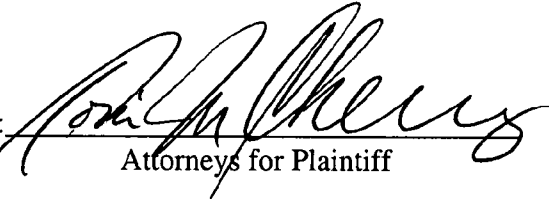
You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Notice and Complaint are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator  
Office of the Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641 (Ext. 88 - 89)

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

By:

  
Attorneys for Plaintiff

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

CITY OF DUBOIS,	:
Plaintiff	:
	:
vs.	: No. 06 - _____ C.D.
	:
RHJ MEDICAL CENTER, INC.,	:
Defendant	:

**COMPLAINT**

AND NOW, comes the Plaintiff, CITY OF DUBOIS, by and through its attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and brings the instant Complaint on causes of action whereof the following is a statement:

1. Plaintiff, CITY OF DUBOIS, is a Third Class City organized and existing under the laws of the Commonwealth of Pennsylvania, having a business address at the City Building situate at 16 West Scribner Avenue, DuBois, Clearfield County, Pennsylvania 15801.
2. Defendant, RHJ MEDICAL CENTER, INC., is a corporation licensed to do business in the Commonwealth of Pennsylvania with a place of business at 994 Beaver Drive, DuBois, Pennsylvania 15801.
3. That City Council for the City of DuBois is the governing body of said municipality under the laws of the Commonwealth of Pennsylvania.
4. That there exists within the City of DuBois from U.S. Route 219 known as Liberty Boulevard to Shaffer Road, a 1.5 mile greenway corridor along the Sandy Lick Creek known as the Sandy Lick Creek Recreational Area and containing within said corridor a cemented

sidewalk or trail known as the Beaver Meadow Walkway. A map showing the location of said Beaver Meadow Walkway is attached hereto and made a part hereof as Exhibit "A".

5. That the City of DuBois maintains the Beaver Meadow Walkway as part of its system of public parks and recreational sites for the purpose of providing a place for the public to walk, jog, bike and otherwise enjoy the benefits of athletic exercise along a scenic walkway subject to the City's right to regulate the use thereof. A true and correct copy of Ordinance No. 1288, enacted on June 25, 1979, imposing specific hours of operation on the public parkway extending along the Sandy Lick Creek from Liberty Boulevard to Shaffer Road similar to the hours established for use of the City's other public parks is attached hereto and made a part hereof as Exhibit "B".

6. That on June 16, 2004, the City of DuBois did receive word from the Pennsylvania Department of Conservation and Natural Resources that it had been approved for a grant in the amount of \$51,000.00 from the Department of Conservation and Natural Resources' Community Conservation Partnerships Program for the improvement of the public park known as the Beaver Meadow Walkway. A true and correct copy of the letter issued by the Secretary of the Pennsylvania Department of Conservation and Natural Resources is attached hereto and made a part hereof as Exhibit "C".

7. That upon the completion of the City's improvements and renovation of the Beaver Meadow Walkway, the City of DuBois did receive a letter from the Pennsylvania Department of Conservation and Natural Resources commending it on the renovations it had made to its public park and acknowledging that the Beaver Meadow Walkway was a true asset to the City

of DuBois. A true and correct copy of that letter dated July 19, 2005, is attached hereto and made a part hereof as Exhibit "D".

8. That on October 9, 2006, at a regularly-scheduled public meeting of the DuBois City Council held in Council Chambers with Council assembled at 16 West Scribner Avenue, Defendant, RHJ MEDICAL CENTER, INC., through its agent and employee, Kathy Jones, did appear and did admit that said corporation intended to establish and operate a methadone treatment facility at 994 Beaver Drive, DuBois, Pennsylvania, and that it had been occupying said premises in preparation for the opening of said facility for the past three months. A true and correct copy of the Minutes of the meeting of October 9, 2006, evidencing said admission is attached hereto and made a part hereof as Exhibit "E".

9. That upon hearing such statement from Defendant, Plaintiff, through its agents, did notify Defendant that its intended site, to wit, 994 Beaver Drive, DuBois, was within 500 feet of a public park known as the Beaver Meadow Walkway and, as a result, the methadone treatment facility that Defendant intended to operate could not be opened until and unless Defendant first received the express permission of the City Council of the City of DuBois.

10. That in response to this warning from Plaintiff, Defendant advised the governing body of the Plaintiff, CITY OF DUBOIS, that it did not intend to request the permission of the governing body and that it intended to locate the methadone treatment facility at the foregoing address because it did not consider the Beaver Meadow Walkway to be a public park.

11. That Section 621 of the Pennsylvania Municipalities Planning Code prohibits the establishment or operation of a methadone treatment facility within 500 feet of an existing public park unless by majority vote, the governing body for the municipality in which the

proposed methadone treatment facility is to be located votes in favor of the issuance of an Occupancy Permit or Certificate of Use for said facility at such a location closer than 500 feet. (See 53 P.S. §10621.) A true and correct copy of the provisions of Section 621 cited at 53 P.S. §10621 are attached hereto and made a part hereof as Exhibit "F".

12. That despite having been advised that the site of the methadone treatment facility it intended to open was within 500 feet of a public park and is actually 39 feet from said park, Defendant did wholly fail and/or refuse to apply for an Occupancy Permit or Certificate of Use as required by Section 621 of the Pennsylvania Municipalities Planning Code.

13. That Section 703 of Chapter 27, Part 7 of the City's Code of Ordinances, being the Zoning Ordinance of the City of DuBois, requires that no change in the use of a structure be effected until and unless a Certificate of Use has been requested and awarded by the Zoning Officer of the City of DuBois.

14. That despite being required to secure the permission of the City Council of the City of DuBois before locating a methadone treatment facility within 500 feet of a public park under Section 621 of the MPC and despite having to secure a Certificate of Use under the provisions of the City of DuBois' Zoning Ordinance, Defendant did wholly fail and/or refuse to secure either the permission of the City Council or a Certificate of Use from the Zoning Officer before establishing and operating its methadone treatment facility.

15. That by letter dated October 23, 2006, Plaintiff did provide Defendant with copies of the proof that the Beaver Meadow Walkway was a public park and did direct Defendant not to open the doors of its methadone treatment facility until first seeking and receiving the

permission of the DuBois City Council in accordance with Section 621 of the MPC. A true and correct copy of said letter is attached hereto and made a part hereof as Exhibit "G".

16. That a telephone call made to the offices of Defendant at 994 Beaver Drive on Wednesday, October 25, 2006, verified that Defendant had indeed opened its methadone treatment facility and was treating patients.

17. That Plaintiff has since learned that Defendant has admitted opening the methadone treatment facility for the purposes of conducting business in the same on October 10, 2006.

18. That in further violation of the Zoning Ordinances of the City of DuBois, Defendant has caused a second free-standing sign advertising its treatment facility to be erected upon the site in violation of Section 1601.6.B. that permits only one free-standing sign to be located on the premises.

19. That Defendant, through its agents and employees, have wrongfully, knowingly and willfully acted in violation of the laws of the Commonwealth of Pennsylvania and the laws of the City of DuBois in locating a methadone treatment facility within 500 feet of a public park without having first received a Certificate of Use for the operation of said facility within 500 feet of such park.

20. That Defendant, through its agents and employees, has knowingly, willfully, deliberately and wrongfully failed to act in accordance with the requirements of the laws of this Commonwealth and the laws of the City of DuBois by refusing to secure a Certificate of Use prior to opening a methadone treatment facility at 994 Beaver Drive in the City of DuBois, Pennsylvania.



21. That in addition to other remedies available to it, Section 617 of the Pennsylvania Municipalities Planning Code authorizes the City of DuBois to bring an action in equity to prevent any act, conduct, business or use constituting a violation in or about any premises located within its municipal boundaries.

22. That the use by Defendant of the premises at 994 Beaver Drive as a methadone treatment facility is a violation of the laws of the Commonwealth of Pennsylvania and the laws of the City of DuBois.

WHEREFORE, Plaintiff requests that an Order be issued by Your Honorable Court:

(a) directing Defendant to cease and desist from operating a methadone treatment facility at 994 Beaver Drive in the City of DuBois immediately;

(b) ordering Defendant to pay a fine to the City of DuBois equal to \$1,000.00 per day for every day that it opened a methadone treatment facility in violation of the laws of the Commonwealth of Pennsylvania requiring that no methadone treatment facility be opened within 500 feet of a public park without first receiving the permission of the city council of that municipality;

(c) awarding to Plaintiff attorney's fees in the amount of \$5,000.00;

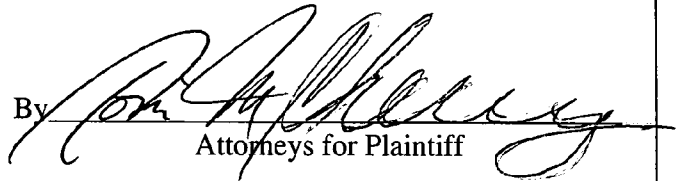
(d) directing Defendant to make application to the City of DuBois in accordance with the provisions of Section 621 of the MPC;

(e) directing Defendant to immediately remove the free-standing sign advertising its methadone treatment facility; and

(f) whatever further equitable relief Your honorable Court may deem necessary  
and proper.

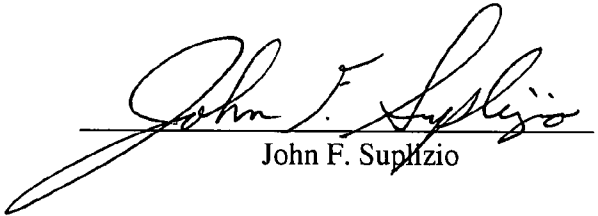
Respectfully submitted,

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

By   
Attorneys for Plaintiff

## **VERIFICATION**

I, JOHN F. SUPLIZIO, Mayor of the CITY OF DUBOIS, verify that the information provided in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities.



John F. Suplizio

DATED: October 26, 2006

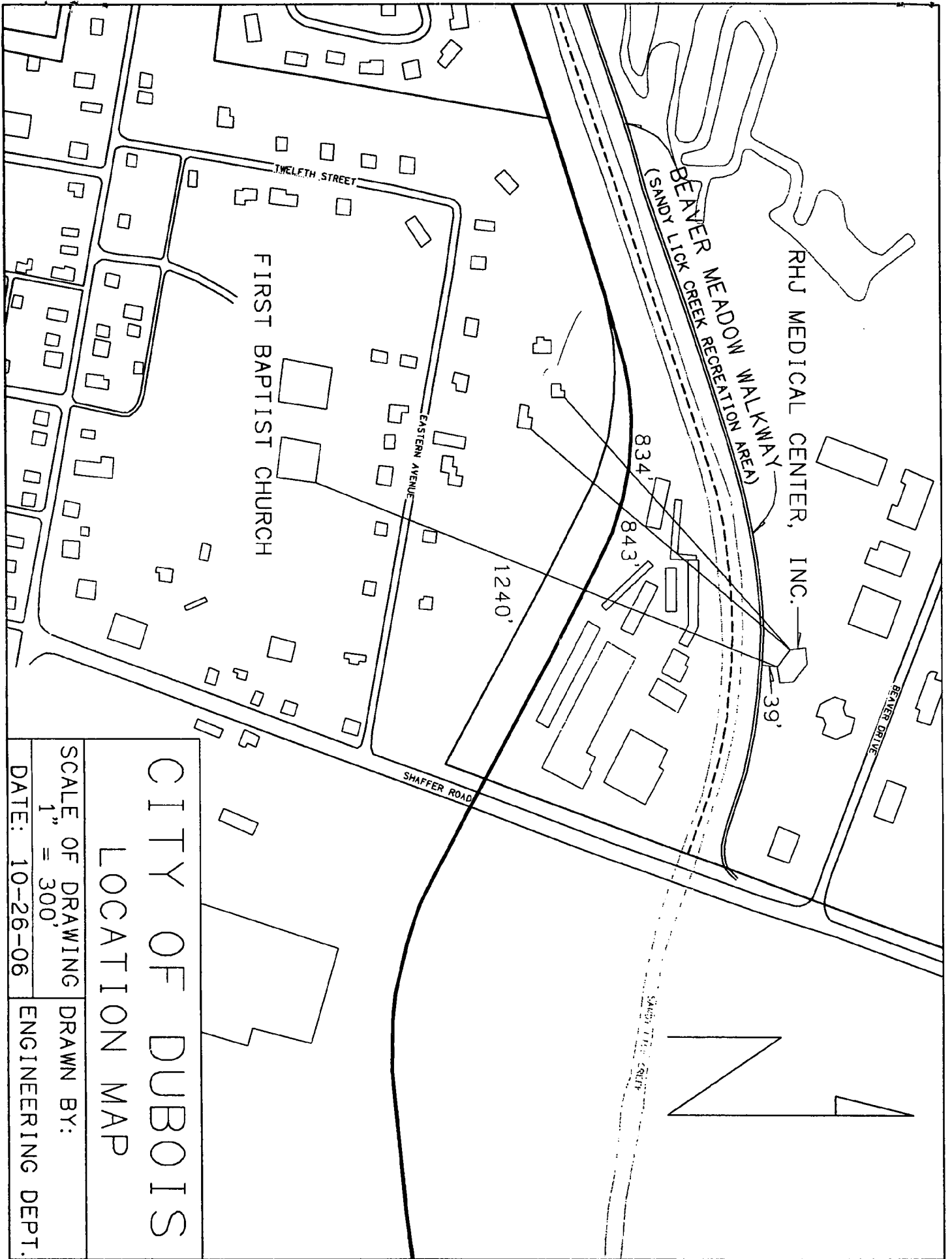


EXHIBIT "A"

CITY OF DUBOIS  
LOCATION MAP

SCALE OF DRAWING 1" = 300'  
DATE: 10-26-06  
DRAWN BY:  
ENGINEERING DEPT.

INTRODUCED BY BARBARA DUGAN, JUNE 11, 1979

ORDINANCE NO. 1288

A N O R D I N A N C E

AN ORDINANCE AMENDING ORDINANCE NO. 1240 ENTITLED "AN ORDINANCE PROVIDING RULES AND REGULATIONS GOVERNING THE USE OF THE DUBOIS MEMORIAL CITY PARK AND ALL OTHER RECREATION AREAS IN THE CITY OF DUBOIS" TO EXTEND TO THE GOVERNING REGULATIONS OF SAID ORDINANCE NO. 1240 TO ALL CITY OWNED AND/OR OPERATED PLAYGROUNDS, THE JUNIATA LAKE RECREATION AREA AND THE PUBLIC WALKWAY AREA ALONG SANDY LICK CREEK FROM LIBERTY BOULEVARD TO SHAFFER ROAD, AND TO CHANGE THE HOURS OF OPERATION OF MEMORIAL PARK AND RECREATION AREAS, EXCLUDING CITY OWNED TENNIS COURTS.

THEREFORE, BE IT ORDAINED AND ENACTED by the Council of the City of DuBois in Council assembled, and it is hereby enacted by Authority of the same.

SECTION 1. On and after the passage of this ordinance, all provisions of Ordinance No. 1240 shall apply to City of DuBois owned and/or operated playgrounds, both present and future; Juniata Lake, also known as Tannery Dam, and its adjacent recreation areas; and the public walkway area along Sandy Lick Creek from Liberty Boulevard to Shaffer Road.

SECTION 2. On and after the passage of this ordinance, that the hours of operation in Section 1 of said Ordinance No. 1240 be changed to 9:00 A.M. to 10:00 P.M., excluding City owned tennis courts and the public walkway.

SECTION 3. All other provisions of Ordinance No. 1240, except as have been altered, changed or amended by this ordinance shall remain in full force and effect.

ATTEST Walter F. Lepionka APPROVED June 25, 1979  
WALTER F. LEPIONKA  
City Clerk

Passed by Council: June 25, 1979 Mark Vrahas  
MARK VRAHAS  
Mayor and President of Council

I, Frances L. Lias, duly qualified Secretary of the City of DuBois, Clearfield County, Pennsylvania, hereby certify that the foregoing is a true and correct of an Ordinance duly adopted by a majority vote of the DuBois City Council at a regular meeting held June 25, 1979, and said Ordinance has been recorded in the Ordinance Book of the City of DuBois and remains in effect as of that date.

Frances L. Lias  
Frances L. Lias  
City Secretary

(SEAL)

Exhibit "B"



**Pennsylvania Department of Conservation and Natural Resources**  
Rachel Carson State Office Building, P.O. Box 8767, Harrisburg, PA 17105-8767  
Office of the Secretary

June 16, 2004

The Honorable John Suplizio  
Mayor  
DuBois City  
P.O. Box 408  
DuBois, PA 15801

RE: DuBois City (Clearfield)  
Beaver Meadow Walkway  
Park Rehabilitation and Development

Dear Mayor Suplizio:


I am pleased to inform you on behalf of Governor Edward G. Rendell that the above-referenced project has been approved for a grant in the amount of \$51,000 from the Department of Conservation and Natural Resources' Community Conservation Partnerships Program. Funding for this project is coming from the Keystone Recreation, Park and Conservation Fund (Key 93) or the Environmental Stewardship Act Fund (Growing Greener).

One of this Administration's highest priorities is building community conservation partnerships with local governments, businesses and nonprofit organizations to protect critical natural areas and open space, develop greenways and trails, provide quality park, recreation and conservation opportunities and to improve the quality of life in Pennsylvania's communities.

Under the Bureau of Recreation and Conservation's new streamlined contracting process, the grant agreement for this project is currently being processed. Your project coordinator will receive a fully-executed copy of the agreement in the near future, as well as a letter from the Bureau concerning their review of your application and additional grant procedures.

I wish you much success in implementing this project, which will contribute to the quality of life for many Commonwealth citizens. If you have any questions, please contact our Bureau of Recreation and Conservation at 717-783-4734, or by fax at 717-772-4363, for assistance.

Sincerely,

  
Michael DiBerardinis  
Secretary

Stewardship

Partnership

Service



**Pennsylvania Department of Conservation and Natural Resources**

**Southwestern Field Office**

**Bureau of Recreation and Conservation  
1405 State Office Building  
300 Liberty Avenue  
Pittsburgh, PA 15222  
July 19, 2005**

**412-880-0486  
(FAX) 412-565-2635  
e-mail: kmccullough@state.pa.us**

Lance Marshall  
Dubois City Redevelopment Authority  
P.O. Box 711, 16 W. Scribner Ave.  
Dubois, PA. 15801

RE: Dubois City (Clearfield)  
Beaver Meadow Walkway  
BRC-PRD-10-23  
Final Inspection Report

Dear Mr. Marshall:

I am writing to you today to summarize the items discussed at the Dubois City final inspection on July 19, 2005.

First, I would like to congratulate the DuBois City Redevelopment Authority on your efforts to complete the project. The renovation of the Beaver Meadow Walkway will be a true asset for many years, to the city of DuBois.

As you will notice on the enclosed Site Inspection Report Form, I believe your project was completed in accordance with the grant contract.

I am forwarding to our central office in Harrisburg a copy of the enclosed Final Site Inspection Report together with the photos I took of your project. Once our central office processes the Final Payment Request Form they will authorize the final payment to Dubois City Redevelopment Authority.

Again, congratulations on your project and I look forward to working with you on future recreational facilities in DuBois. If you have any questions please do not hesitate to call me at the above-referenced number.

Sincerely,

Kim M. McCullough  
Recreation & Park Advisor

Enclosures

cc: Tom Vargo (w/enclosures)  
File

**Stewardship**

**Partnership**

**Service**

### Minutes of Council Meeting of October 9, 2006

Council Chambers, City Building, 16 West Scribner Avenue, DuBois, PA, October 9, 2006; 7:00 p.m. Council convened in regular session with Mayor John "Herm" Suplizio in the Chair. Other members present included: Randy E. Schmidt, Gary D. Gilbert, John D. Micks and William R. Boyle. Also in attendance were: City Solicitor Toni M. Cherry and City Controller Diane Bernardo.

Mayor Suplizio called the meeting to order at 7:00 p.m. and the Pledge of Allegiance was conducted.

#### Approval of Minutes

The motion was made by Schmidt and seconded by Boyle that Council approve the minutes of the regular Council Meeting held September 25, 2006 and the Council Work Session held October 5, 2006. Roll call vote was as follows: Schmidt, yea; Gilbert, yea; Micks, yea; Boyle, yea; Suplizio, yea. Motion passed by 5-0 vote.

#### RHJ Medical Center, Inc.

Kathy Jones, Sponsor of the RHJ Medical Center, Inc., read from a prepared statement which stated:

"It is RHJ Medical Center's mission to provide a respectful, therapeutic, and safe environment that will assist and encourage the opiate dependent individual to stabilize so that they are able to attain a more positive lifestyle. RHJ Medical Center, DuBois is a medically assisted addiction treatment center. We are a family owned and operated corporation from the Pittsburgh area. We decided to expand into DuBois after being advised of the growing need in this area. We are licensed by the Federal Drug Enforcement Agency, the United States Department of Health Center for Substance Abuse Treatment, and the Pennsylvania Department of Health. We are also monitored and accredited by the Joint Commission. These same agencies monitor, license, and accredit all hospitals."

Solicitor Cherry asked Ms. Jones for the address of the proposed Center. She replied - 994 Beaver Drive (the former Swift Kennedy Building); they have been in the building for three (3) months, but are not open yet. They hope to open as soon as possible. Cherry asked Jones if she is aware that such a center is not allowed closer than 500' in a recreational area such as the walkway. Jones said that the walkway is not considered a public park under Act 10 according to the State's Legal Department. Cherry stated that unless she gets something in writing stating otherwise, she says it is. Jones said they are in compliance with Act 10 - got licensed by PA Department of Health - and that she will contact them for something in writing.

Jones stated she is not having a question/answer session at this meeting, but anyone with questions can call or e-mail her.

#### Public Comments

Dave Roush, Channel 6 TV, stated he has left messages and sent e-mails for the past 3 weeks or so that have gone unanswered.

#### Approval of Invoices

The motion was made by Gilbert and seconded by Micks that Council authorize payment of the invoices presented by the Accounting Specialist. Roll call vote was as follows: Schmidt, yea; Gilbert, yea; Micks, yea; Boyle, yea; Suplizio, yea. Motion passed by 5-0 vote.

Exhibit "E"



## § 10621. Prohibiting the location of methadone treatment facilities in certain locations

(a)(1) Notwithstanding any other provision of law to the contrary and except as provided in subsection (b), a methadone treatment facility shall not be established or operated within 500 feet of an existing school, public playground, public park, residential housing area, child-care facility, church, meetinghouse or other actual place of regularly stated religious worship established prior to the proposed methadone treatment facility.

(2) The provisions of this subsection shall apply whether or not an occupancy permit or certificate of use has been issued to the owner or operator of a methadone treatment facility for a location that is within 500 feet of an existing school, public playground, public park, residential housing area, child-care facility, church, meetinghouse or other actual place of regularly stated religious worship established prior to the proposed methadone treatment facility.

(b) Notwithstanding subsection (a), a methadone treatment facility may be established and operated closer than 500 feet to an existing school, public playground, public park, residential housing area, child-care facility, church, meetinghouse or other actual place of regularly stated religious worship established prior to the proposed methadone treatment facility if, by majority vote, the governing body for the municipality in which the proposed methadone treatment facility is to be located votes in favor of the issuance of an occupancy permit or certificate of use for said facility at such a location. At least 14 days prior to the governing body of a municipality voting on whether to approve the issuance of an occupancy permit or certificate of use for a methadone treatment facility at a location that is closer than 500 feet to a school, public playground, public park, residential housing area, child-care facility, church, meetinghouse or other actual place of regularly stated religious worship established prior to the proposed methadone treatment facility, one or more public hearings regarding the proposed methadone treatment facility location shall be held within the municipality following public notice. All owners of real property located within 500 feet of the proposed location shall be provided written notice of said public hearings at least 30 days prior to said public hearings occurring.

(c) This section shall not apply to a methadone treatment facility that is licensed by the Department of Health prior to May 15, 1999.

(d) As used in this section, the term "methadone treatment facility" shall mean a facility licensed by the Department of Health to use the drug methadone in the treatment, maintenance or detoxification of persons.

1968, July 31, P.L. 805, No. 247, § 621, added 1999, June 18, P.L. 70, No. 10, § 1, imd. effective.

### Research References

#### Encyclopedias

Summary Pa. Jur. 2d Property § 24:12, Generally; Definition of Zoning.

Summary Pa. Jur. 2d Property § 24:15, Joint Municipal Zoning.

Summary Pa. Jur. 2d Property § 24:206, Transferable Development Rights.

### Notes of Decisions

#### Abstention 3

Construction with other laws 2  
Standing 1

#### 1. Standing

Operator of methadone clinic had standing as an individual plaintiff to assert action against township, alleging that state law and township zoning ordinance, prohibiting the establishment of methadone clinics within 500 feet of certain other facilities, and township's denial of operator's change of use permit violated the Americans with Disabilities Act (ADA), the Rehabilitation Act, its due process rights, and its equal

protection rights; broad language of enforcement provisions of the ADA and the Rehabilitation Act evidenced Congressional intent to extend standing to the full limits permitted by Article III, and §§ 1983 gave operator standing to seek damages for constitutional violations on its own behalf, so that prudential limits for organizational standing did not apply. *Addiction Specialists, Inc. v. Township of Hampton, C.A.3 (Pa.)2005, 411 F.3d 399. Civil Rights* ⇨ 1331(3)

#### 2. Construction with other laws

Claims by operator of methadone clinic, alleging that township zoning board's denial of operator's change of use permit, pursuant to state law and township ordinance, which prohibited estab-

lishment of certain facilities, did and thus, those claim challenging Specialists, (Pa.)2005,

#### 3. Abstention

Claims by challenging valid ordinance, methadone clinics, and se

## § 10701.

#### Encyclopedias

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## § 10702.1.

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Exhibit 114 "F"



## CITY OF DUBOIS, PENNSYLVANIA

P. O. BOX 408

16 W. SCRIBNER AVE.

DUBOIS, PENNSYLVANIA 15801

Office of the City Solicitor

TELEPHONE (814) 371-2002

October 23, 2006

RHJ Medical Center, Inc.  
994 Beaver Drive  
DuBois, PA 15801

ATTENTION: MS. KATHY JONES

RE: **Operation of methadone clinic within 500 feet  
of an existing public playground/public park**

Dear Ms. Jones:

As you no doubt know, Section 621 of the Pennsylvania Municipalities Planning Code prohibits the establishment or operation of a methadone treatment facility within 500 feet of an existing school, public playground, public park, residential housing area, child-care facility, church, meeting house or other actual place of regularly stated religious worship established prior to the proposed methadone treatment facility. 53 P.S. §10621(a)(1). In order to establish such a facility closer than 500 feet, the express permission of City Council must be granted and only after at least one (1) public hearing on the request. You have advised City Council that you do not need such permission and that your operation and/or establishment of the methadone treatment facility is not within 500 feet from any of the above-named facilities.

At the meeting, you were advised that the proposed site of the methadone treatment facility was approximately 35 feet from the Beaver Meadow Walkway in the City of DuBois. You responded that you did not consider the walkway to be a public playground/public park. We are enclosing herewith the following:

1. A copy of the City's Ordinance No. 1288 enacted June 25, 1979, establishing hours of operation for the public walkway area along Sandy Lick Creek from Liberty Boulevard to Shaffer Road. Please be advised that the walkway described in Ordinance No. 1288 is the walkway known as the Beaver Meadow Walkway.
2. A copy of letter from Michael DiBerardinis, Secretary of the Pennsylvania Department of Conservation and Natural Resources, directed to the Mayor of the City of DuBois advising the Mayor on behalf of Governor Edward G. Rendell that the Beaver Meadow Walkway Park Rehabilitation and Development Project was approved for a grant in the amount of \$51,000.00 from the Department of Conservation and Natural Resources Community Conservation Partnerships Program. Obviously, if the Beaver Meadow Walkway were not a public park, it would not be eligible for grant monies under this program.

"Gateway To Big Game Country"  
Exhibit "G"

RHJ Medical Center, Inc.

Page Two

October 23, 2006

3. A copy of letter dated July 19, 2005, from Kim M. McCullough, Recreation & Park Advisor with the Pennsylvania Department of Conservation and Natural Resources, congratulating the DuBois City Redevelopment Authority on the renovation of the Beaver Meadow Walkway after the Department's final site inspection report. The contents of the letter speak for themselves and there can be no question that this is a congratulatory letter resulting from the City's proper use of the grant funds awarded to it.
4. Section 703 of Chapter 27, Part 7 of the Code of Ordinances of the City of DuBois requiring a Certificate of Use to be issued by the Zoning Officer of the City of DuBois when a structure or part of a structure is either structurally altered or changed in use. This Certificate of Use must be issued prior to the time that the change of use in the building is implemented and the premises is occupied with that new use.

I have checked the records of the City of DuBois and I have not found where you have applied for a Certificate of Use under Section 703. The City has been advised that you have made structural changes to the interior of the premises at 994 Beaver Drive. Even if you have not made structural changes to the interior of the building, you are clearly intending to change its use. The premises at 994 Beaver Drive was never operated as a methadone treatment center by the previous occupant.

My research also reveals that your intended location of the methadone treatment facility is within 500 feet of an existing public park. Therefore, I respectfully advise that it is the position of the City of DuBois that you need to request a Certificate of Use and you need to request permission of the City Council to operate the methadone treatment facility at your intended location of 994 Beaver Drive.

We ask that you not open your doors until you have followed the proper procedure and received the Certificate of Use and the permission of City Council. In the event that you open the doors of the treatment facility at 994 Beaver Drive without securing Council's permission and without securing a Certificate of Use, the Solicitor's Office has been directed to take whatever enforcement action is permitted under our ordinances and also under the Pennsylvania Municipalities Planning Code.

Exhibit "G"

RHJ Medical Center, Inc.

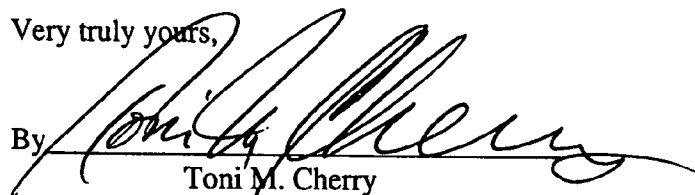
Page Three

October 23, 2006

If you should have any questions, please feel free to contact us and we thank you for your kind attention to this matter.

Very truly yours,

By

A handwritten signature in black ink, appearing to read "Toni M. Cherry", written over a horizontal line.

Toni M. Cherry

Solicitor for the City of DuBois

TMC:mls

Enclosures

cc: Mayor and Members of Council

Exhibit "G"

LA

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

CITY OF DUBOIS,	Plaintiff	:	No. 06 - <u>1759</u> C.D.
		:	
vs.		:	Type of Case: ACTION IN EQUITY TO
		:	ENFORCE THE PROVISIONS OF THE
RHJ MEDICAL CENTER, INC.,		:	PENNSYLVANIA MUNICIPALITIES
Defendant		:	PLANNING CODE AND THE PROVISIONS
		:	OF THE CITY OF DUBOIS ZONING
		:	ORDINANCE
		:	
		:	Type of Pleading: PETITION FOR
		:	PRELIMINARY INJUNCTION
		:	
		:	Filed on Behalf of: CITY OF DUBOIS,
		:	Plaintiff
		:	
		:	Counsel of Record for this Party:
		:	
		:	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**  
0/9:00 LM  
OCT 27 2006  
William A. Shaw  
Prothonotary/Clerk of Courts

*30c ATty J. Cherry*  
*LM*

FILED  
OCT 27 2006  
William A. Shaw  
Prothonotary/Clerk of Courts  
cc Sheriff  
sect. Cherry

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

CITY OF DUBOIS,  
Plaintiff  
vs.  
RHJ MEDICAL CENTER, INC.,  
Defendant  
: No. 06 - 1759 C.D.

**ORDER**

AND NOW, this 27<sup>th</sup> day of October, 2006, upon consideration of the Complaint in Equity, Plaintiff's Petition for Injunctive Relief, proof that Plaintiff's attorney notified Defendant by facsimile transmission of her intention to file the Complaint and present the Petition for Injunctive Relief this date and the Court having determined (1) that the Plaintiff will suffer irreparable harm if the requested relief is not granted immediately without notice and a hearing; (2) that Plaintiff does not have an adequate remedy at law; and (3) that greater injury would be inflicted upon Plaintiff by a denial of temporary injunctive relief than will be inflicted upon Defendant by the granting of such relief since Defendant is in violation of law, it is hereby ORDERED that:

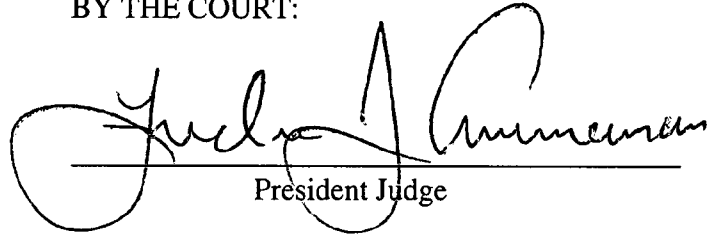
(a) Defendant is enjoined from opening and operating a methadone treatment facility at 994 Beaver Drive in the City of DuBois and shall cease and desist the operation of the same immediately; and

(b) Defendant shall cause the free-standing sign advertising the location of such methadone treatment facility to be covered pending hearing in this matter.

A hearing pertaining to the continuance of this preliminary injunction will be held on the 15<sup>th</sup> day of November, 2006, at 9:00 o'clock A. M. in Courtroom No. 1 of the Clearfield County Courthouse, Second Floor, Clearfield, Pennsylvania, pursuant to Pa. R.C.P. 1531(d).

A Rule is entered upon Defendant, RHJ MEDICAL CENTER, INC., to show cause at the above date and time why this preliminary injunction should not be continued.

BY THE COURT:

  
\_\_\_\_\_  
President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CITY OF DUBOIS,

Plaintiff

**VS.**

No. 06 - 1759 C.D.

RHJ MEDICAL CENTER, INC.,

Defendant

# PETITION FOR PRELIMINARY INJUNCTION



"1". All of the averments of said Complaint are incorporated herein by reference as if the same were set forth at length herein.

4. That the averments contained in the attached Complaint together with the exhibits attached thereto prove beyond a doubt that Defendant has opened a methadone treatment facility within 500 feet of a public park of the City of DuBois known as the Beaver Meadow Walkway which action is specifically prohibited by Section 621 of the Pennsylvania Municipalities Planning Code (MPC).

5. That despite having been repeatedly warned that no methadone treatment facility could be opened at 994 Beaver Drive without Defendant first having sought and received the permission of the City Council of the City of DuBois in accordance with the provisions set forth at Section 621(b) of the MPC, Defendant has willfully defied the law of this Commonwealth and the directive of the City of DuBois and did open for operating said methadone treatment facility and continues to operate said facility.

6. That unless Your Honorable Court issues an immediate injunction against Defendant ordering the closure of said facility until such time as Defendant seeks and receives the permission of the City of DuBois to operate a facility at the Beaver Drive site, Defendant will continue to be in violation of the laws of this Commonwealth and the Ordinances of the City of DuBois.

7. That our appellate courts have held that a municipality is entitled to an injunction to prevent or stop the violation of its Zoning Ordinances. (See Little Britton v. Lancaster County, 604 A.2d 1225 (Pa.Cmwlth. 1992) and Smithfield v. Kessler, 882 A.2d 17 (Pa.Cmwlth. 2005).

8. That Defendant's conduct is against the laws of the Commonwealth of Pennsylvania and Defendant is not entitled to continue to act in violation of law.

9. That Defendant's conduct is actionable and Plaintiff's rights to enforce the laws of the Commonwealth of Pennsylvania and its own Ordinances are clear.

10. That Plaintiff is likely to succeed on the merits of its claims.

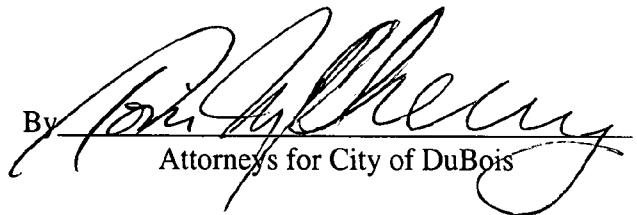
11. Plaintiff has no adequate remedy at law.

12. That Plaintiff, as a political subdivision of the Commonwealth of Pennsylvania, does not have to post bond for the issuance of a preliminary or special injunction.

WHEREFORE, Plaintiff requests Your Honorable Court to enter a preliminary injunction without written notice and hearing and a Rule to Show Cause in the form attached to this Petition.

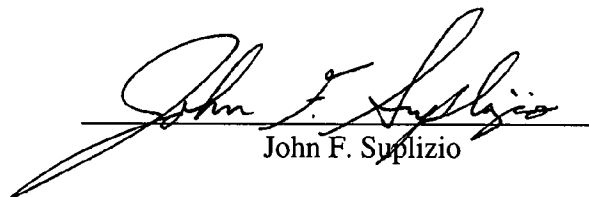
Respectfully submitted,

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

By   
Attorneys for City of DuBois

## **VERIFICATION**

I, JOHN F. SUPLIZIO, Mayor of the CITY OF DUBOIS, verify that the information provided in the foregoing Petition are true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities.

  
John F. Suplizio

DATED: October 26, 2006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CITY OF DUBOIS,

Plaintiff

: No. 06 - 1759 C.D.

vs.

RHJ MEDICAL CENTER, INC.,

Defendant

: Type of Case: ACTION IN EQUITY TO  
: ENFORCE THE PROVISIONS OF THE  
: PENNSYLVANIA MUNICIPALITIES  
: PLANNING CODE AND THE PROVISIONS  
: OF THE CITY OF DUBOIS ZONING  
: ORDINANCE

: Type of Pleading: COMPLAINT

: Filed on Behalf of: CITY OF DUBOIS,  
: Plaintiff

: Counsel of Record for this Party:

: 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

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

OCT 27 2006

Attest.

*[Signature]*  
Clerk of Courts

EXHIBIT "1"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CITY OF DUBOIS,

Plaintiff

vs.

RHJ MEDICAL CENTER, INC.,

Defendant

:  
:  
:  
: No. 06 - 1759 C.D.  
:  
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**NOTICE**

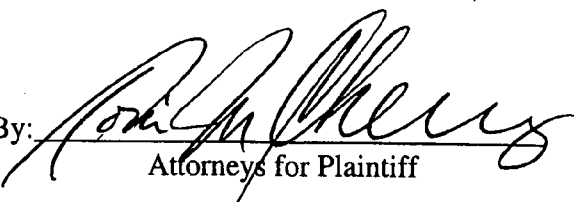
You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Notice and Complaint are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator  
Office of the Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641 (Ext. 88 - 89)

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

By:

  
Attorneys for Plaintiff

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

CITY OF DUBOIS,

Plaintiff

vs.

RHJ MEDICAL CENTER, INC.,

Defendant

:  
:  
:  
: No. 06 - 1759 C.D.  
:  
:  
:

**COMPLAINT**

AND NOW, comes the Plaintiff, CITY OF DUBOIS, by and through its attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and brings the instant Complaint on causes of action whereof the following is a statement:

1. Plaintiff, CITY OF DUBOIS, is a Third Class City organized and existing under the laws of the Commonwealth of Pennsylvania, having a business address at the City Building situate at 16 West Scribner Avenue, DuBois, Clearfield County, Pennsylvania 15801.
2. Defendant, RHJ MEDICAL CENTER, INC., is a corporation licensed to do business in the Commonwealth of Pennsylvania with a place of business at 994 Beaver Drive, DuBois, Pennsylvania 15801.
3. That City Council for the City of DuBois is the governing body of said municipality under the laws of the Commonwealth of Pennsylvania.
4. That there exists within the City of DuBois from U.S. Route 219 known as Liberty Boulevard to Shaffer Road, a 1.5 mile greenway corridor along the Sandy Lick Creek known as the Sandy Lick Creek Recreational Area and containing within said corridor a cemented

sidewalk or trail known as the Beaver Meadow Walkway. A map showing the location of said Beaver Meadow Walkway is attached hereto and made a part hereof as Exhibit "A".

5. That the City of DuBois maintains the Beaver Meadow Walkway as part of its system of public parks and recreational sites for the purpose of providing a place for the public to walk, jog, bike and otherwise enjoy the benefits of athletic exercise along a scenic walkway subject to the City's right to regulate the use thereof. A true and correct copy of Ordinance No. 1288, enacted on June 25, 1979, imposing specific hours of operation on the public parkway extending along the Sandy Lick Creek from Liberty Boulevard to Shaffer Road similar to the hours established for use of the City's other public parks is attached hereto and made a part hereof as Exhibit "B".

6. That on June 16, 2004, the City of DuBois did receive word from the Pennsylvania Department of Conservation and Natural Resources that it had been approved for a grant in the amount of \$51,000.00 from the Department of Conservation and Natural Resources' Community Conservation Partnerships Program for the improvement of the public park known as the Beaver Meadow Walkway. A true and correct copy of the letter issued by the Secretary of the Pennsylvania Department of Conservation and Natural Resources is attached hereto and made a part hereof as Exhibit "C".

7. That upon the completion of the City's improvements and renovation of the Beaver Meadow Walkway, the City of DuBois did receive a letter from the Pennsylvania Department of Conservation and Natural Resources commending it on the renovations it had made to its public park and acknowledging that the Beaver Meadow Walkway was a true asset to the City

of DuBois. A true and correct copy of that letter dated July 19, 2005, is attached hereto and made a part hereof as Exhibit "D".

8. That on October 9, 2006, at a regularly-scheduled public meeting of the DuBois City Council held in Council Chambers with Council assembled at 16 West Scribner Avenue, Defendant, RHJ MEDICAL CENTER, INC., through its agent and employee, Kathy Jones, did appear and did admit that said corporation intended to establish and operate a methadone treatment facility at 994 Beaver Drive, DuBois, Pennsylvania, and that it had been occupying said premises in preparation for the opening of said facility for the past three months. A true and correct copy of the Minutes of the meeting of October 9, 2006, evidencing said admission is attached hereto and made a part hereof as Exhibit "E".

9. That upon hearing such statement from Defendant, Plaintiff, through its agents, did notify Defendant that its intended site, to wit, 994 Beaver Drive, DuBois, was within 500 feet of a public park known as the Beaver Meadow Walkway and, as a result, the methadone treatment facility that Defendant intended to operate could not be opened until and unless Defendant first received the express permission of the City Council of the City of DuBois.

10. That in response to this warning from Plaintiff, Defendant advised the governing body of the Plaintiff, CITY OF DUBOIS, that it did not intend to request the permission of the governing body and that it intended to locate the methadone treatment facility at the foregoing address because it did not consider the Beaver Meadow Walkway to be a public park.

11. That Section 621 of the Pennsylvania Municipalities Planning Code prohibits the establishment or operation of a methadone treatment facility within 500 feet of an existing public park unless by majority vote, the governing body for the municipality in which the



proposed methadone treatment facility is to be located votes in favor of the issuance of an Occupancy Permit or Certificate of Use for said facility at such a location closer than 500 feet. (See 53 P.S. §10621.) A true and correct copy of the provisions of Section 621 cited at 53 P.S. §10621 are attached hereto and made a part hereof as Exhibit "F".

12. That despite having been advised that the site of the methadone treatment facility it intended to open was within 500 feet of a public park and is actually 39 feet from said park, Defendant did wholly fail and/or refuse to apply for an Occupancy Permit or Certificate of Use as required by Section 621 of the Pennsylvania Municipalities Planning Code.

13. That Section 703 of Chapter 27, Part 7 of the City's Code of Ordinances, being the Zoning Ordinance of the City of DuBois, requires that no change in the use of a structure be effected until and unless a Certificate of Use has been requested and awarded by the Zoning Officer of the City of DuBois.

14. That despite being required to secure the permission of the City Council of the City of DuBois before locating a methadone treatment facility within 500 feet of a public park under Section 621 of the MPC and despite having to secure a Certificate of Use under the provisions of the City of DuBois' Zoning Ordinance, Defendant did wholly fail and/or refuse to secure either the permission of the City Council or a Certificate of Use from the Zoning Officer before establishing and operating its methadone treatment facility.

15. That by letter dated October 23, 2006, Plaintiff did provide Defendant with copies of the proof that the Beaver Meadow Walkway was a public park and did direct Defendant not to open the doors of its methadone treatment facility until first seeking and receiving the

permission of the DuBois City Council in accordance with Section 621 of the MPC. A true and correct copy of said letter is attached hereto and made a part hereof as Exhibit "G".

16. That a telephone call made to the offices of Defendant at 994 Beaver Drive on Wednesday, October 25, 2006, verified that Defendant had indeed opened its methadone treatment facility and was treating patients.

17. That Plaintiff has since learned that Defendant has admitted opening the methadone treatment facility for the purposes of conducting business in the same on October 10, 2006.

18. That in further violation of the Zoning Ordinances of the City of DuBois, Defendant has caused a second free-standing sign advertising its treatment facility to be erected upon the site in violation of Section 1601.6.B. that permits only one free-standing sign to be located on the premises.

19. That Defendant, through its agents and employees, have wrongfully, knowingly and willfully acted in violation of the laws of the Commonwealth of Pennsylvania and the laws of the City of DuBois in locating a methadone treatment facility within 500 feet of a public park without having first received a Certificate of Use for the operation of said facility within 500 feet of such park.

20. That Defendant, through its agents and employees, has knowingly, willfully, deliberately and wrongfully failed to act in accordance with the requirements of the laws of this Commonwealth and the laws of the City of DuBois by refusing to secure a Certificate of Use prior to opening a methadone treatment facility at 994 Beaver Drive in the City of DuBois, Pennsylvania.

21. That in addition to other remedies available to it, Section 617 of the Pennsylvania Municipalities Planning Code authorizes the City of DuBois to bring an action in equity to prevent any act, conduct, business or use constituting a violation in or about any premises located within its municipal boundaries.

22. That the use by Defendant of the premises at 994 Beaver Drive as a methadone treatment facility is a violation of the laws of the Commonwealth of Pennsylvania and the laws of the City of DuBois.

WHEREFORE, Plaintiff requests that an Order be issued by Your Honorable Court:

(a) directing Defendant to cease and desist from operating a methadone treatment facility at 994 Beaver Drive in the City of DuBois immediately;

(b) ordering Defendant to pay a fine to the City of DuBois equal to \$1,000.00 per day for every day that it opened a methadone treatment facility in violation of the laws of the Commonwealth of Pennsylvania requiring that no methadone treatment facility be opened within 500 feet of a public park without first receiving the permission of the city council of that municipality;

(c) awarding to Plaintiff attorney's fees in the amount of \$5,000.00;

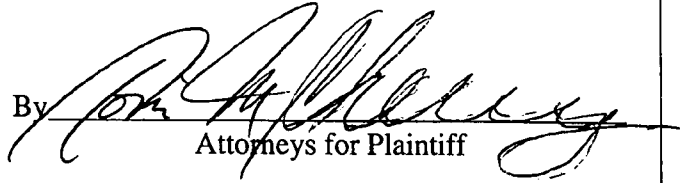
(d) directing Defendant to make application to the City of DuBois in accordance with the provisions of Section 621 of the MPC;

(e) directing Defendant to immediately remove the free-standing sign advertising its methadone treatment facility; and

(f) whatever further equitable relief Your honorable Court may deem necessary  
and proper.

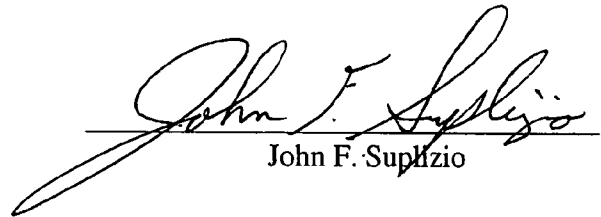
Respectfully submitted,

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

By   
Attorneys for Plaintiff

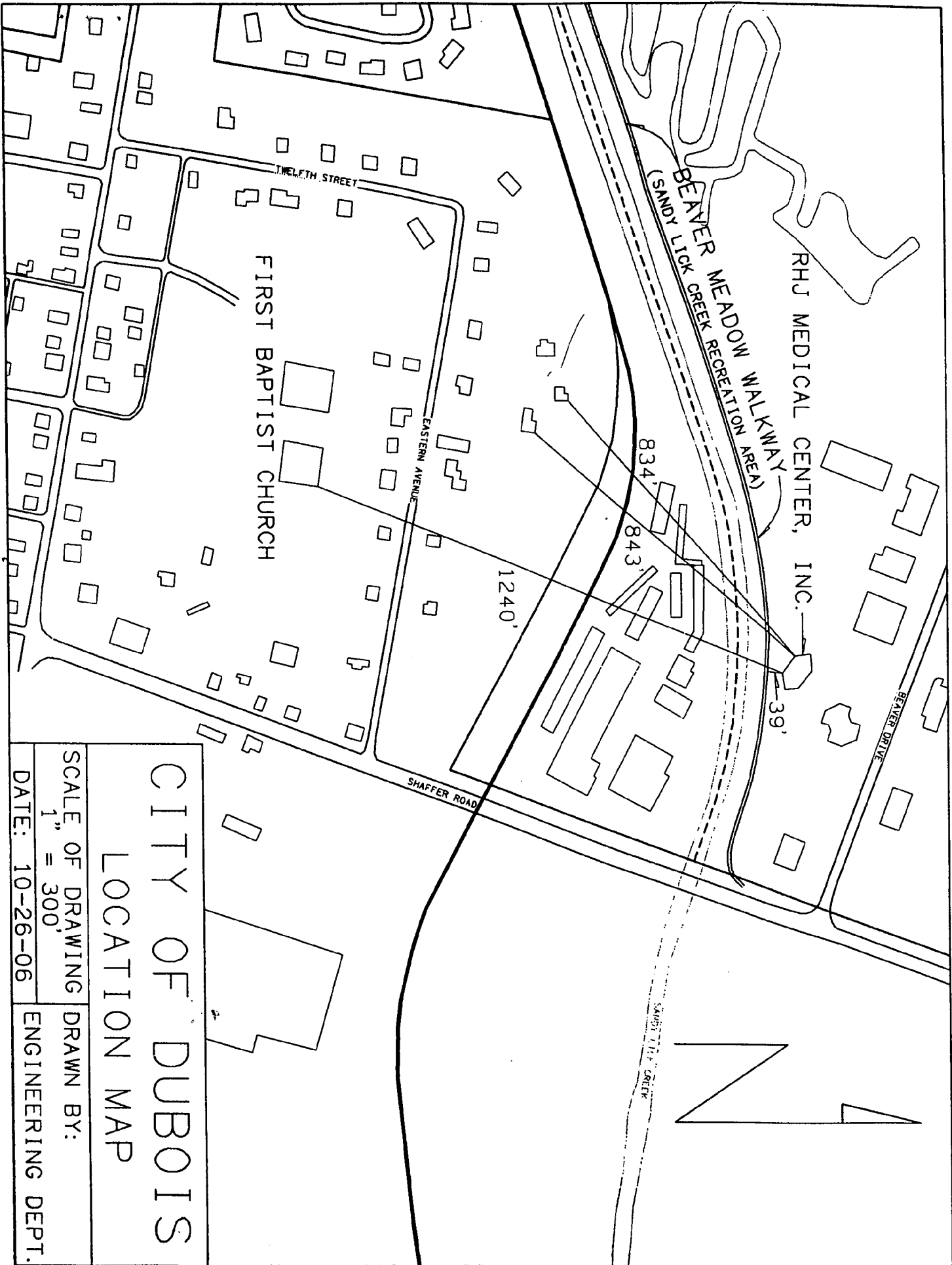
## VERIFICATION

I, JOHN F. SUPLIZIO, Mayor of the CITY OF DUBOIS, verify that the information provided in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities.



John F. Suplizio

DATED: October 26, 2006



# CITY OF DUBOIS

## LOCATION MAP

SCALE OF DRAWING  
1" = 300'

DRAWN BY:

DATE: 10-26-06

ENGINEERING DEPT.

EXHIBIT "A"

INTRODUCED BY BARBARA DUGAN, JUNE 11, 1979

ORDINANCE NO. 1288

AN ORDINANCE

AN ORDINANCE AMENDING ORDINANCE NO. 1240 ENTITLED "AN ORDINANCE PROVIDING RULES AND REGULATIONS GOVERNING THE USE OF THE DUBOIS MEMORIAL CITY PARK AND ALL OTHER RECREATION AREAS IN THE CITY OF DUBOIS" TO EXTEND TO THE GOVERNING REGULATIONS OF SAID ORDINANCE NO. 1240 TO ALL CITY OWNED AND/OR OPERATED PLAYGROUNDS, THE JUNIATA LAKE RECREATION AREA AND THE PUBLIC WALKWAY AREA ALONG SANDY LICK CREEK FROM LIBERTY BOULEVARD TO SHAFFER ROAD, AND TO CHANGE THE HOURS OF OPERATION OF MEMORIAL PARK AND RECREATION AREAS, EXCLUDING CITY OWNED TENNIS COURTS.

THEREFORE, BE IT ORDAINED AND ENACTED by the Council of the City of DuBois in Council assembled, and it is hereby enacted by Authority of the same.

SECTION 1. On and after the passage of this ordinance, all provisions of Ordinance No. 1240 shall apply to City of DuBois owned and/or operated playgrounds, both present and future; Juniata Lake, also known as Tannery Dam, and its adjacent recreation areas; and the public walkway area along Sandy Lick Creek from Liberty Boulevard to Shaffer Road.

SECTION 2. On and after the passage of this ordinance, that the hours of operation in Section 1 of said Ordinance No. 1240 be changed to 9:00 A.M. to 10:00 P.M., excluding City owned tennis courts and the public walkway.

SECTION 3. All other provisions of Ordinance No. 1240, except as have been altered, changed or amended by this ordinance shall remain in full force and effect.

ATTEST Walter F. Lepionka APPROVED  
WALTER F. LEPIONKA  
City Clerk

June 25, 1979

Passed by Council: June 25, 1979

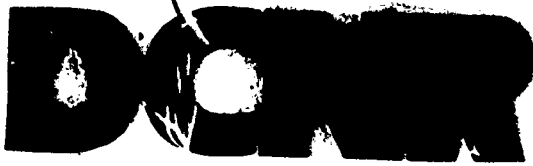
Mark Vrahas  
MARK VRAHAS  
Mayor and President of Council

I, Frances L. Lias, duly qualified Secretary of the City of DuBois, Clearfield County, Pennsylvania, hereby certify that the foregoing is a true and correct of an Ordinance duly adopted by a majority vote of the DuBois City Council at a regular meeting held June 25, 1979, and said Ordinance has been recorded in the Ordinance Book of the City of DuBois and remains in effect as of that date.

Frances L. Lias  
Frances L. Lias  
City Secretary

(SEAL)

Exhibit "B"



**Pennsylvania Department of Conservation and Natural Resources**  
Rachel Carson State Office Building, P.O. Box 8767, Harrisburg, PA 17105-8767  
Office of the Secretary

June 16, 2004

The Honorable John Suplizio  
Mayor  
DuBois City  
P.O. Box 408  
DuBois, PA 15801

RE: DuBois City (Clearfield)  
Beaver Meadow Walkway  
Park Rehabilitation and Development

Dear Mayor Suplizio:

I am pleased to inform you on behalf of Governor Edward G. Rendell that the above-referenced project has been approved for a grant in the amount of \$51,000 from the Department of Conservation and Natural Resources' Community Conservation Partnerships Program. Funding for this project is coming from the Keystone Recreation, Park and Conservation Fund (Key 93) or the Environmental Stewardship Act Fund (Growing Greener).

One of this Administration's highest priorities is building community conservation partnerships with local governments, businesses and nonprofit organizations to protect critical natural areas and open space, develop greenways and trails, provide quality park, recreation and conservation opportunities and to improve the quality of life in Pennsylvania's communities.

Under the Bureau of Recreation and Conservation's new streamlined contracting process, the grant agreement for this project is currently being processed. Your project coordinator will receive a fully-executed copy of the agreement in the near future, as well as a letter from the Bureau concerning their review of your application and additional grant procedures.

I wish you much success in implementing this project, which will contribute to the quality of life for many Commonwealth citizens. If you have any questions, please contact our Bureau of Recreation and Conservation at 717-783-4734, or by fax at 717-772-4363, for assistance.

Sincerely,

Michael DiBerardinis  
Secretary

Stewardship

Partnership

Service





**Pennsylvania Department of Conservation and Natural Resources**

**Southwestern Field Office**

**Bureau of Recreation and Conservation  
1405 State Office Building  
300 Liberty Avenue  
Pittsburgh, PA 15222  
July 19, 2005**

**412-880-0486  
(FAX) 412-565-2635**

**e-mail: kmcculloug@state.pa.us**

Lance Marshall  
Dubois City Redevelopment Authority  
P.O. Box 711, 16 W. Scribner Ave.  
Dubois, PA. 15801

RE: Dubois City (Clearfield)  
Beaver Meadow Walkway  
BRC-PRD-10-23  
Final Inspection Report

Dear Mr. Marshall:

I am writing to you today to summarize the items discussed at the Dubois City final inspection on July 19, 2005.

First, I would like to congratulate the DuBois City Redevelopment Authority on your efforts to complete the project. The renovation of the Beaver Meadow Walkway will be a true asset for many years, to the city of DuBois.

As you will notice on the enclosed Site Inspection Report Form, I believe your project was completed in accordance with the grant contract.

I am forwarding to our central office in Harrisburg a copy of the enclosed Final Site Inspection Report together with the photos I took of your project. Once our central office processes the Final Payment Request Form they will authorize the final payment to Dubois City Redevelopment Authority.

Again, congratulations on your project and I look forward to working with you on future recreational facilities in DuBois. If you have any questions please do not hesitate to call me at the above-referenced number.

Sincerely,

Kim M. McCullough  
Recreation & Park Advisor

Enclosures

cc: Tom Vargo (w/enclosures)  
File

**Stewardship**

**Partnership**

**Service**

An Equal Opportunity/Affirmative Action Employer

**Exhibit "D"**

Printed on Recycled Paper

### Minutes of Council Meeting of October 9, 2006

Council Chambers, City Building, 16 West Scribner Avenue, DuBois, PA, October 9, 2006; 7:00 p.m. Council convened in regular session with Mayor John "Herm" Suplizio in the Chair. Other members present included: Randy E. Schmidt, Gary D. Gilbert, John D. Micks and William R. Boyle. Also in attendance were: City Solicitor Toni M. Cherry and City Controller Diane Bernardo.

Mayor Suplizio called the meeting to order at 7:00 p.m. and the Pledge of Allegiance was conducted.

#### Approval of Minutes

The motion was made by Schmidt and seconded by Boyle that Council approve the minutes of the regular Council Meeting held September 25, 2006 and the Council Work Session held October 5, 2006. Roll call vote was as follows: Schmidt, yea; Gilbert, yea; Micks, yea; Boyle, yea; Suplizio, yea. Motion passed by 5-0 vote.

#### RHJ Medical Center, Inc.

Kathy Jones, Sponsor of the RHJ Medical Center, Inc., read from a prepared statement which stated:

"It is RHJ Medical Center's mission to provide a respectful, therapeutic, and safe environment that will assist and encourage the opiate dependent individual to stabilize so that they are able to attain a more positive lifestyle. RHJ Medical Center, DuBois is a medically assisted addiction treatment center. We are a family owned and operated corporation from the Pittsburgh area. We decided to expand into DuBois after being advised of the growing need in this area. We are licensed by the Federal Drug Enforcement Agency, the United States Department of Health Center for Substance Abuse Treatment, and the Pennsylvania Department of Health. We are also monitored and accredited by the Joint Commission. These same agencies monitor, license, and accredit all hospitals."

Solicitor Cherry asked Ms. Jones for the address of the proposed Center. She replied - 994 Beaver Drive (the former Swift Kennedy Building); they have been in the building for three (3) months, but are not open yet. They hope to open as soon as possible. Cherry asked Jones if she is aware that such a center is not allowed closer than 500' in a recreational area such as the walkway. Jones said that the walkway is not considered a public park under Act 10 according to the State's Legal Department. Cherry stated that unless she gets something in writing stating otherwise, she says it is. Jones said they are in compliance with Act 10 - got licensed by PA Department of Health - and that she will contact them for something in writing.

Jones stated she is not having a question/answer session at this meeting, but anyone with questions can call or e-mail her.

#### Public Comments

Dave Roush, Channel 6 TV, stated he has left messages and sent e-mails for the past 3 weeks or so that have gone unanswered.

#### Approval of Invoices

The motion was made by Gilbert and seconded by Micks that Council authorize payment of the invoices presented by the Accounting Specialist. Roll call vote was as follows: Schmidt, yea; Gilbert, yea; Micks, yea; Boyle, yea; Suplizio, yea. Motion passed by 5-0 vote.

Exhibit "E"

# § 10621: Prohibiting the location of methadone treatment facilities in certain locations

(a)(1) Notwithstanding any other provision of law to the contrary and except as provided in subsection (b), a methadone treatment facility shall not be established or operated within 500 feet of an existing school, public playground, public park, residential housing area, child-care facility, church, meetinghouse or other actual place of regularly stated religious worship established prior to the proposed methadone treatment facility.

(2) The provisions of this subsection shall apply, whether or not an occupancy permit or certificate of use has been issued to the owner or operator of a methadone treatment facility for a location that is within 500 feet of an existing school, public playground, public park, residential housing area, child-care facility, church, meetinghouse or other actual place of regularly stated religious worship established prior to the proposed methadone treatment facility.

(b) Notwithstanding subsection (a), a methadone treatment facility may be established and operated closer than 500 feet to an existing school, public playground, public park, residential housing area, child-care facility, church, meetinghouse or other actual place of regularly stated religious worship established prior to the proposed methadone treatment facility if, by majority vote, the governing body for the municipality in which the proposed methadone treatment facility is to be located votes in favor of the issuance of an occupancy permit or certificate of use for said facility at such a location. At least 14 days prior to the governing body of a municipality voting on whether to approve the issuance of an occupancy permit or certificate of use for a methadone treatment facility at a location that is closer than 500 feet to a school, public playground, public park, residential housing area, child-care facility, church, meetinghouse or other actual place of regularly stated religious worship established prior to the proposed methadone treatment facility, one or more public hearings regarding the proposed methadone treatment facility location shall be held within the municipality following public notice. All owners of real property located within 500 feet of the proposed location shall be provided written notice of said public hearings at least 30 days prior to said public hearings occurring.

(c) This section shall not apply to a methadone treatment facility that is licensed by the Department of Health prior to May 15, 1999.

(d) As used in this section, the term "methadone treatment facility" shall mean a facility licensed by the Department of Health to use the drug methadone in the treatment, maintenance or detoxification of persons.

1968, July 31, P.L. 805, No. 247, § 621; added 1999, June 18, P.L. 70, No. 10, § 1, imd. effective.

## Research References

### Encyclopedias

Summary Pa. Jur. 2d Property § 24:12, Generally; Definition of Zoning.

Summary Pa. Jur. 2d Property § 24:15, Joint Municipal Zoning.

Summary Pa. Jur. 2d Property § 24:206, Transferable Development Rights.

## Notes of Decisions

### Abstention 3

### Construction with other laws 2

### Standing 1

#### 1. Standing

Operator of methadone clinic had standing as an individual plaintiff to assert action against township, alleging that state law and township zoning ordinance, prohibiting the establishment of methadone clinics within 500 feet of certain other facilities, and township's denial of operator's change of use permit violated the Americans with Disabilities Act (ADA), the Rehabilitation Act, its due process rights, and its equal

protection rights; broad language of enforcement provisions of the ADA and the Rehabilitation Act evidenced Congressional intent to extend standing to the full limits permitted by Article III, and §§ 1983 gave operator standing to seek damages for constitutional violations on its own behalf, so that prudential limits for organizational standing did not apply. *Addiction Specialists, Inc. v. Township of Hampton, C.A.3 (Pa.)2005, 411 F.3d 399. Civil Rights* 1331(3)

#### 2. Construction with other laws

Claims by operator of methadone clinic, alleging that township zoning board's denial of operator's change of use permit, pursuant to state law and township ordinance, which prohibited estab-

lishment of certain facilities, did not violate operator's rights, did not violate operator's rights, and thus, those claim challenging township's denial of operator's change of use permit, pursuant to state law and township ordinance, which prohibited estab-

3. Abstention  
Claims by operator of methadone clinic, alleging that township zoning board's denial of operator's change of use permit, pursuant to state law and township ordinance, which prohibited estab-

## § 10701.

### Encyclopedias

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## § 10702.1.

### Encyclopedias

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Exhibit 1141 F



## CITY OF DUBOIS, PENNSYLVANIA

P. O. BOX 408

16 W. SCRIBNER AVE.

DUBOIS, PENNSYLVANIA 15801

Office of the City Solicitor

TELEPHONE (814) 371-2002

October 23, 2006

RHJ Medical Center, Inc.  
994 Beaver Drive  
DuBois, PA 15801

ATTENTION: MS. KATHY JONES

RE: **Operation of methadone clinic within 500 feet  
of an existing public playground/public park**

Dear Ms. Jones:

As you no doubt know, Section 621 of the Pennsylvania Municipalities Planning Code prohibits the establishment or operation of a methadone treatment facility within 500 feet of an existing school, public playground, public park, residential housing area, child-care facility, church, meeting house or other actual place of regularly stated religious worship established prior to the proposed methadone treatment facility. 53 P.S. §10621(a)(1). In order to establish such a facility closer than 500 feet, the express permission of City Council must be granted and only after at least one (1) public hearing on the request. You have advised City Council that you do not need such permission and that your operation and/or establishment of the methadone treatment facility is not within 500 feet from any of the above-named facilities.

At the meeting, you were advised that the proposed site of the methadone treatment facility was approximately 35 feet from the Beaver Meadow Walkway in the City of DuBois. You responded that you did not consider the walkway to be a public playground/public park. We are enclosing herewith the following:

1. A copy of the City's Ordinance No. 1288 enacted June 25, 1979, establishing hours of operation for the public walkway area along Sandy Lick Creek from Liberty Boulevard to Shaffer Road. Please be advised that the walkway described in Ordinance No. 1288 is the walkway known as the Beaver Meadow Walkway.
2. A copy of letter from Michael DiBerardinis, Secretary of the Pennsylvania Department of Conservation and Natural Resources, directed to the Mayor of the City of DuBois advising the Mayor on behalf of Governor Edward G. Rendell that the Beaver Meadow Walkway Park Rehabilitation and Development Project was approved for a grant in the amount of \$51,000.00 from the Department of Conservation and Natural Resources Community Conservation Partnerships Program. Obviously, if the Beaver Meadow Walkway were not a public park, it would not be eligible for grant monies under this program.

"Gateway To Big Game Country"  
Exhibit "G"

RHJ Medical Center, Inc.

Page Two

October 23, 2006

3. A copy of letter dated July 19, 2005, from Kim M. McCullough, Recreation & Park Advisor with the Pennsylvania Department of Conservation and Natural Resources, congratulating the DuBois City Redevelopment Authority on the renovation of the Beaver Meadow Walkway after the Department's final site inspection report. The contents of the letter speak for themselves and there can be no question that this is a congratulatory letter resulting from the City's proper use of the grant funds awarded to it.
4. Section 703 of Chapter 27, Part 7 of the Code of Ordinances of the City of DuBois requiring a Certificate of Use to be issued by the Zoning Officer of the City of DuBois when a structure or part of a structure is either structurally altered or changed in use. This Certificate of Use must be issued prior to the time that the change of use in the building is implemented and the premises is occupied with that new use.

I have checked the records of the City of DuBois and I have not found where you have applied for a Certificate of Use under Section 703. The City has been advised that you have made structural changes to the interior of the premises at 994 Beaver Drive. Even if you have not made structural changes to the interior of the building, you are clearly intending to change its use. The premises at 994 Beaver Drive was never operated as a methadone treatment center by the previous occupant.

My research also reveals that your intended location of the methadone treatment facility is within 500 feet of an existing public park. Therefore, I respectfully advise that it is the position of the City of DuBois that you need to request a Certificate of Use and you need to request permission of the City Council to operate the methadone treatment facility at your intended location of 994 Beaver Drive.

We ask that you not open your doors until you have followed the proper procedure and received the Certificate of Use and the permission of City Council. In the event that you open the doors of the treatment facility at 994 Beaver Drive without securing Council's permission and without securing a Certificate of Use, the Solicitor's Office has been directed to take whatever enforcement action is permitted under our ordinances and also under the Pennsylvania Municipalities Planning Code.

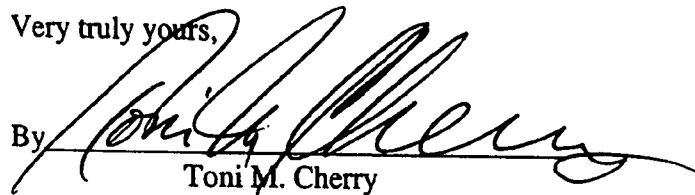
Exhibit "G"

RHJ Medical Center, Inc.  
Page Three  
October 23, 2006

If you should have any questions, please feel free to contact us and we thank you for your kind attention to this matter.

Very truly yours,

By

A handwritten signature in black ink, appearing to read "Toni M. Cherry", written over a horizontal line.

Toni M. Cherry  
Solicitor for the City of DuBois

TMC:mls

Enclosures

cc: Mayor and Members of Council

Exhibit "B"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102073  
NO: 06-1759-CD  
SERVICE # 1 OF 1  
COMPLAINT; PETITION / PRELIMINARY

INJUNCTION&ORDER

PLAINTIFF: CITY OF DUBOIS

vs.

DEFENDANT: RHJ MEDICAL CENTER, INC.

SHERIFF RETURN

NOW, October 27, 2006 AT 2:30 PM SERVED THE WITHIN COMPLAINT; PETITION / PRELIMINARY INJUNCTION&ORDER ON RHJ MEDICAL CENTER, INC. DEFENDANT AT 994 BEAVER DRIVE, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO CATHY JONES, OWNER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT; PETITION / PRELIMINARY INJUNCTION&ORDER AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING / COUDRIET

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	GLEASON	11468	10.00
SHERIFF HAWKINS	GLEASON	11468	35.30


FILED  
9/11:40 AM  
OCT 31 2006

William A. Shaw  
Prothonotary/Clerk of Courts

Sworn to Before Me This

\_\_\_\_\_ Day of \_\_\_\_\_ 2006

So Answers,

  
Chester A. Hawkins  
Sheriff

(A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CITY OF DUBOIS,  
Plaintiff,

vs.

RHJ MEDICAL CENTER, INC.  
Defendant

NO. 06-1759 C.D.

Type of Case: ACTION IN EQUITY TO  
ENFORCE THE PROVISIONS OF THE  
PENNSYLVANIA MUNICIPALITIES  
PLANNING CODE AND THE PROVISIONS  
OF THE CITY OF DUBOIS ZONING  
ORDINANCE

Type of Pleading: EMERGENCY MOTION  
FOR CONTINUANCE

Filed on behalf of: RHJ Medical Center, Inc.,  
Defendant

Counsel for this party:

David F. Alpern, Esquire  
Supreme Court ID No. 11129

David F. Alpern, Esquire  
916 Fifth Avenue  
Pittsburgh, PA 15219  
(412) 471-1960

FILED

NOV 01 2006

0/1:20/4  
William A. Shaw  
Prothonotary/Clerk of Courts

1 SENT TO ATTY w/o ORDER  
1 SENT TO ATTY



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

CITY OF DUBOIS,  
Plaintiff,

NO. 06-1759 C.D.

vs.

RHJ MEDICAL CENTER, INC.  
Defendant

**EMERGENCY MOTION FOR CONTINUANCE**

To the Honorable, Judges of Said Court:

Your Movant, RHJ Medical Center, Defendant, by and through its attorney, David F. Alpern, Esquire, respectfully represents that:

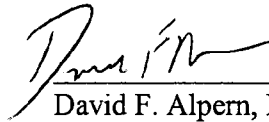
1. It is Defendant in the above-captioned case.
2. On October 27, 2006, your Honorable Court entered an Order granting a rule upon the Defendant returnable on the 1st day of November, 2006 at 9:00 a.m. in Courtroom Number 1 of the Clearfield County Courthouse, 2nd Floor, Clearfield, Pennsylvania, to show cause why the Preliminary Injunction granted by said Order should not be continued.
3. On or about the 26th day of October, 2006, your Movant contacted Attorney Michael Yurcheshen to represent it in this matter.
4. On or about October 29, 2006, your Movant was advised by Mr. Yurcheshen that he could not, for medical and other reasons, represent the Defendant, your Movant in this matter.
5. On Tuesday, October 31, 2006, at 10:30 a.m., your Movant contacted David F. Alpern, Esquire to represent it in this matter.

6. David F. Alpern, Esquire, given the time period involved, has not had time to read and or understand the pleadings in this case and/or to prepare for a hearing on November 1, 2006.

7. Your Movant is informed, believes and, therefore, avers that a continuance granted in this matter will not prejudice the Plaintiff in that an injunction is already in effect.

Wherefore, your Movant, RHJ Medical Center, Inc., prays the Court to continue the return day of said rule until November 14, 2006.

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'David F. Alpern', is written over a horizontal line.

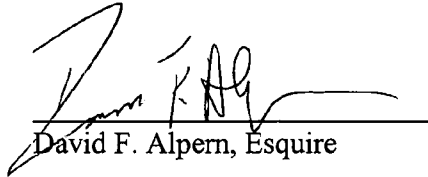
David F. Alpern, Esquire  
PA Attorney ID No. 11129

David F. Alpern, Esquire  
916 Fifth Avenue  
Pittsburgh, PA 15219  
(412) 471-1960

### VERIFICATION

AND NOW, David F. Alpern, Esquire, verifies that the statements made in this Motion are true and correct to the best of his knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. 4904, relating to unsworn falsification to authorities.

By virtue of the fact that the principals of the Defendant are temporarily outside the jurisdiction of the court and the verification cannot be obtained within the time allowed for the filing of this pleading, the pleading is submitted by counsel having sufficient knowledge, information and belief based upon the information provided him by such principals.



David F. Alpern, Esquire

Dated: 10/31/2006

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

**CIVIL DIVISION**

CITY OF DUBOIS,

Plaintiff,

NO. 06-1759 C.D.

vs.

RHJ MEDICAL CENTER, INC.

Defendant

**ORDER OF COURT**

And, now, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, upon consideration of the within Emergency Motion for Continuance, the Rule granted on October 27, 2006, is hereby continued to, and returnable on, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock, \_\_\_\_\_m. in Courtroom Number 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:

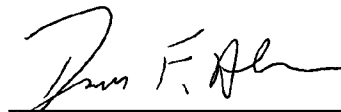
\_\_\_\_\_, J.

**CERTIFICATE OF SERVICE**

I, David F. Alpern, hereby certify that on the 31st day of October, 2006, a true and correct copy of the within Emergency Motion for Continuance was served upon the following by facsimile:

Toni M. Cherry, Esquire  
(814) 371-0936

I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
David F. Alpern, Esquire

0A

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

CITY OF DuBOIS,  
Plaintiff

vs.

RHJ MEDICAL CENTER, INC.,  
Defendant

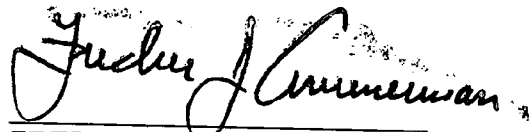
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NO. 06-1759-CD

**ORDER**

NOW, this 1<sup>st</sup> day of November, 2006, upon the Court's consideration of the Emergency Motion for Continuance filed on behalf of RHJ Medical Center, Inc., Defendant, in the above-captioned action, with the Court having been advised that the City of DuBois, Plaintiff, has no objection to the request for the continuance; the Court further noting that the Defendant understands that the Preliminary Injunction shall continue to be in effect, it is the ORDER of this Court that the hearing on the Preliminary Injunction be and is hereby continued until the 7<sup>th</sup> day of December, 2006 at 1:30 p.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

**FILED**

019:39/301  
NOV 02 2006

rec Atty's:  
T. Cherry  
Alpern  
CR

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 11/21/06

     You are responsible for serving all appropriate parties.

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

     Plaintiff(s) X Plaintiff(s) Attorney      Other

     Defendant(s) X Defendant(s) Attorney

     Special Instructions:

**FILED**

NOV 02 2006

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CITY OF DUBOIS,

CIVIL DIVISION

Plaintiff,

NO. 06-1759-CD

vs.

PRAECIPE FOR ENTRY OF APPEARANCE

RHJ MEDICAL CENTER, INC.,

Defendant.

Filed on behalf of:

Defendant, RHJ Medical Center, Inc.

Counsel of Record for this Party:

Dusty Elias Kirk, Esquire  
PA I.D. No. 30702  
Alan K. Sable, Esquire  
PA I.D. No. 66014  
PEPPER HAMILTON LLP  
Firm No. 143  
One Mellon Center  
500 Grant Street, 50<sup>th</sup> Floor  
Pittsburgh, PA 15219  
(412) 454-5000

**FILED** *NO*  
*m) 11:08 AM*  
**NOV 21 2006** *copy to CIA*  
William A. Shaw  
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CITY OF DUBOIS,	:	CIVIL DIVISION
Plaintiff,	:	
vs.	:	NO. 06-1759-CD
RHJ MEDICAL CENTER, INC.,	:	
Defendant.	:	
	:	
	:	
	:	

PRAECIPE FOR ENTRY OF APPEARANCE

TO: William A. Shaw, Prothonotary

Kindly enter the appearance of Dusty Elias Kirk, Esquire, Alan K. Sable, Esquire and Pepper Hamilton LLP, on behalf of RHJ Medical Center, Inc.

Respectfully submitted,

  
Dusty Elias Kirk

PA I.D. No. 30702

Alan K. Sable

PA I.D. No. 66014

PEPPER HAMILTON LLP

Firm No. 143

One Mellon Center

500 Grant Street, 50<sup>th</sup> Floor

Pittsburgh, PA 15219

Dated: November 2014, 2006

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Praecipe for Appearance has been served upon the following parties by first class mail, postage prepaid, on this 20th day of November, 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 Plaintiff*

Dusty Elias Kirk  
Dusty Elias Kirk

**FILED**

**NOV 21 2006**

William A. Shaw  
Prothonotary/Clerk of Courts

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CITY OF DUBOIS,

Plaintiff

vs.

RHJ MEDICAL CENTER, INC.,

Defendant

:  
: No. 06 - 1759 C.D.  
:  
:  
: Type of Case: ACTION IN EQUITY TO  
: ENFORCE THE PROVISIONS OF THE  
: PENNSYLVANIA MUNICIPALITIES  
: PLANNING CODE AND THE PROVISIONS  
: OF THE CITY OF DUBOIS ZONING  
: ORDINANCE  
:  
: Type of Pleading: ORDER OF COURT AND  
: STIPULATION  
:  
: Filed on Behalf of: CITY OF DUBOIS,  
: Plaintiff  
:  
: Counsel of Record for this Party:  
:  
: 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 2cc  
DEC 07 2006  
Atty T. Cherry  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CITY OF DUBOIS,	:
Plaintiff	:
	:
vs.	: No. 06 - 1759 C.D.
	:
RHJ MEDICAL CENTER, INC.,	:
Defendant	:

**ORDER OF COURT**

AND NOW, this 7<sup>th</sup> day of December, 2006, this being the date set for hearing on Plaintiff's Petition for Injunctive Relief continued to this time at the request of Defendant, and the parties have reached an agreement that a permanent injunction should be issued against Defendant without the need for hearing on the same as a result of Defendant's acknowledgment that the Beaver Meadow Walkway is a public park within the meaning of Section 621 of the Pennsylvania Municipalities Planning Code, as re-enacted and amended 53 P.S. §10621 and; as a result, that the methadone clinic opened by RHJ MEDICAL CENTER, INC., at 994 Beaver Drive, DuBois, Pennsylvania, is in violation of the terms of Section 621 because the site at 994 Beaver Drive is within 500 feet of the aforementioned public park and RHJ MEDICAL CENTER, INC., did fail to obtain either an occupancy permit or a certificate of use from the City of DuBois before opening said clinic at such location, it is hereby ORDERED, ADJUDGED AND DECREED THAT:

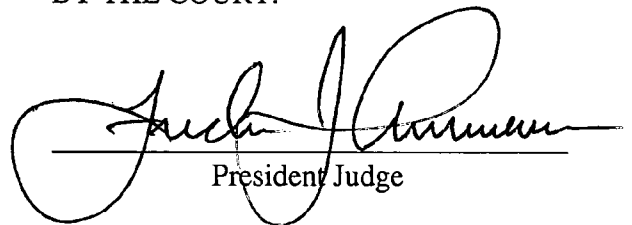
1. RHJ MEDICAL CENTER, INC., is permanently enjoined from opening and operating a methadone treatment facility at 994 Beaver Drive, DuBois, Pennsylvania, unless and until such time as it: (a) receives approval from the City of DuBois after application

therefor and at least one public hearing is held on said request; and (b) obtains a certificate of use from the City of DuBois for the location and operation of a methadone clinic at 994 Beaver Drive, DuBois, Pennsylvania; and

2. RHJ MEDICAL CENTER, INC., is permanently enjoined from advertising the location of a methadone treatment facility at 994 Beaver Drive, DuBois, Pennsylvania, and the free-standing sign located upon said premises shall be covered or the name of RHJ MEDICAL CENTER, INC., shall be removed from said sign until and unless the City of DuBois issues a certificate of use to RHJ MEDICAL CENTER, INC.; and

3. All claims by the CITY OF DUBOIS for penalties, fines and attorney's fees for violation of its ordinances and Section 621 of the Pennsylvania Municipalities Planning Code raised in its Complaint and the Defendant's defenses thereto are not waived by the issuance of this permanent injunction by consent of the parties.

BY THE COURT:



President Judge

## **STIPULATION**

AND NOW, this 7<sup>th</sup> day of December, 2006, the parties hereto stipulate and agree to the entry of the foregoing Order without the necessity of a hearing before the Court on the issues

raised in Plaintiff's Petition for Injunctive Relief.

FOR THE CITY OF DUBOIS, PLAINTIFF:

ATTEST:

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
Mayor and President of Council

\_\_\_\_\_  
Attorney for the CITY OF DUBOIS

FOR RHJ MEDICAL CENTER, INC., DEFENDANT:

ATTEST:

\_\_\_\_\_  
Secretary

By \_\_\_\_\_  
President

\_\_\_\_\_  
Attorney for RHJ MEDICAL CENTER, INC.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CITY OF DUBOIS,

Plaintiff

vs.

RHJ MEDICAL CENTER, INC.,

Defendant

No. 06-1759 C.D.

**ORDER OF COURT**

AND NOW, this 7th day of December, 2006, this being the date set for hearing on Plaintiff's Petition for Injunctive Relief continued to this time at the request of Defendant, and the parties have reached an agreement that a permanent injunction should be issued against Defendant without the need for hearing on the same as a result of Defendant's acknowledgment that the Beaver Meadow Walkway is a public park within the meaning of Section 621 of the Pennsylvania Municipalities Planning Code, as re-enacted and amended 53 P.S. §10621 and, as a result, that the methadone clinic operated by RHJ MEDICAL CENTER, INC., at 994 Beaver Drive, DuBois, Pennsylvania, is in violation of the terms of Section 621 because the site at 994 Beaver Drive is within 500 feet of the aforementioned public park and RHJ MEDICAL CENTER, INC., did fail to obtain either an occupancy permit or a certificate of use from the City of DuBois before opening said clinic at such location, it is hereby ORDERED, ADJUDGED AND DECREED THAT:

1. RHJ MEDICAL CENTER, INC., is permanently enjoined from opening and operating a methadone treatment facility at 994 Beaver Drive, DuBois, Pennsylvania, unless and until such time as it: (a) receives approval from the City of DuBois after application



thereof and at least one public hearing is held on said request; and (b) obtains a certificate of use from the City of DuBois for the location and operation of a methadone clinic at 994 Beaver Drive, DuBois, Pennsylvania; and

2. RHJ MEDICAL CENTER, INC., is permanently enjoined from advertising the location of a methadone treatment facility at 994 Beaver Drive, DuBois, Pennsylvania, and the free-standing sign located upon said premises shall be covered or the name of RHJ MEDICAL CENTER, INC., shall be removed from said sign until and unless the City of DuBois issues a certificate of use to RHJ MEDICAL CENTER, INC.; and

3. All claims by the CITY OF DUBOIS for penalties, fines and attorney's fees for violation of its ordinances and Section 621 of the Pennsylvania Municipalities Planning Code raised in its Complaint and the Defendant's defenses thereto are not waived by the issuance of this permanent injunction by consent of the parties.

BY THE COURT:

---

President Judge

### **STIPULATION**

AND NOW, this 7<sup>th</sup> day of December, 2006, the parties hereto stipulate and agree to the entry of the foregoing Order without the necessity of a hearing before the Court on the issues

related to Plaintiff's Petition for Injunctive Relief.

FOR THE CITY OF DUBOIS, PLAINTIFF:

ATTEST:

Francis L. Lias  
City Clerk

By John L. Lias  
Mayor and President of Council

[Signature]  
Attorney for the CITY OF DUBOIS

FOR RHI MEDICAL CENTER, INC., DEFENDANT:

ATTEST:

[Signature]  
Secretary

By [Signature]  
President

[Signature]  
Attorney for RHI MEDICAL CENTER, INC.

FILED

DEC 07 2006

William A. Shaw  
Prothonotary/Clerk of Courts

CITY OF DUBOIS,

Plaintiff,

vs.

RHJ MEDICAL CENTER, INC.,

Defendant.

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

: CIVIL ACTION NO. 06-1759 C.D.

: ACTION IN EQUITY

FILED  
02:32:37  
NOV 19 2007

William A. Shaw  
Prothonotary/Clerk of Courts

2cc: *Attorney Delaney* (GK)

**RULE TO SHOW CAUSE WHY INJUNCTIONS SHOULD NOT BE DISSOLVED**

AND NOW, this 19 day of Nov, 2007, on consideration of RHJ

Medical Center, Inc.'s Motion to Dissolve Injunctions, it is hereby ordered that:

- (1) a rule is issued upon the plaintiff to show cause why the defendant is not entitled to the relief requested;
- (2) the plaintiff shall file an answer within twenty (20) days of service upon the plaintiff;
- (3) the motion shall be decided under Pennsylvania Rule of Civil Procedure No. 206.7;
- (4) notice of the entry of this order shall be provided to all parties by the petitioner.

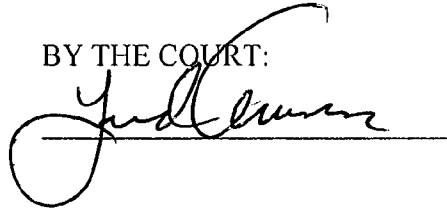
A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE MATTERS SET FORTH IN THE FOLLOWING PETITION, YOU MUST ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE AN ANSWER IN WRITING WITH THE PROTHONOTARY SETTING FORTH YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU AND SERVE A COPY ON THE ATTORNEY OR PERSON FILING THE PETITION. YOU ARE

WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU  
AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT  
FURTHER NOTICE FOR THE RELIEVE REQUESTED BY THE PETITIONER. YOU MAY  
LOSE RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO  
NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE  
OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

**COURT ADMINISTRATOR**  
**Clearfield County Courthouse**  
**Second & Market Streets**  
**Clearfield, PA 16830**  
**(814) 765-2641, Ext. 50-51**

BY THE COURT:

A handwritten signature in black ink, appearing to read "Judith L. ...", is written over a horizontal line.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CIVIL DIVISION

CITY OF DUBOIS,	:	
Plaintiff,	:	No. 06-1759 C.D.
	:	
RHJ MEDICAL CENTER, INC.	:	
Defendant.	:	

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE CLERK:

Kindly enter my appearance as counsel for Defendant, RHJ Medical Center in the  
above referenced matter.

Public Interest Law Center of Philadelphia

BY:

Barbara E. Ransom  
ID# 64166

125 S. 9<sup>th</sup> Street, 7<sup>th</sup> Floor  
Philadelphia, PA 19107  
215-627-7100  
215-627-3183

Date: November 15, 2007

FILED <sup>NO CC</sup>  
m110:3181  
NOV 20 2007 Copy to CIA

William A. Shaw  
Prothonotary/Clerk of Courts

(GK)

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

**CIVIL DIVISION**

<b>CITY OF DUBOIS,</b>	:	
<b>Plaintiff,</b>	:	<b>No. 06-1759 C.D.</b>
	:	
<b>RHJ MEDICAL CENTER, INC.</b>	:	
<b>Defendant.</b>	:	

**CERTIFICATE OF SERVICE**

I hereby certify that on November 15, 2007 I served a copy of the foregoing document on counsel for the Plaintiff via United States Mail, first class postage prepaid, as follows:

Toni M. Cherry, Esquire  
Solicitor for City of Dubois  
Gleason, Cherry and Cherry, LLP  
One North Franklin Street  
P.O. Box 505  
DuBois, PA 15801

Sean P. Delaney  
Pepper Hamilton  
100 Market Street, Suite 200  
P.O. Box 1181  
Harrisburg, PA 17108-1181

  
\_\_\_\_\_  
Barbara E. Ransom

CITY OF DUBOIS,

Plaintiff,

vs.

RHJ MEDICAL CENTER, INC.,

Defendant.

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

: CIVIL ACTION NO. 06-1759 C.D.

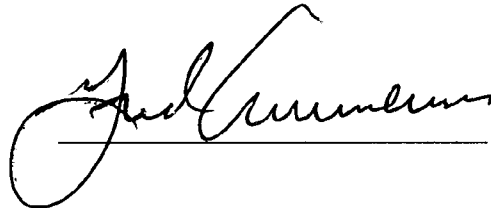
: ACTION IN EQUITY

SCHEDULING ORDER

And now this 4<sup>th</sup> day of Dec, 2007, it is hereby

ORDERED and DECREED that a hearing on the Motion to Dissolve Injunctions which was filed  
in the above captioned case is scheduled for January 15, 2008 at 1:30 a.m./p.m.  
in Courtroom 1 at the Court of Common Pleas Clearfield County, Pennsylvania.

BY THE COURT:



**FILED**

DEC 05 2007

0/9:55/4

William A. Shaw  
Prothonotary/Clerk of Courts

2 CEN TO ATTY



DATE: 12-05-07

☒ 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:

**FILED**  
**DEC 05 2007**  
Prothonotary/Clerk of Courts  
William A. Shaw

CITY OF DUBOIS,

Plaintiff,

vs.

RHJ MEDICAL CENTER, INC.,

Defendant.

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

: CIVIL ACTION NO. 06-1759 C.D.

: ACTION IN EQUITY

: Type of Pleading:

: **MOTION TO DISSOLVE INJUNCTIONS**

: Filed on Behalf of Defendant,  
: RHJ Medical Center, Inc.

: Counsel of Record for This Party:

: Dusty Elias Kirk, Esquire  
: PA I.D. No. 30702  
: Jennifer F. Shugars, Esquire  
: PA I.D. No. 84797  
: PEPPER HAMILTON LLP  
: Firm I.D. No. 143  
: One Mellon Center, 50<sup>th</sup> Floor  
: 500 Grant Street  
: Pittsburgh, PA 15219-2502  
: Telephone: (412) 454-5000  
: Fax: (412) 281-0717

: Sean Delaney, Esquire  
: PA I.D. No. 85996  
: PEPPER HAMILTON LLP  
: Suite 200, 100 Market Street  
: Harrisburg, PA 17101  
: Telephone: (717) 255-1124  
: Fax: (717) 238-0575

: Barbara E. Ransom, Esquire  
: PA I.D. No. 64166  
: Public Interest Law Center of Philadelphia  
: 125 South 9<sup>th</sup> Street, Suite 700  
: Philadelphia, PA 19107  
: Telephone: (215) 627-7100  
: Fax: (215) 627-3183

**FILED**

04:00 PM  
NOV 15 2007

2cc  
Amy Delaney

William A. Shaw  
Prothonotary/Clerk of Courts

CITY OF DUBOIS,	:	IN THE COURT OF COMMON PLEAS OF :
	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff,	:	
vs.	:	
	:	CIVIL ACTION NO. 06-1759 C.D.
RHJ MEDICAL CENTER, INC.,	:	
	:	
Defendant.	:	ACTION IN EQUITY
	:	

**MOTION TO DISSOLVE INJUNCTIONS**

Defendant, RHJ Medical Center, Inc. ("RHJ"), by and through its undersigned counsel Pepper Hamilton LLP and the Public Interest Law Center of Philadelphia, hereby moves this Court pursuant to Pa.R.C.P. §1531(c) to dissolve the preliminary injunction granted on October 27, 2006 (the "Preliminary Injunction"), as well as the subsequent injunction granted by the Court on December 7, 2006 (the "Injunction"), prohibiting RHJ from "opening and operating a methadone treatment facility at 994 Beaver Drive in the City of DuBois," in light of new controlling case law decided by the United States District Court for the Third Circuit, which has materially changed the law as it existed at the time that the Preliminary Injunction and the Injunction were issued. In support of this motion, RHJ represents as follows:

1. In October of 2006, the City of DuBois sought an injunction to prevent RHJ from opening a methadone treatment facility at 994 Beaver Drive in the City of DuBois (the "Property") on the grounds that Section 621 of the Pennsylvania Municipalities Planning Code (the "MPC"), 53 P.S. §10621, prohibited a methadone treatment facility from locating within five hundred (500) feet of, *inter alia*, "a ... public park," unless a majority of the governing board of the municipality voted in favor of such use after holding a public meeting in accordance with the statute.

2. On October 27, 2006, this Court entered an interim Order issuing the Preliminary Injunction, preliminarily enjoining RHJ from opening and operating a methadone

treatment facility at the Property and ordering RHJ to cover a sign announcing the location of the facility. *See Exhibit A* attached hereto.

3. RHJ does not concede that the Court's decision to issue the Preliminary Injunction was correct either factually or as a matter of law and reserves all rights to challenge it, if not dissolved.

4. Subsequently, and pursuant to a stipulation between the City of DuBois and RHJ, this Court entered an Order issuing the Injunction on December 7, 2006, enjoining RHJ from opening and operating a methadone treatment facility at the Property unless and until (i) RHJ received permission from the City of DuBois to operate a methadone treatment facility within 500 feet of a public park in accordance with Section 621 of the MPC, and (ii) RHJ obtained a certificate of use pertaining to the proposed methadone treatment facility from the City of DuBois. *See Exhibit B* attached hereto. Petitioner entered into this stipulation to comply with the requirements of Section 621 of the MPC.

5. In accordance with the Court's December 7, 2006 Order issuing the Injunction, RHJ submitted an application for a certificate of use to the City of DuBois on or about January 24, 2007.

6. On May 29, 2007, the City of DuBois, relying solely upon the authority granted by Section 621 of the MPC, denied RHJ's request to operate a methadone treatment facility within 500 feet of a public park and refused to issue a certificate of use for the methadone treatment facility proposed at the Property as a result of that denial. *See Exhibit C* attached hereto.

7. On June 15, 2007, the United States Court of Appeals for the Third Circuit (the “Third Circuit”) decided *New Directions Treatment Services v. City of Reading*, filed at No. 05-4353 (“*New Directions*”). The time to seek review of the *New Directions* case from the United States Supreme Court has expired and the decision is final. A copy of *New Directions* is attached as Exhibit D hereto.

8. *New Directions* holds that Section 621 of the MPC violates (i) the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*, and (ii) Section 504 of the Rehabilitation Act, 29 U.S.C. § 793, by singling out methadone treatment facilities for different zoning treatment and thereby discriminating against this effective treatment therapy for persons with drug addictions. *New Directions* declares Section 621 of the MPC, and municipal action taken under Section 621 of the MPC, invalid throughout the Commonwealth.

9. The Third Circuit’s decision in *New Directions* is directly controlling in the instant matter, due to the simple fact that *New Directions* invalidates Section 621 of the MPC, thereby removing the basis for (i) the issuance and continuance of the Preliminary Injunction and the Injunction, and (ii) the denial of RHJ’s application for a certificate of use by the City of DuBois.

10. An injunction should be dissolved when changed circumstances eviscerate the justification for it. *Township of Salisbury v. Sun Oil Co.*, 406 A.2d 195 (Pa. 1962), cited in *Whibby v. Dep’t of Corr.*, 820 A.2d 829, 831 (Pa. Commw. Ct. 2003) (holding “when an injunction serves no purpose because of the expiration of the statutory authority supporting it, an application to dissolve the injunction is appropriate”). The Third Circuit’s decision in *New Directions* constitutes such changed circumstances, because that decision invalidated Section

621 of the MPC, and there is therefore no justification for the continuance of the Preliminary Injunction or the Injunction.

11. Accordingly, the City of DuBois' consent to the operation of a methadone treatment facility at this location is no longer required as a result of the invalidation of Section 621 of the MPC, and the Preliminary Injunction and the Injunction are no longer in accordance with the law and should be dissolved.

12. The Court has maintained jurisdiction over this matter due to the fact that jurisdiction was never relinquished by the Court.

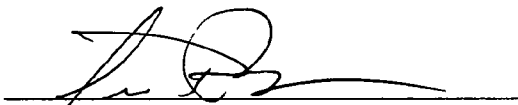
13. As noted in Paragraph 6 above, the City of DuBois refused to issue a certificate of use permitting the operation of a methadone treatment facility on the Property because of Section 621 of the MPC, which is now invalid.

14. The basis for the denial of RHJ's application for issuance of a certificate of use is invalid, therefore, the City of DuBois must now exclude Section 621 of the MPC from its analysis and act upon RHJ's application for a certificate of use in accordance with the valid ordinances and regulations in effect at the time RHJ submitted its application.

WHEREFORE, RHJ Medical Center, Inc. respectfully requests this Court to dissolve the Preliminary Injunction and the Injunction immediately, vacate the decision of the governing body of the City of DuBois, and remand RHJ Medical Center, Inc.'s application for issuance of a certificate of use to the Office of the Zoning Officer of the City of DuBois for administrative review in accordance with the valid ordinances and regulations in effect at the

time such application was filed. Further, RHJ Medical Center, Inc. respectfully requests this Court to continue to retain jurisdiction in this matter pending such review.

November 15, 2007



---

Dusty Elias Kirk, Esquire  
PA I.D. No. 30702  
Jennifer F. Shugars, Esquire  
PA I.D. No. 84797  
PEPPER HAMILTON LLP  
Firm I.D. No. 143  
One Mellon Center, 50<sup>th</sup> Floor  
500 Grant Street  
Pittsburgh, PA 15219-2502  
Telephone: (412) 454-5000  
Fax: (412) 281-0717

Sean Delaney, Esquire  
PA I.D. No. 85996  
PEPPER HAMILTON LLP  
Suite 200, 100 Market Street  
Harrisburg, PA 17101  
Telephone: (717) 255-1124  
Fax: (717) 238-0575

Barbara E. Ransom, Esquire  
PA I.D. No. 64166  
Public Interest Law Center of Philadelphia  
125 South 9th Street, Suite 700  
Philadelphia, PA 19107  
Telephone: (215) 627-7100  
Fax: (215) 627-3183

Attorneys for the Defendant  
RHJ Medical Center, Inc.

CITY OF DUBOIS,

Plaintiff,

vs.

RHJ MEDICAL CENTER, INC.,

Defendant.

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


:  
: CIVIL ACTION NO. 06-1759 C.D.

:  
: ACTION IN EQUITY  
:

**CERTIFICATION BY COUNSEL**

I, Sean Delaney, represent RHJ Medical Center, Inc. in this matter. I hereby  
certify that I spoke with Toni M. Cherry, Solicitor for the City of Dubois, on October 18, 2007,  
and the City will not consent to dissolving these injunctions.

November 15, 2007

  
Sean Delaney, Esquire  
PA I.D. No. 85996  
PEPPER HAMILTON LLP  
Suite 200, 100 Market Street  
Post Office Box 1181  
Harrisburg, PA 17108-1181  
Telephone: (717) 255-1124  
Fax: (717) 238-0575



CITY OF DUBOIS,

Plaintiff,

vs.

RHJ MEDICAL CENTER, INC.,

Defendant.

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

:  
: CIVIL ACTION NO. 06-1759 C.D.

:  
: ACTION IN EQUITY  
:

**ORDER DISSOLVING INJUNCTIONS**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, on consideration of RHJ Medical Center, Inc.'s Motion to Dissolve Injunctions, the injunctions granted in this matter by orders dated October 27, 2006, and December 7, 2006, are hereby dissolved.

In light of the United States Court of Appeals for the Third Circuit's decision in *New Directions Treatment Services v. City of Reading*, filed at No. 05-4353, it is further ORDERED that the decision of the City Council of the City of DuBois, rendered under the invalid authority of Section 621 of the MPC on May 29, 2007, is hereby VACATED as contrary to law, and RHJ Medical Center Inc.'s application for issuance of a certificate of use, filed with the City of DuBois on or about January 24, 2007, is hereby REMANDED to the Office of the Zoning Officer of the City of DuBois for administrative review in accordance with the valid ordinances and regulations in effect at the time such application was filed. The Court shall continue to retain jurisdiction in this matter pending such review.

BY THE COURT:

---

CITY OF DUBOIS,

Plaintiff,

vs.

RHJ MEDICAL CENTER, INC.,

Defendant.

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

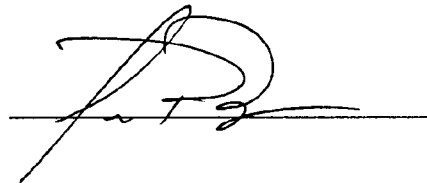
:  
: CIVIL ACTION NO. 06-1759 C.D.

:  
: ACTION IN EQUITY  
:

**CERTIFICATE OF SERVICE**

I hereby certify that on November 15, 2007, I served a copy of the foregoing document on counsel, via <sup>overnight delivery</sup> ~~hand delivery~~, addressed as follows:

Toni M. Cherry, Esquire  
Solicitor for the City of Dubois  
Gleason, Cherry and Cherry, L.L.P.  
One North Franklin Street  
P.O. Box 505  
DuBois, PA 15801

A handwritten signature in black ink, appearing to be "T M Cherry", written over a horizontal line.



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

CITY OF DUBOIS,  
Plaintiff

vs.

RHJ MEDICAL CENTER, INC.,  
Defendant

No. 06 - 1759 C.D.

**ORDER**

AND NOW, this 27<sup>th</sup> day of October, 2006, upon consideration of the Complaint in Equity, Plaintiff's Petition for Injunctive Relief, proof that Plaintiff's attorney notified Defendant by facsimile transmission of her intention to file the Complaint and present the Petition for Injunctive Relief this date and the Court having determined (1) that the Plaintiff will suffer irreparable harm if the requested relief is not granted immediately without notice and a hearing; (2) that Plaintiff does not have an adequate remedy at law; and (3) that greater injury would be inflicted upon Plaintiff by a denial of temporary injunctive relief than will be inflicted upon Defendant by the granting of such relief since Defendant is in violation of law, it is hereby ORDERED that:

(a) Defendant is enjoined from opening and operating a methadone treatment facility at 994 Beaver Drive in the City of DuBois and shall cease and desist the operation of the same immediately; and

(b) Defendant shall cause the free-standing sign advertising the location of such methadone treatment facility to be covered pending hearing in this matter.

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

CITY OF DUBOIS,

Plaintiff

No. 06 - 1259 C.D.

vs.

RHJ MEDICAL CENTER, INC.,  
Defendant

Type of Case: ACTION IN EQUITY TO  
ENFORCE THE PROVISIONS OF THE  
PENNSYLVANIA MUNICIPALITIES  
PLANNING CODE AND THE PROVISIONS  
OF THE CITY OF DUBOIS ZONING  
ORDINANCE

Type of Pleading: PETITION FOR  
PRELIMINARY INJUNCTION

Filed on Behalf of: CITY OF DUBOIS,  
Plaintiff

Counsel of Record for this Party:

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

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

OCT 27 2006

Attest

*[Signature]*  
Prothonotary/  
Clerk of Court

A hearing pertaining to the continuance of this preliminary injunction will be held on the 1<sup>st</sup> day of November, 2006, at 9:00 o'clock A.M. in Courtroom No. 1 of the Clearfield County Courthouse, Second Floor, Clearfield, Pennsylvania, pursuant to Pa. R.C.P. 1531(d).

A Rule is entered upon Defendant, RHJ MEDICAL CENTER, INC., to show cause at the above date and time why this preliminary injunction should not be continued.

BY THE COURT:

/s/ Fredric J. Ammerman

President Judge

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

OCT 27 2006

Attest.

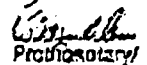
  
Probationary  
Clerk of Courts

Exhibit B

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CITY OF DUBOIS,	:
Plaintiff	:
	:
vs.	: No. 06 - 1759 C.D.
	:
RHI MEDICAL CENTER, INC.,	:
Defendant	:

**ORDER OF COURT**

AND NOW, this \_\_\_\_ day of December, 2006, this being the date set for hearing on Plaintiff's Petition for Injunctive Relief continued to this time at the request of Defendant, and the parties have reached an agreement that a permanent injunction should be issued against Defendant without the need for hearing on the same as a result of Defendant's acknowledgment that the Beaver Meadow Walkway is a public park within the meaning of Section 621 of the Pennsylvania Municipalities Planning Code, as re-enacted and amended 53 P.S. §10621 and: as a result, that the methadone clinic opened by RHI MEDICAL CENTER, INC., at 994 Beaver Drive, DuBois, Pennsylvania, is in violation of the terms of Section 621 because the site at 994 Beaver Drive is within 500 feet of the aforementioned public park and RHI MEDICAL CENTER, INC., did fail to obtain either an occupancy permit or a certificate of use from the City of DuBois before opening said clinic at such location, it is hereby ORDERED, ADJUDGED AND DECREED THAT:

1. RHI MEDICAL CENTER, INC., is permanently enjoined from opening and operating a methadone treatment facility at 994 Beaver Drive, DuBois, Pennsylvania, unless and until such time as it: (a) receives approval from the City of DuBois after application



therefor and at least one public hearing is held on said request; and (b) obtains a certificate of use from the City of DuBois for the location and operation of a methadone clinic at 994 Beaver Drive, DuBois, Pennsylvania; and

2. RHJ MEDICAL CENTER, INC., is permanently enjoined from advertising the location of a methadone treatment facility at 994 Beaver Drive, DuBois, Pennsylvania, and the free-standing sign located upon said premises shall be covered or the name of RHJ MEDICAL CENTER, INC., shall be removed from said sign until and unless the City of DuBois issues a certificate of use to RHJ MEDICAL CENTER, INC.; and

3. All claims by the CITY OF DUBOIS for penalties, fines and attorney's fees for violation of its ordinances and Section 621 of the Pennsylvania Municipalities Planning Code raised in its Complaint and the Defendant's defenses thereto are not waived by the issuance of this permanent injunction by consent of the parties.

BY THE COURT:

---

President Judge

### **STIPULATION**

AND NOW, this 7<sup>th</sup> day of December, 2006, the parties hereto stipulate and agree to the entry of the foregoing Order without the necessity of a hearing before the Court on the issues

2

Exhibit C

LAW OFFICES  
**GLEASON, CHERRY AND CHERRY, L.L.P.**  
P.O. Box 505  
DuBois, PENNSYLVANIA 15801-0505

TONI M. CHERRY  
PAULA M. CHERRY  
EDWARD V. CHERRY  
1950-1990  
JAMES A. GLEASON  
1948-1975

ONE NORTH FRANKLIN STREET

AREA CODE 814  
371-5800  
FAX NUMBER  
(814) 371-0936

June 1, 2007

Mr. Dennis R. Jones  
RHJ Medical Center  
RR 1 Box 224, Old Route 119 South  
Hunker, PA 15639

Dear Mr. Jones:

We are enclosing herewith written Findings of Fact, Conclusions of Law and written Decision of the City Council of the City of DuBois on the Application of RHJ Medical Center, Inc. for a Certificate of Use to operate a methadone treatment facility at 994 Beaver Drive, DuBois, Clearfield County, Pennsylvania.

Very truly yours,

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

By

  
Tom M. Cherry

TMC:mls

Enclosure

cc: Mayor and Members of Council

## **BEFORE THE CITY COUNCIL OF THE CITY OF DUBOIS**

IN RE: Application of RHJ Medical Center, Inc.  
for a Certificate of Use to Operate a  
Methadone Treatment Facility at  
994 Beaver Drive, DuBois, Clearfield  
County, PA, a Location that is Closer  
than 500 feet to the Public Park known  
as Beaver Meadow Walkway

### **WRITTEN FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION OF THE CITY COUNCIL OF THE CITY OF DUBOIS**

#### **I. PROCEDURAL HISTORY**

1. An Application for an Occupancy Permit or Certificate of Use to operate a methadone treatment facility at 994 Beaver Drive, DuBois, Clearfield County, Pennsylvania 15801, Map No. 32, Parcel 11012, was filed on behalf of RHJ Medical Center, Inc., and the requisite fee for public hearing was paid and received by the City of DuBois on January 24, 2007.

2. That in response to said application, a public hearing was scheduled for April 23, 2007, at 6:00 p.m. in the Council Chambers of the City of DuBois Municipal Building, 16 West Scribner Avenue, DuBois, Pennsylvania.

3. That in accordance with the requirements of 53 P.S. §10621(b), all owners of real property located within 500 feet of the proposed location were provided written notice of said public hearing at least 30 days prior to said public hearing occurring on March 12, 2007, by United States First Class Mail, postage prepaid.

4. That notice of said public hearing was provided to the general public by advertisement in The Courier-Express, a newspaper of general daily circulation within the City of DuBois and surrounding areas.

5. That at the public hearing, the City of DuBois entered the following exhibits into the record without objection:

- Exhibit 1 - Application for Occupancy Permit or a Certificate of Use filed by RHJ Medical Center to operate a methadone treatment facility at 994 Beaver Drive, DuBois, PA
- Exhibit 2 - Copies of written notices sent to landowners of real property located within 500 feet of the proposed location
- Exhibit 3 - Copy of the legal notice that appeared in The Courier-Express in its issues of March 15, 2007 and April 12, 2007
- Exhibit 4 - A-G - Packet of documents evidencing the City of DuBois' Application for a Department of Conservation and Natural Resources Community Partnership Program Grant for improvement of the public park known as the Beaver Meadow Walkway
- Exhibit 5 - Petition for Preliminary Injunction filed by the City of DuBois to No. 06 - 1759 C.D. seeking to enjoin RHJ Medical Center, Inc., from opening and operating a methadone treatment facility at 994 Beaver Drive and to have the free-standing sign advertising the location of such methadone treatment facility covered pending hearing in the matter due to the fact that the center was opened without a public hearing and without receiving the consent of the City of DuBois to locate said facility closer than 500 feet to an existing park with attached Interim Order of October 27, 2006, granting the relief requested
- Exhibit 6 - A certified copy of the Order of Court entered to No. 06 - 1759 C.D. upon the stipulation of RHJ Medical Center, Inc., through its agents and employees and the City of DuBois, through its Mayor, permanently enjoining RHJ Medical Center, from opening and operating a methadone treatment facility at 994 Beaver Drive, DuBois, PA, unless and until it receives approval from the City of DuBois and further permanently enjoining the advertisement of the location of such facility at 994 Beaver Drive and directing that the free-standing sign be covered

Exhibits 7A through 7D - Photographs of the sign on Liberty Boulevard advertising the Beaver Meadow Walkway and that the City of DuBois received Funding Assistance from the Community Conservation Partnerships Program administered by the Bureau of Recreation and Conservation, Pennsylvania Department of Conservation and Natural Resources

Exhibits 8A through 8D - Photographs of the sign advertising the park and its source of funding at the entrance on Shaffer Road

## **II. JURISDICTION**

The City Council of the City of DuBois has jurisdiction to hold a public hearing and to determine whether RHJ Medical Center, Inc., may locate a methadone treatment facility at 994 Beaver Drive, DuBois, Pennsylvania, under Section 621 of the Pennsylvania Municipalities Planning Code (MPC), 53 P.S. §10621.

## **III. FINDINGS OF FACT**

1. That there exists within the City of DuBois from US Route 219 known as Liberty Boulevard to Shaffer Road, a 1.5 mile greenway corridor along the Sandy Lick Creek known as the Sandy Lick Creek Recreational Area and containing within said corridor a cemented sidewalk or trail known as the Beaver Meadow Walkway.

2. That the City of DuBois maintains the Beaver Meadow Walkway as part of its system of public parks and recreational sites for the purpose of providing a place for the public to walk, jog, bike

and otherwise enjoy the benefits of athletic exercise along a scenic walkway subject to the City's right to regulate the use thereof.

3. That by Ordinance No. 1288, enacted on June 25, 1979, the City of DuBois did adopt specific hours of operation for the Beaver Meadow Walkway similar to the hours established for use of the City's other public parks.

4. That by letter dated June 16, 2004, the City of DuBois was advised that the Pennsylvania Department of Conservation and Natural Resources had approved a grant in the amount of \$51,000.00 from the Department of Conservation and Natural Resources' Community Conservation Partnerships Program for the improvement of the public park known as the Beaver Meadow Walkway.

5. That the site at which RHJ Medical Center, Inc., intends to establish and operate a methadone treatment facility, to wit, 994 Beaver Drive, DuBois, Pennsylvania, is located approximately 39 feet from the linear public park known as the Beaver Meadow Walkway.

6. That RHJ Medical Center, Inc., has a physician associated with the methadone treatment facility but he is not on site at all times, only having to be there one hour for each ten patients that the center treats.

7. That the methadone treatment facility has no on-site security personnel but will depend upon the services of the City's police force and fire department to handle emergency situations.

8. The doctor associated with the methadone clinic does not have privileges at DuBois Regional Medical Center and would not be able to treat any of the methadone treatment facility's patients should they need to be hospitalized and would expect other doctors on staff at DuBois Regional Medical Center to take over patient care.



9. The facility does not have a means of transporting patients and if a patient were to have an overdose, transportation to DuBois Regional Medical Center would come via a call to 9-1-1.
10. That the methadone treatment facility expects to treat 100 patients per day.
11. That RHJ Medical Center, Inc., did not perform any traffic study to determine the impact that the transportation of these 100 patients per day would have on the traffic pattern of Beaver Drive.
12. That RHJ Medical Center, Inc., did not perform any need assessment to determine whether its center was needed in the area and had no statistics concerning area drug use to present.
13. That RHJ Medical Center, Inc., is a for-profit organization and will not be working with the DuBois Regional Medical Center because the hospital has declined to be involved with RHJ Medical Center, Inc.
14. That RHJ Medical Center, Inc., intends to operate the facility and receive patients from 5:30 a.m. to 11:15 a.m. with the staff leaving at 1:00 p.m.
15. That in addition to 100 patients per day traveling Beaver Drive and parking at the facility, there will be 14 to 20 staff people each day sharing no more than 50 parking spaces with other businesses in that same complex.
16. That no evidence was submitted by RHJ Medical Center, Inc., to prove that there was adequate parking available for all businesses in this complex if a methadone treatment facility was established at 994 Beaver Drive.
17. That RHJ Medical Center, Inc., presented no evidence to establish that its methadone treatment facility should be located closer than 500 feet to the existing public park known as Beaver Meadow Walkway.

#### IV. CONCLUSIONS OF LAW

1. That Section 621 of the Pennsylvania Municipalities Planning Code (MPC) prohibits the establishment or operation of a methadone treatment facility within 500 feet of an existing public park unless the governing body of the municipality in which the proposed methadone treatment facility is to be located votes in favor of the issuance of an occupancy permit or certificate of use for said facility at such a location closer than 500 feet to an existing park. 53 P.S. §10621.
2. That RHJ Medical Center, Inc., presented no evidence to justify a deviation from the mandate of Section 621 of the MPC that a methadone treatment facility not be established or operated within 500 feet of an existing public park.
3. That no evidence was presented by RHJ Medical Center, Inc., to establish that the health, safety and general welfare of the citizens of DuBois would be served by the location of a methadone treatment facility at a site that is within 500 feet of the public park known as Beaver Meadow Walkway.
4. That the health, safety and general welfare of the citizens of the City of DuBois will not be served by allowing a methadone treatment facility to be located at 994 Beaver Drive, a site that is approximately 39 feet from the linear public park known as the Beaver Meadow Walkway.

#### V. DECISION

RHJ Medical Center, Inc.'s request for an Occupancy Permit/Certificate of Use to establish and operate a methadone treatment facility at 994 Beaver Drive, DuBois, Pennsylvania, is **DENIED**.

We, the following members of the City Council of the City of DuBois, declare this to be our

decision this 29<sup>th</sup> day of May, 2007.

(Mayor)

(Councilman)

(Councilman)

(Councilman)

(Councilman)

Exhibit D

PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

Case No: 05-4353

NEW DIRECTIONS TREATMENT SERVICES, on its own  
behalf and on  
behalf of its patients; ANGEL DOE; DAN COE; JOSEPH  
JOE;  
LOUIS LOE; CARLOS POE; PETER VOE, on their own  
behalf  
and on behalf of the class,

Appellants

v.

CITY OF READING; VAUGHN SPENCER, City Council  
President, in  
his official capacity, and City Council Members; ANGEL  
FIGUEROA; GEORGE KERNS; MICHAEL D. SCHORN;  
DENNIS STERNER;  
DONNA REED; JEFFREY WALTMAN; CASEY  
GANSTER, In their  
individual and official capacities

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On Appeal from the United States District Court  
for the Eastern District of Pennsylvania  
District Court No.: 04-cv-1311  
District Judge: The Honorable Paul S. Diamond

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Argued on December 11, 2006

Before: SMITH and ROTH, *Circuit Judges*,  
and IRENAS, *District Judge*\*

(Filed: June 15, 2007)

Michael Churchill  
Barbara E. Ransom (argued)  
Public Interest Law Center of Philadelphia  
125 South 9th Street  
Suite 700  
Philadelphia, PA 19107  
*Counsel for Appellants*

Steven K. Ludwig (argued)  
Fox Rothschild  
2000 Market Street  
10th Floor  
Philadelphia, PA 19103  
*Counsel for Appellees*

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\* The Honorable Joseph E. Irenas, Senior District Judge for  
the United States District of New Jersey, sitting by designation.

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OPINION

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SMITH, *Circuit Judge*.

This case presents the familiar conflict between the legal principle of non-discrimination and the political principle of not-in-my-backyard. New Directions Treatment Services, a reputable and longstanding provider of methadone treatment, sought to locate a new facility in the City of Reading. A Pennsylvania statute that facially singles out methadone clinics gave the City of Reading the opportunity to vote to deny the permit. The City of Reading availed itself of that opportunity.

New Directions and individual methadone patients brought suit on constitutional and federal statutory grounds, raising both facial and as applied challenges to the statute. The City of Reading successfully moved for summary judgment against all of plaintiffs' claims. New Directions and the individual plaintiffs' appeal is before us.

**I. Summary of facts and procedural history**

New Directions Treatment Services ("NDTS") operates several methadone clinics throughout Pennsylvania, including

one in West Reading.<sup>1</sup> NDTs provides methadone

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<sup>1</sup>The National Institute on Drug Abuse (part of the National Institutes of Health) describes methadone treatment:

Methadone treatment has been used for more than 30 years to effectively and safely treat opioid addiction. Properly prescribed methadone is not intoxicating or sedating, and its effects do not interfere with ordinary activities such as driving a car. The medication is taken orally and it suppresses narcotic withdrawal for 24 to 36 hours. Patients are able to perceive pain and have emotional reactions. Most important, methadone relieves the craving associated with heroin addiction; craving is a major reason for relapse. Among methadone patients, it has been found that normal street doses of heroin are ineffective at producing euphoria, thus making the use of heroin more easily extinguishable.

Methadone's effects last four to six times as long as those of heroin, so people in treatment need to take it only once a day. Also, methadone is medically safe even when used continuously for 10 years or more. Combined with behavioral therapies or counseling and other supportive services, methadone enables patients to stop using heroin (and other opiates) and return to more stable and productive lives.



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<http://www.nida.nih.gov/researchreports/heroin/heroin5.html#treatment>.

The Office of National Drug Control Policy (of the Executive Office of the President) provides further information on methadone treatment:

#### Background Information

Methadone is a rigorously well-tested medication that is safe and efficacious for the treatment of narcotic withdrawal and dependence. For more than 30 years this synthetic narcotic has been used to treat opioid addiction.

\* \* \*

Methadone reduces the cravings associated with heroin use and blocks the high from heroin, but it does not provide the euphoric rush. Consequently, methadone patients do not experience the extreme highs and lows that result from the waxing and waning of heroin in blood levels. Ultimately, the patient remains physically dependent on the opioid, but is freed from the uncontrolled, compulsive, and disruptive behavior seen in heroin addicts.

Withdrawal from methadone is much slower than that from heroin. As a result, it is possible to maintain an addict on methadone without harsh side effects. Many MMT [methadone maintenance treatment] patients require

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continuous treatment, sometimes over a period of years.

Methadone maintenance treatment provides the heroin addict with individualized health care and medically prescribed methadone to relieve withdrawal symptoms, reduces the opiate craving, and brings about a biochemical balance in the body. Important elements in heroin treatment include comprehensive social and rehabilitation services.

#### Availability of Treatment

About 20% of the estimated 810,000 heroin addicts in the United States receive MMT (American Methadone Treatment Association, 1999). At present, the operating practices of clinics and hospitals are bound by Federal regulations that restrict the use and availability of methadone. These regulations are explicitly stated in detailed protocols established by the U.S. Food and Drug Administration (FDA). Additionally, most States have laws that control and closely monitor the distribution of this medication.

In July 1999 the U.S. Department of Health and Human Services released a Notice of Proposed Rulemaking (NPRM) for the use of methadone. For the first time in more than 30 years, the

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NPRM proposes that this medication take its rightful place as a clinical tool in the treatment of the heroin addict. Instead of its use being mandated by regulations, programs will establish quality assurance guidelines and have to be accredited. The proposed new system will allow greater flexibility by the treating physician and ensure appropriate clinical management of the patient's needs. This proposed change in policy would eliminate most of the current regulations and allow greater clinical discretion for treatment by the physician. Accreditation establishes a clinical standard of care for the treatment of medical conditions. In the foreseeable future, clinic and hospital programs would be accredited by a national and/or State accrediting body. Responsibility for preventing the diversion of methadone to illicit use will remain with the Drug Enforcement Administration.

\* \* \*

#### Benefits

Evidence shows that continuous MMT is associated with several other benefits.

MMT costs about \$13 per day and is considered a cost-effective alternative to incarceration (Office of National Drug Control Policy, 1998a).

MMT has a benefit-cost ratio of 4:1, meaning \$4

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in economic benefit accrues for every \$1 spent on MMT (COMPA, 1997).

MMT has a significant effect on the spread of HIV/AIDS infection, hepatitis B and C, tuberculosis, and sexually transmitted diseases (COMPA, 1997). Heroin users are known to share needles and participate in at-risk sexual activity and prostitution, which are significant factors in the spread of many diseases. Research suggests that MMT significantly decreases the rate of HIV infection for those patients participating in MMT programs (Firshein, 1998).

MMT allows patients to be free of heroin addiction. The National Institute on Drug Abuse found that, among outpatients receiving MMT, weekly heroin use decreased by 69%. This decrease in use allows for the individual's health and productivity to improve (Office of National Drug Control Policy, 1998a). Patients were no longer required to live a life of crime to support their habit, and criminal activity decreased by 52% among these patients. Full-time employment increased by 24%. In a 1994 study of drug treatment in California, researchers found that rates of illegal drug use, criminal activity, and hospitalization were lower for MMT patients than for addicts in any other type of drug treatment program.

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The Drug Abuse Treatment Outcome Study (DATOS) conducted an outpatient methadone treatment (OMT) evaluation examining the long-term effects of MMT (Hubbard et al., 1997). The pretreatment problems consisted of weekly heroin use, no full-time employment, and illegal activity. Results of the 1-year follow-up showed a decrease in the number of weekly heroin users and a reduction in illegal activity after OMT. There was no significant change in unemployment rates.

#### A Review

MMT is one of the most monitored and regulated medical treatments in the United States. Despite the longstanding efficacy of MMT, only 20% of heroin addicts in the United States are currently in treatment. The National Institutes of Health Consensus Development Conference on Effective Medical Treatment of Heroin Addiction concluded that heroin addiction is a medical disorder that can be effectively treated in MMT programs. The Consensus panel recommended expanding access to MMT by increasing funding and minimizing Federal and State regulations. Further research must be conducted on factors leading to heroin use and the differences among various users and their ability to end opiate

maintenance for adults who have been addicted to heroin for at least a year. NDTS's Executive Director, Glen Cooper, contacted the City of Reading ("the City") to discuss opening an additional treatment center, as their West Reading facility had developed a waiting list for treatment. NDTS met with City officials on January 24, 2001, to discuss potential sites within the City. NDTS met with the City Council two months later to continue the discussion. Although NDTS had not yet obtained an operating permit from the City, NDTS signed a ten-year lease on a property located at 700 Lancaster Avenue. NDTS then submitted a zoning permit application.

The Lancaster Avenue property is located on a commercial highway that is interspersed with 40-75 private residences. The Berks Counseling Center previously occupied the site, providing treatment to patients with mental health problems and drug addictions. It did not provide methadone treatment.<sup>2</sup> NDTS intended to serve "a couple

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addiction before the demand for heroin addiction treatment can be effectively met by increased MMT availability.

<http://www.whitehousedrugpolicy.gov/publications/factsht/methadone/index.html>.

<sup>2</sup>The website for the Berks Counseling Center, which has since relocated, describes its activities:

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Our mission is to provide counseling and supportive services to enable individuals and families to achieve a healthy and more productive lifestyle

**Description:**

Our purpose is to offer addiction and mental health out patient treatment, case management, supportive services, and housing. Services extend to individuals, couples, families, adolescents and children. Our target population includes Berks County residents impacted upon by chemical dependency and/or mental illness. Berks Counseling Center (BCC) places a special emphasis on serving those persons who cannot access treatment elsewhere due to financial difficulties. We believe that community enlightenment and family strength are key components to the prevention and reduction of drug abuse. We have a satellite site at the Reading/Berks Emergency Shelter in order to better serve the population residing at the Shelter.

**History:**

Berks Counseling Center (BCC) is a private, non-profit corporation founded in October 1977 as Berks Youth Counseling Center. BCC is licensed by the State Dept. of Health, Division of Program Licensing; and the Dept. of Public Welfare, Office of Mental Health. BCC has been

hundred or so" methadone patients at the new facility. NDTS

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providing treatment services to the residents of center city Reading for the past 25 years. Additionally, BCC has provided both transitional (women and their children) and permanent housing for persons with disabilities for the past twelve years.

<http://www.volunteersolutions.org/uwberks/org/220334.html>. Glen Cooper, the Executive Director of NDTS, referred to the previous tenancy of the Berks Counseling Center at the same location in his comments before the City Council:

The Berks Counseling Center was in the very building that we are proposing to put this facility in. They did exactly the same sort of work that we do: drug addiction treatment, mental health services.

\* \* \*

We found what I think is a very good site where formerly heroin addicts were treated. I mean, the place that we're proposing is a former--very recently a former site for treating heroin addicts and mentally ill people. We're simply replacing or proposing to replace the agency which left there not too long ago, replace them with our own facility. And, you know, there were no problems when Berks Counseling Center was there that I'm aware of. They treated the same kind of people we treat. They were there for a long time.



proposed a 4,000 square foot addition to the property to accommodate this increased usage. NDTs planned to operate the new facility from 5:30 a.m. to 6:00 p.m. on weekdays, as well as more limited hours on weekends.

In 1999, Pennsylvania adopted 53 PA. CONS. STAT. ANN. § 10621, a zoning statute regulating locations of methadone treatment facilities.<sup>3</sup> The statute provides that “a

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<sup>3</sup>The statute provides, in full, that:

(a)(1) Notwithstanding any other provision of law to the contrary and except as provided in subsection (b), a methadone treatment facility shall not be established or operated within 500 feet of an existing school, public playground, public park, residential housing area, child-care facility, church, meetinghouse or other actual place of regularly stated religious worship established prior to the proposed methadone treatment facility.

(2) The provisions of this subsection shall apply whether or not an occupancy permit or certificate of use has been issued to the owner or operator of a methadone treatment facility for a location that is within 500 feet of an existing school, public playground, public park, residential housing area, child-care facility, church, meetinghouse or other actual place of regularly stated religious worship

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established prior to the proposed methadone treatment facility.

(b) Notwithstanding subsection (a), a methadone treatment facility may be established and operated closer than 500 feet to an existing school, public playground, public park, residential housing area, child-care facility, church, meetinghouse or other actual place of regularly stated religious worship established prior to the proposed methadone treatment facility if, by majority vote, the governing body for the municipality in which the proposed methadone treatment facility is to be located votes in favor of the issuance of an occupancy permit or certificate of use for said facility at such a location. At least 14 days prior to the governing body of a municipality voting on whether to approve the issuance of an occupancy permit or certificate of use for a methadone treatment facility at a location that is closer than 500 feet to a school, public playground, public park, residential housing area, child-care facility, church, meetinghouse or other actual place of regularly stated religious worship established prior to the proposed methadone treatment facility, one or more public hearings regarding the proposed methadone treatment facility location shall be held within the municipality following public notice. All owners of real property located within 500 feet of the proposed location shall be

methadone treatment facility shall not be established or operated within 500 feet of an existing school, public playground, public park, residential housing area, child-care facility, church, meetinghouse or other actual place of regularly stated religious worship established prior to the proposed methadone treatment facility," unless, "by majority vote, the governing body for the municipality in which the proposed methadone treatment facility is to be located votes in favor of the issuance of an occupancy permit." *Id.* at § 10621(a)(1) and (b). The Lancaster Avenue property falls within the ambit of the statute. When NDTS inquired about sites not covered by the statute, a City zoning official referred them to three sites, including a cemetery and a heavy industrial area, all of which NDTS considered unsuitable.

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provided written notice of said public hearings at least 30 days prior to said public hearings occurring.

(c) This section shall not apply to a methadone treatment facility that is licensed by the Department of Health prior to May 15, 1999.

(d) As used in this section, the term "methadone treatment facility" shall mean a facility licensed by the Department of Health to use the drug methadone in the treatment, maintenance or detoxification of persons.

53 PA. CONS. STAT. ANN. § 10621.

The City notified NDTs that it would hold a hearing on January 14, 2002. Glen Cooper, the Executive Director of NDTs, appeared at the hearing and described NDTs's history and its proposed treatment center. He also answered questions from the City Council. NDTs acknowledged that it had experienced some loitering and littering at its West Reading facility. At a second hearing on February 28, 2002, the Council heard additional public comments. At a March 25, 2002 Council meeting, the City heard more comments and then unanimously voted against NDTs's application.

NDTs filed complaints with the Pennsylvania Human Relations Commission ("PHRC") and the U.S. Department of Housing and Urban Development's Office of Fair Housing and Equal Opportunity ("HUD"). The PHRC dismissed NDTs's complaint in a letter stating that, "the facts of the case [did] not establish that probable cause exist[ed] to credit the allegations of unlawful discrimination." NDTs and several individual plaintiffs proceeding in pseudonym filed suit in the United States District Court for the Eastern District of Pennsylvania on March 25, 2004.

The complaint states four counts. First, NDTs alleged violations of the Fourteenth Amendment guarantees of Due Process and Equal Protection, stating that the Pennsylvania statute was unconstitutional on its face and as applied to the proposed Reading facility. Second, NDTs alleged that the statute, both facially and as applied, violates § 504 of the Rehabilitation Act. 29 U.S.C. § 794. Third, NDTs alleged that

the statute, both facially and as applied, violates Title II of the Americans with Disabilities Act ("ADA"). 42 U.S.C. § 12132. Fourth, NDTs alleged that the statute, both facially and as applied, contravenes the federal scheme for regulation of methadone treatment and is therefore preempted. NDTs sought declaratory and injunctive relief for harm resulting from the City's purportedly discriminatory action. Individual plaintiff methadone users also sought damages.

The City moved on September 3, 2004 to dismiss individual City officials on the grounds of common law quasi-judicial immunity and qualified immunity. *See* FED. R. CIV. P. 12(c). The District Court granted the motion on October 17, 2004. NDTs does not appeal this decision.

The City moved for partial summary judgment with respect to the fourth count of the complaint, in which NDTs argued on Supremacy Clause grounds that the statute was preempted by federal law. The District Court granted the motion and dismissed the fourth count on October 15, 2004. NDTs does not appeal this decision.

NDTs and the individual plaintiffs filed the complaint as a class action and moved to certify the class on September 27, 2004, as "all persons residing in the City of Reading and its surrounding community who have been, are currently, or will be at risk of being on the waiting list to receive methadone treatment; and, all opiate-dependant residents of the City of Reading and its surrounding community who have needed, now

need or in the future may need methadone treatment.” *See* FED. R. CIV. P. 23(b)(2). The District Court denied the motion without prejudice, reasoning that the Court lacked adequate information to determine if the individual plaintiffs could adequately represent the class.

The City moved for summary judgment. NDTs filed a cross-motion for partial summary judgment on their claims against the validity of the statute. The District Court granted the City’s motion in its entirety and denied NDTs’s cross-motion on August 22, 2005. NDTs timely appealed.

## **II. Discussion**

The District Court had jurisdiction under 28 U.S.C. § 1331. We have jurisdiction over an appeal from the District Court’s final order under 28 U.S.C. § 1291. We review the grant of summary judgment *de novo*. *Union Pac. R.R. v. Greentree Transp. Trucking Co.*, 293 F.3d 120 (3d Cir. 2002). This Court has conclusively settled that the proprietors of a proposed methadone treatment facility have standing to seek relief both on their own behalf and on behalf of their clients under both the ADA and Rehabilitation Act. *See Addiction Specialists, Inc. v. Twp. of Hampton*, 411 F.3d 399, 405-08 (3d Cir. 2005).

NDTs raises a myriad of issues on appeal. They argue (1) that 53 PA. CONS. STAT. ANN. § 10621 facially violates the Equal Protection Clause of the Fourteenth Amendment, the

ADA, and the Rehabilitation Act, (2) that the individual plaintiffs have standing to make out ADA and Rehabilitation Act challenges, (3) that the City violated the Equal Protection Clause of the Fourteenth Amendment, the ADA, and the Rehabilitation Act by denying NDTS a permit, and (4) that the District Court abused its discretion by denying the motion for class certification.

**1. Whether 53 PA. CONS. STAT. ANN. § 10621 facially violates the ADA and the Rehabilitation Act**

NDTS and the individual plaintiffs argue that 53 PA. CONS. STAT. ANN. § 10621 facially violates the Equal Protection Clause of the Fourteenth Amendment, the ADA, and the Rehabilitation Act. The District Court did not engage in a detailed analysis of the statute's validity under either Title II of the ADA or the Rehabilitation Act. Rather, the Court focused on the Equal Protection inquiry.<sup>4</sup> However, these inquiries are

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<sup>4</sup> The District Court first analyzed the as applied and facial challenges to the statute under the Equal Protection Clause. The District Court held that these claims must fail because the City had asserted rational reasons for the permit denial and in support of the statute, including "substantial loitering and noise problems . . . [and] increased vehicular and pedestrian traffic, double parking, and repeated instances of patient jaywalking."

The District Court then held that the Plaintiffs' claims under the ADA and Rehabilitation Act could not survive summary judgment because "Plaintiffs must show that their

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identity as heroin addicts or methadone users was the sole reason for the City's decision." The City concedes that this misstates our interpretation of the ADA, which requires that, "in pretext cases a plaintiff need prove only that the illicit factor 'played a role in the employer's decisionmaking process and that it had a determinative effect on the outcome of that process.'" *Newman v. GHS Osteopathic, Inc.*, 60 F.3d 153, 158 (3d Cir. 1995) (citing *Miller v. CIGNA Corp.*, 47 F.3d 586, 598 (3d Cir. 1995)); see also *Baird v. Rose*, 192 F.3d 462, 468-70 (4th Cir. 1999) (specifically rejecting the sole cause test for ADA claims).

The District Court appears to have overlooked that, despite the fact that Congress has directed the courts to construe the ADA and the Rehabilitation Act such that conflicting standards do not arise, see *Bragdon v. Abbott*, 524 U.S. 624 (1998), the ADA and the Rehabilitation Act are not exactly the same. The language of these two statutory provisions "regarding the causative link between discrimination and adverse action is significantly dissimilar." *Baird*, 192 F.3d at 468. Section 504 of the Rehabilitation Act states that "[n]o otherwise qualified individual with a disability . . . shall, *solely by reason of her or his disability*, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination" by specified entities. 29 U.S.C. § 794(a) (emphasis added). However, the ADA prohibits discrimination against an individual "*by reason of such disability*." 42 U.S.C. § 12132 (emphasis added). We squarely held in *Newman* that this language in the ADA clearly establishes that the "sole reason" standard adopted by the District Court is inapplicable to the ADA, which requires only but for causation. See 60 F.3d at



analytically distinct and must be approached accordingly.<sup>5</sup>

The principal difference between the equal protection and the ADA inquiry is that, in an as applied or facial equal protection challenge, the plaintiff bears the burden of negating all conceivable rational justifications for the allegedly discriminatory action or statute, *Board of Trustees of the Univ. of Alabama v. Garrett*, 531 U.S. 356, 367 (2001), whereas to make out a claim under the ADA, the plaintiff need only show that intentional discrimination was the *but for* cause of the allegedly discriminatory action. *Newman v. GHS Osteopathic, Inc.*, 60 F.3d 153, 157-58 (3d Cir. 1995).<sup>6</sup> A facially discriminatory statute based on a non-suspect class (such as 53 PA. CONS. STAT. ANN. § 10621) will survive an equal protection challenge unless it is based on a bare desire to harm a politically

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157-158.

<sup>5</sup> We address the federal statutory challenges first, both because they involve a less stringent standard and because we have an obligation not to decide constitutional questions unless necessary. *See, e.g., Spector Motor Serv., Inc. v. McLaughlin*, 323 U.S. 101, 105 (1944).

<sup>6</sup>We noted in *Newman* that “courts addressing the allocations of burdens of proof and persuasion under the ADA uniformly have looked for guidance to Title VII.” 60 F.3d at 157. The Supreme Court held in *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), that, for Title VII cases, “because of” does not mean “solely because of.” *Id.* at 241.

unpopular group or “a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational.” *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 446 (1985). A statute that facially discriminates against disabled individuals, however, faces a far different and more skeptical inquiry under the ADA and Rehabilitation Act.

Section 12132 of Title II of the ADA provides that “[s]ubject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. This statement constitutes a general prohibition against discrimination by public entities, regardless of activity.<sup>7</sup> *Bay Area Addiction Research and Treatment, Inc. v. City of Antioch*, 179 F.3d 725, 730-31 (9th Cir. 1999) (striking down a ban on methadone clinics within 500 feet of a residential area). Section 504 of the Rehabilitation Act similarly provides that “[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a). We have noted that

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<sup>7</sup>The City of Reading is a qualifying public entity. See 42 U.S.C. § 12131(1)(A).

“[a]s the ADA simply expands the Rehabilitation Act’s prohibitions against discrimination into the private sector, Congress has directed that the two acts’ judicial and agency standards be harmonized” and we will accordingly analyze the two provisions together. *Newman*, 60 F.3d at 157-58; *see also Innovative Health Sys., Inc. v. City of White Plains*, 117 F.3d 37, 44 (2d Cir. 1997).

The Sixth and Ninth Circuits have considered the issue of whether a municipal ordinance prohibiting methadone clinics within 500 feet of a residential area violated the general proscription contained in the ADA and Rehabilitation Act. *See MX Group, Inc. v. City of Covington*, 293 F.3d 326, 342 (6th Cir. 2002); *Bay Area*, 179 F.3d at 737. Both Courts concluded that the ordinances were “facially discriminatory laws” and therefore “present[ed] per se violations of § 12132.” *Bay Area*, 179 F.3d at 737; *see MX Group*, 293 F.3d at 342.<sup>8</sup>

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<sup>8</sup>One District Court struck down an ordinance functionally identical to 53 PA. CONS. STAT. ANN. § 10621. *Smith-Berch, Inc. v. Baltimore County, Md.*, 115 F. Supp. 2d 520, 523 (D. Md. 2000). That Court reasoned that a statute that facially singled out methadone clinics imposed a disparate impact on methadone users. Although we agree with the Sixth and Ninth Circuits that such statutes are properly analyzed as facial violations of the ADA and Rehabilitation Act, we nevertheless concur with the *Smith-Berch* Court’s ultimate conclusion. The District Court rejected the argument that a public hearing requirement was necessary to the local zoning scheme. *Id.* at

The Ninth Circuit confronted many of the issues presented in this case when the Bay Area Addiction Research and Treatment, Inc. ("BAART") and California Detoxification Programs, Inc. ("CDP") tried to relocate their methadone clinic to the City of Antioch, California. *Bay Area*, 179 F.3d at 727. BAART had been operating a methadone clinic near the courthouse in Pittsburg, California for 13 years. BAART and CDP received notice from Antioch that the proposed location could be used for a methadone clinic under Antioch's zoning plan. However, the Antioch City Council enacted an urgency ordinance banning methadone clinics within 500 feet of residential areas, thereby barring use of the proposed site. BAART and other plaintiffs alleged that Antioch had violated both Title II of the ADA and § 504 of the Rehabilitation Act. The District Court denied Bay Area's motion for a preliminary injunction enjoining the ordinance. BAART appealed. *See id.*

After disposing of issues not contested in the instant case, the Ninth Circuit analyzed whether the District Court had abused its discretion by denying the preliminary injunction in part because BAART did not have a likelihood of success on the merits. *Id.* at 733. The Ninth Circuit held that the District Court had abused its discretion by applying an erroneous legal standard and remanded the case. *Id.* The Ninth Circuit first

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524. The *Smith-Berch* Court emphasized that there was no non-discriminatory reason to differentiate methadone treatment centers from other drug rehabilitation centers. *Id.*

held that the District Court erred by applying the “reasonable modification” test to a facially discriminatory law. *See id.* at 734-35. U.S. Department of Justice regulations require that would-be plaintiffs request reasonable modifications to avoid discrimination unless the modification would fundamentally alter the program, activity, ordinance, or statute. 28 C.F.R. § 35.130(b)(7). However, where the “statute discriminates against qualified individuals on its face rather than in its application,” the applicable regulation interpreting Title II, which only requires “reasonable” accommodation, makes little sense. *Bay Area*, 179 F.3d at 734. The only way to alter a facially discriminatory ordinance is to remove the discriminating language. The Antioch ordinance could only have been “rendered facially neutral by expanding the class of entities that may not operate within 500 feet of a residential neighborhood to include all clinics at which medical services are provided, or by striking the reference to methadone clinics entirely,” and, “[e]ither modification would fundamentally alter the zoning ordinance, the former by expanding the covered establishments dramatically, and the latter by rendering the ordinance a nullity.” *Id.* Therefore, the reasonable modifications test could not apply to a facially discriminatory ordinance. *See id.* at 735 (holding that “facially discriminatory laws present per se violations of § 12132”).

The Ninth Circuit noted that this determination does not end the inquiry, however, as both statutes withhold protection from any “individual who poses a significant risk to the health or safety of others that cannot be ameliorated by means of a

reasonable modification.” *Id.* The Supreme Court developed the significant risk test in *School Board of Nassau County v. Arline*, a case involving a teacher who alleged a violation of § 504 of the Rehabilitation Act after she was discharged because she had an active case of tuberculosis. 480 U.S. 273, 276 (1987). The Supreme Court held that “[a] person who poses a significant risk of communicating an infectious disease to others in the workplace will not be otherwise qualified for his or her job if reasonable accommodation will not eliminate that risk.” *Id.* at 287 n.16. The Court essentially incorporated a significant risk test into the Rehabilitation Act’s definition of a disabled person qualified to receive § 504’s protection. The Court noted that this test effectuates § 504’s “goal of protecting handicapped individuals from deprivations based on prejudice, stereotypes, or unfounded fear, while giving appropriate weight to such legitimate concerns . . . as avoiding exposing others to significant health and safety risks.” *Id.* at 287.

Although the Ninth Circuit disclaimed any conclusion about the outcome of this inquiry or the ultimate merits of the claim, it repeatedly emphasized that *Arline* was designed to “ensure[] that decisions are not made on the basis of ‘the prejudiced attitudes or the ignorance of others,’” and that “[t]his is particularly important because, as with individuals with contagious diseases, ‘[f]ew aspects of a handicap give rise to the same level of public fear and misapprehension,’ as the challenges facing recovering drug addicts.” *Bay Area*, 179 F.3d at 736 (internal citations omitted) (citing *Arline*, 480 U.S. at 284). The Ninth Circuit held that, in order for a methadone

clinic to fail the significant risk test, it must present “severe and likely harms to the community that are directly associated with the operation of the methadone clinic.” *Id.* at 736-37. Such alleged harms must be supported by evidence and “may include a reasonable likelihood of a significant increase in crime.” *Id.* The Ninth Circuit noted that courts should be mindful of the ADA and Rehabilitation Act’s goals of eliminating discrimination against individuals with disabilities and protecting those individuals “from deprivations based on prejudice, stereotypes, or unfounded fear.” *Id.* at 737 (citing *Arline*, 480 U.S. at 287). Therefore, “it is not enough that individuals pose a hypothetical or presumed risk”—the evidence must reflect a risk that is significant and harm that is serious. *Id.*

Three years later, the Sixth Circuit invoked *Bay Area* and reached a similar result in *MX Group v. City of Covington*. 293 F.3d 326, 344-45 (6th Cir. 2002). MX Group is a for-profit operator of methadone clinics. *Id.* at 328-29. In 1997, they began the process of locating a suitable site for a methadone clinic in Covington, Kentucky. MX Group selected a location and Covington’s zoning administrator issued them a permit. Public outcry spurred the Covington Board of Adjustment to overrule the issuance of the permit. MX Group located another suitable site, prompting the city solicitor to inform the zoning administrator that methadone clinics were not a permitted use anywhere in the city. Shortly thereafter, Covington adopted an amendment to the zoning code expanding the definition of “addiction treatment facility” in the zoning code to include any place whose primary function is to care for the chemically

dependent. This term had applied only to programs that provided overnight or housing accommodations. The ordinance limited the number of all such facilities to one facility for every 20,000 persons in the city. This amendment prevented MX Group from locating a facility in the city. *Id.* at 330-31. However, the zoning administrator testified at trial that it was his impression from the city solicitor that amendments permitting individual clinics would be considered on a case-by-case basis. *Id.* at 331. MX Group brought suit pursuant to the ADA and Rehabilitation Act. The District Court held that Covington's denial of the permit and the subsequently enacted amendment violated both federal statutes. *Id.* at 328.

Covington alleged that the District Court had committed various errors of law, of which only one is relevant here—whether the District Court correctly concluded that MX Group was not required to request a reasonable modification. *Id.* at 334. The Sixth Circuit cited *Bay Area* approvingly and rejected the “reasonable accommodation argument because it is inapplicable inasmuch as the ordinance at issue is facially discriminatory.” *Id.* The Sixth Circuit noted that “the district court found that the blanket prohibition of all methadone clinics from the entire city is discriminatory on its face,” agreed with that conclusion, and also agreed with the Ninth Circuit “that it would make little sense under these circumstances to require Plaintiff to seek an accommodation, when the only accommodation, a fundamental change to the ordinance, could not be considered reasonable.” *Id.* at 335.



Although *Bay Area* and *MX Group* dealt with outright bans, we believe that the reasoning of those cases is equally applicable here. The Pennsylvania statute imposes a ban on the establishment of methadone clinics within 500 feet of many structures, including schools, churches, and residential housing developments. See 53 PA. CONS. STAT. ANN. § 10621(a)(1). The Pennsylvania law differs from those in *Bay Area* and *MX Group* in that the “the governing body for the municipality in which the proposed methadone treatment facility is to be located” can waive the ban if, and only if, it approves the issuance of a permit by majority vote. 53 PA. CONS. STAT. ANN. § 10621(b). However, this ability of municipalities to waive the statutory ban in no way alters the fact that 53 PA. CONS. STAT. ANN. § 10621 facially singles out methadone clinics, and thereby methadone patients, for different treatment, thereby rendering the statute facially discriminatory.

We agree with the Sixth and Ninth Circuits that a law that singles out methadone clinics for different zoning procedures is facially discriminatory under the ADA and the Rehabilitation Act. We also agree that it is inappropriate to apply the “reasonable modification” test to facially discriminatory laws. See *MX Group*, 293 F.3d at 344-45; *Bay Area*, 179 F.3d at 734-35. The only way to modify a facially discriminatory statute is to remove the discriminatory language. However, amending 53 PA. CONS. STAT. ANN. § 10621 to remove the facial discrimination against methadone clinics would “fundamentally alter” the statute. *Bay Area*, 179 F.3d at 734.

Having concluded that 53 PA. CONS. STAT. ANN. § 10621 is facially discriminatory and that the reasonable modification test does not apply, we proceed to inquire whether NDTs's clients pose a significant risk. This inquiry is also referred to as the "direct threat" defense in cases arising under Title I of the ADA. *Bragdon v. Abbott*, 524 U.S. 624, 662 (1998) (Stevens, J., concurring). The Court's analysis of the Rehabilitation Act in *Arline* remains the guiding precedent. *See Arline*, 480 U.S. at 278-79. The Court concluded that contagious diseases such as tuberculosis fit within the Rehabilitation Act's definition of "handicapped," and then addressed the question of whether the plaintiff was otherwise qualified for her job as an elementary school teacher. *Id.* at 279. The Court held that "[a] person who poses a significant risk of communicating an infectious disease to others in the workplace will not be otherwise qualified for his or her job if reasonable accommodation will not eliminate that risk." *Id.* at 287 n.16. The Court adopted the language proposed by amicus curiae the American Medical Association, stating the significant risk inquiry should include consideration of four factors: the nature of the risk, the duration of the risk, the severity of the risk, and the probability that the potential harm will occur. *Donahue v. Consol. Rail Corp.*, 224 F.3d 226, 231 (3d Cir. 2000) (citing *Arline*, 480 U.S. at 288).

The *Arline* Court limited its decision to cases where a significant risk is alleged on the basis of an infectious disease. *See* 480 U.S. at 289. The ADA and subsequent cases expanded the significant risk test to cases where a disability created a significant risk to the health or safety of others, such as attention

deficit hyperactive disorder, see *Robertson v. Neuromedical Ctr.*, 161 F.3d 292, 295-96 (5th Cir. 1998), depression, see *EEOC v. Amego, Inc.*, 110 F.3d 135, 143-45 (1st Cir. 1997), diabetes, see *Turco v. Hoechst Celanese Corp.*, 101 F.3d 1090, 1094 (5th Cir. 1996), violent employees, see *Palmer v. Cir. Ct. of Cook County*, 117 F.3d 351, 353 (7th Cir. 1997), or epileptics whose jobs involve operating potentially dangerous machinery. See *Donahue*, 224 F.3d at 231.

The Supreme Court emphasized in *Bragdon v. Abbott* that the significant risk test requires a rigorous objective inquiry. 524 U.S. 624, 626 (1998). In *Bragdon*, a dentist refused to fill a cavity for an asymptomatic AIDS patient. See *id.* The Court held that:

The existence, or nonexistence, of a significant risk must be determined from the standpoint of the person who refuses the treatment or accommodation, and the risk of assessment must be based on medical or other objective evidence. . . . As a health care professional, petitioner had the duty to assess the risk of infection based on the objective, scientific information available to him and others in his profession. His belief that a significant risk existed, even if maintained in good faith, would not relieve him of liability.

*Id.* at 649. Accordingly, we cannot base our decision on the subjective judgments of the people purportedly at risk, the Reading residents, City Council, or even Pennsylvania citizens,

but must look to objective evidence in the record of any dangers posed by methadone clinics and patients. The purported risk must be substantial, not speculative or remote. *See id.* at 649 (“Because few, if any, activities in life are risk free, *Arline* and the ADA do not ask whether a risk exists, but whether it is significant.”). The Plaintiffs are not required to show that they pose no risk at all.<sup>9</sup> *See id.*

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<sup>9</sup>Although the concept of significant risk has been much more fully considered in the Title I context, courts have not come to an agreement in either Title I or Title II cases as to where the burden lies. Some courts have held that whether there is a significant risk is a factor in whether a plaintiff is “qualified” within the meaning of the statute. These courts conclude that the plaintiff bears the burden of demonstrating that they do not pose a significant risk. *See Rizzo v. Children’s World Learning Ctrs., Inc.*, 213 F.3d 209, 213 (5th Cir. 2000); *EEOC v. Amego, Inc.*, 110 F.3d 135, 142-44 (1st Cir. 1997). Other courts view “direct threat” as an affirmative defense. These courts reason that the burden is on the defendant to show that the plaintiff poses a significant risk. These courts note that the direct threat provision appears in a section of Title I entitled “Defenses.” *See Nunes v. Wal-Mart Stores, Inc.*, 164 F.3d 1243, 1247-48 (9th Cir. 1999); *EEOC v. AIC Sec. Investigations, Ltd.*, 55 F.3d 1276, 1283-85 (7th Cir. 1995).

We have previously reserved judgment on this issue when it was “unnecessary to decide this question,” and do so again in this case as it would not affect our holding. *Donahue v. Consolidated Rail Corp.*, 224 F.3d 226, 230 (3d Cir. 2000).

The record contains ample evidence that NDTs's clients, and methadone patients as a class, do not pose a significant risk. Neither the City nor its amicus, the Commonwealth, have offered any evidence to the contrary. The City refers to the deposition of Glen Cooper, the Executive Director of NDTs, in which he estimated that 20 to 30 percent of the clinic's patients would test positive for illegal drugs. However, NDTs also submitted the results of drug screens at its West Reading and Bethlehem clinics showing that only patients enrolled for less than six months test positive at the 30 percent rate, whereas less than six percent of patients enrolled for more than six months test positive for illegal drugs.

More importantly, the record demonstrates no link between methadone clinics and increased crime. Cooper testified that there had been no criminal incidents at NDTs's West Reading facility. The Commonwealth offered no evidence to support its contrary assertion that there is a "frequent association" between methadone clinics and criminal activity. In depositions, City Council members expressed concerns about heavy traffic, loitering, noise pollution, littering, double parking, and jaywalking. However, the City offered no evidence to support an association between these concerns and methadone clinics. Even if such connections existed, we are skeptical that they would qualify as the substantial harms contemplated by the *Arline* and *Bragdon* Courts.

The brief legislative history of 53 PA. CONS. STAT. ANN. § 10621 provides no further evidence that methadone patients

pose a significant risk. Representative Platts, the bill's principal sponsor, stated that the legislation would protect "children from the high crime rates associated with heroin addicts," that, "[o]n average heroin addicts before treatment commit a crime on average 200 days of the year," and that "[e]ven after 6 months of methadone treatment, they still average once a month committing a crime." Representative Platts offered no source for this statistic. We find it difficult to place much weight on this unsupported statistic given Cooper's un rebutted testimony that other NDTS facilities had experienced no criminal incidents and the extremely positive reports of the National Institute on Drug Abuse and the Office of National Drug Control Policy. In addition, the statement of Representative Serafini betrays the generalized prejudice and fear warned against by the *Arline* Court:

It is unfortunate that we have to have methadone treatment facilities at all, but to locate them in areas that are residential or close to where young people might congregate or the community might meet and gather is a definite mistake, and these facilities, in my opinion, do not benefit anyone but the heroin addict, and they should be located either in a community that welcomes this kind of facility or out in an area away from people who have kept themselves clean and free of drugs and should not be confronted by this kind of a pollution in their community.

On one hand, we have before us uncontroverted

testimony that NDTs's methadone treatment facilities have not experienced any criminal incidents or other potentially dangerous behavior. We have the objective viewpoints of the National Institute on Drug Abuse and the Office of National Drug Control Policy, brought to our attention by amicus curiae, the Pennsylvania Community Providers Association. On the other hand, neither the City nor amicus, the Commonwealth of Pennsylvania, offered any evidence in the proceedings below or in the statute's legislative history demonstrating that methadone patients pose a significant risk. The *Arline* Court specifically recognized that the Rehabilitation Act was meant to protect disabled individuals "from deprivations based on prejudice, stereotypes, or unfounded fear." 480 U.S. at 287; *see also Innovative Health*, 117 F.3d at 49. The speculative, hypothetical, and unsupported statements in 53 PA. CONS. STAT. ANN. § 10621's legislative history and in the record of the Reading City Council meeting do not suffice to create a triable issue of fact as to whether NDTs's clients, or methadone patients generally, pose a significant risk.

We have no doubt that some methadone patients are inclined to criminal or otherwise dangerous behavior. However, in the words of the *Arline* Court:

The fact that *some* persons who have contagious diseases may pose a serious health threat to others under certain circumstances does not justify excluding from the coverage of the Act *all* persons with actual or perceived contagious

diseases. Such exclusion would mean that those accused of being contagious would never have the opportunity to have their condition evaluated in light of medical evidence and a determination made as to whether they were “otherwise qualified.” Rather, they would be vulnerable to discrimination on the basis of mythology—precisely the type of injury Congress sought to prevent.

480 U.S. at 285.

We will reverse the order of the District Court and remand with instructions that it grant NDTs’s motion for partial summary judgment because 53 PA. CONS. STAT. ANN. § 10621 facially violates the ADA and the Rehabilitation Act. We need not reach the question of whether 53 PA. CONS. STAT. ANN. § 10621 facially violates the Equal Protection Clause of the Fourteenth Amendment, as the statute fails the less stringent tests required by the ADA and the Rehabilitation Act.<sup>10</sup>

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<sup>10</sup>Plaintiffs argued before the District Court that § 504 of the Rehabilitation Act and Title II of the ADA preempt 53 PA. CONS. STAT. ANN. § 10621. As Plaintiffs do not argue this issue on appeal, it is waived.



## **2. Whether the individual plaintiffs have standing to make out ADA and Rehabilitation Act challenges**

The Pennsylvania statute is facially invalid under the ADA and the Rehabilitation Act. Because of that, the individual plaintiffs' standing has no impact on the issue of injunctive relief. However, the individual plaintiffs also assert claims to damages under the ADA and the Rehabilitation Act. The District Court must reach the issue of the individual plaintiffs' standing in order to resolve their claims for damages.<sup>11</sup>

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<sup>11</sup>We recognized in *Addiction Specialists, Inc. v. Township of Hampton* that methadone clinic providers may assert both direct standing based on their own injuries and associational standing based on injuries to the disabled individuals they serve. See 411 F.3d 399, 407 (3d Cir. 2005). A third-party may only assert claims based on the injuries of others to the extent that those who suffered the direct harm would themselves have standing to sue. See *Hunt v. Washington State Apple Adver. Comm'n.*, 432 U.S. 333, 343 (1977). Third-party standing is closely related to facial challenges, in which a single party asserts that a law is invalid not only as applied to them, but as applied to all parties that might come before the court. See *Broadrick v. Oklahoma*, 413 U.S. 601, 610-11 (1973) ("Embedded in the traditional rules governing constitutional adjudication is the principle that a person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others, in other situations not before the Court. A closely related principle is that constitutional rights are personal and may not be

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asserted vicariously.” (internal citations omitted)); *United States v. Raines*, 362 U.S. 17, 21 (1960). *But see* Richard H. Fallon, *As-Applied and Facial Challenges and Third-Party Standing*, 113 HARV. L. REV. 1321, 1359-64 (2000) (examining the differences between facial challenges and third-party standing).

Therefore, every individual plaintiff harmed by the application of the Pennsylvania statute is not necessarily entitled to damages by virtue of NDTs’s successful demonstration that the statute facially violates the ADA and Rehabilitation Act. Individual plaintiffs may have suffered a harm because the ease or timeliness of their methadone treatment was compromised by operation of the invalid statute. However, if they are current users of illegal drugs, their statutory rights under the ADA and Rehabilitation Act have not been invaded—indeed, current users of illegal drugs are entirely exempted from the ambit of the statute when the allegedly discriminatory action was taken on the basis of that illegal drug use. *See* 42 U.S.C. § 12210(a); 29 U.S.C. § 705(20)(C)(i). Neither NDTs’s associational standing nor its facial challenge can secure damages for individual plaintiffs when they themselves have not suffered a violation of their rights and lack standing. Therefore, the District Court should consider the individual plaintiffs’ standing under the ADA and Rehabilitation Act and, if the District Court finds that some of the individual plaintiffs lack standing, it should proceed to their as-applied equal protection challenge.

The fact that some plaintiffs were not harmed under the ADA and Rehabilitation Act does not necessarily support the facial validity of the Pennsylvania statute. If the Pennsylvania General Assembly had passed a statute regulating only current illegal drug users, then the ADA and Rehabilitation Act could

The parties do not dispute that recovering heroin addicts are presumptively “qualified” persons under the ADA and Rehabilitation Act. *See* 42 U.S.C. § 12131; 29 U.S.C. § 794(a). However, both the ADA and the Rehabilitation Act contain carve-outs stating that individuals are not deemed “qualified” if they are “currently engaging in the illegal use of drugs” when the “covered entity [the City] acts on the basis of” the plaintiff’s drug addiction. *See* 42 U.S.C. § 12210(a); 29 U.S.C. § 705(20)(C)(i). Plaintiffs are not considered “qualified” under the statutes if they have used illegal drugs “recently enough so that continuing use is a real ongoing problem.” *Brown v. Lucky Stores, Inc.*, 246 F.3d 1182, 1188 (9th Cir. 2001). This statutory exception is an odd fit for the instant case. It was intended to ensure that employers could discharge employees who were actually under the influence while at work and that employers could not discharge employees who were recovering addicts but were, at the time of any personnel action, drug free. *See id.* (quoting H.R. REP. NO. 101-596, at 62 (1990) (Conf. Rep.)). This provision makes its first appearance at 42 U.S.C. § 12114(a), where it applies to Subchapter I of the ADA, concerning employment. However, this provision reappears

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not be offended if a covered entity took action based on that drug use. However, the record makes clear that methadone clinics serve a combination of current and rehabilitated drug users.

verbatim in “Subchapter IV: Miscellaneous Provisions,” which makes it applicable to the entire ADA. This perplexing draftsmanship, which appears to make surplusage of the provision in the employment section, mandates that we apply this provision to Subchapter II, 42 U.S.C. § 12210(a)—even though it is unclear how the provision should apply outside the employment context.

First, NDTS contends that the appropriate time frame for this inquiry is 2004, when it filed the complaint in the District Court, similar to a traditional standing analysis. The City responds that the statutory text specifies that the relevant time frame is when the covered entity took its allegedly discriminatory action. We agree with the City inasmuch as both the ADA and Rehabilitation Act both state that an individual does not enjoy these statutory protections if “*currently* engaging in the illegal use of drugs, *when the covered entity acts* on the basis of such use.” 42 U.S.C. § 12210(a); *see* 29 U.S.C. § 705(20)(C)(i) (same).

Less clear is the question of whether the City “acted on the basis of” the individual plaintiffs’ addictions. *See* 42 U.S.C. § 12210(a); 29 U.S.C. § 705(20)(C)(i). The City asserts that it acted on the basis of non-discriminatory reasons, such as traffic and loitering. NDTS contends that the City acted on the basis of general fear and prejudice associated with recovering heroin addicts. NDTS wants to have its cake and eat it too. It claims that the City’s allegedly discriminatory motive does not constitute action on the basis of a drug addiction, but action

against recovering addicts. However, much of the evidence in the record to which NDTS refers illustrates the City's concern about the possibility of NDTS's clients relapsing into drug use.

The ADA and Rehabilitation Act specifically provide that a person who has completed a supervised rehabilitation program or is currently participating in such a program and "is no longer engaging" in drug use shall be deemed a qualified individual. 42 U.S.C. § 12210(a) and (b)(1); 29 U.S.C. § 705(20)(C)(i) and (C)(ii)(I). The Ninth Circuit has observed that "[m]ere participation in a rehabilitation program is not enough," and that covered entities "are entitled to seek reasonable assurances that no illegal use of drugs is occurring." *Brown*, 246 F.3d at 1188. These statutory qualifications weigh against the logic of deeming the City to have acted solely on the basis of the plaintiffs' status as recovering addicts—even if we accept NDTS's version of the City's motivation.

The Second Circuit has recognized that the question of whether drug use is effectively ongoing or a serious problem is a fact bound inquiry best left to the district courts. *Teahan v. Metro-North Commuter R.R. Co.*, 951 F.2d 511, 518-20 (2d Cir. 1991). This determination requires detailed knowledge of methadone treatment protocols to assess whether a currently enrolled methadone patient who relapsed, for example, three months ago, is likely to relapse again. The parties do not dispute that one plaintiff, Coe, has been drug free for some time. However, three other plaintiffs, Joe, Loe, and Poe, had been drug free for only three months prior to the permit denial. *Id.*

We will remand with instructions that the District Court closely consider whether the individual plaintiffs' drug use posed a "real ongoing problem." *Brown*, 246 F.3d at 1188.

### **3. Whether the City violated the Fourteenth Amendment's guarantee of Equal Protection**

The District Court should also consider NDTs's as applied challenge under the Equal Protection Clause of the Fourteenth Amendment if it finds that any of the individual plaintiffs lack standing under the ADA and the Rehabilitation Act. NDTs alleges the City improperly administered 53 PA. CONS. STAT. ANN. § 10621 as applied to their permit application for the Reading facility. The City replies that NDTs failed to show that prejudice was a motivating factor and, in the alternative, that the City met its burden of demonstrating a legitimate, non-discriminatory purpose.

The parties agree that classifications based on disabled individuals, such as recovering heroin addicts, are reviewed under the rational basis test which requires a rational means to serve a legitimate end. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 450 (1985) (holding that the decision to refuse a permit to a home for the "mentally retarded" failed the rational basis test). Yet the City asserts that *Cleburne* "is distinguishable because unlike [NDTs], the Appellants [in *Cleburne*] had presented evidence that the decision to deny the special use permit for homes for the mentally retarded was based on mere negative attitudes and fear that was unsubstantiated by factors

which are properly cognizable." NDTs has adduced evidence of a similar character. The records of the City Council hearings contain numerous statements by both public participants and council members expressing opposition based on what can only be characterized as generalized prejudice, stereotypes, and fear of NDTs's clientele.<sup>12</sup>

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<sup>12</sup>The records of the three City Council hearings are replete with statements by participants illustrating the atmosphere of prejudice and fear that permeated the proceedings. Participants stated that the new NDTs facility would "compromise the quality of life for children and families residing in this area," would disrupt "this stable, residential area," would "further decline the quality of life opportunities for families residing in the area," would "break [the] community spirit," would "have a detrimental effect on the family spirit of the neighborhood community," would "have a detrimental effect on the neighborhood and community businesses," and might "require additional police patrol." One participant opined that "the community would not be able to face the additional stress brought by the treatment facility." Another participant observed that:

[T]he overall community opposes the location of the clinic on Lancaster Avenue. The community believes that the location of the clinic in this area will destroy neighborhood and family standards. [The community wants the] Council to recognize the effect this clinic will have on their community and property values. . . . [I]f existing hospitals

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will not accept the clinic as a tenant, the medical profession may not believe in this type of treatment.

An attorney representing "citizens of the Millmont area," engaged in an extended colloquy with Glen Cooper, Executive Director of NDTs, at the initial City Council hearing on January 14, 2002:

Attorney questions (Q): What do you tell the neighborhood that you're moving in, a community that you didn't investigate, the neighbors you didn't see, the residents whose property values may or may not be affected? What do you give them to suggest in some way their kids aren't going to be affected, their property is not going to be affected? How do you explain that to them?

Cooper answers (A): Explain what?

Q: Whether or not they will or will not be affected, their property values, if their kids will be involved with heroin addicts or ex-addicts or methadone addicts.

A: I don't offer an explanation. I don't see that that's been an issue. It's never been an issue. . . . Do you have any evidence that that's an issue?

Q: I suspect that common sense would tell anybody that they're not going to purchase a house next to a methadone clinic with heroin



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addicts.

A: I'm talking about children being involved. You raised the question about children being involved. Do you have any evidence? Do you have an example?

Q: That children will be--children will be within 500 feet.

A: That wasn't my question. My question was, Do you have evidence that that is a typical problem in relationship to methadone treatment facilities?

Q: I have a daughter, and I don't want her near a methadone clinic.

A: So, you don't have any evidence.

Q: I do have personal evidence. I don't want my 10-year-old daughter at a methadone clinic or within 500 feet of a methadone clinic, if I can help it. And if I lived next to there, I would move.

A: Well, you don't have any reason to believe, any statistical reason to believe, that that would be a problem. You just have a gut feeling that you wouldn't like it.

Q: I'd use common sense.

City Council member Waltman stated "that this method of treatment condones addiction," and that "the City should be considering a Police substation for this area rather than a methadone clinic that will compromise the stability of the community." City Council member Kerns claimed that "the

We have suggested, albeit in a different context, that a factually similar claim would have a likelihood of success. *See Sullivan v. City of Pittsburgh*, 811 F.2d 171, 185 (3d Cir. 1987). We considered in *Sullivan* a request by recovering alcoholics for a preliminary injunction requiring issuance of a permit for the operation of a treatment center for alcoholics. *Id.* The *Sullivan* Court observed that:

Appellees showed that the City's alleged concern about a drop in property values was irrational since ARC [the operator of the treatment centers] had operated in the neighborhood for some years and adduced evidence indicating that property values would not be adversely affected by the Center's presence. Appellees also established that the City's alleged concern with orderly development was irrational since ARC was already located in the North Side Section. Additionally, appellees demonstrated that ARC facilities met lot size and other zoning requirements and that the City's alleged concerns about density were addressed by density ordinances with which ARC had complied. And finally, here as in *Cleburne*, appellees demonstrated that the City took its essentially

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potential damage a clinic could do that would break the community spirit."

unjustified action in an atmosphere charged with hostility towards a minority group. These proofs, and their lack of contradiction by the City, lead us to conclude that, in light of *Cleburne*, class action plaintiffs-appellees are likely to prevail on the merits of their Equal Protection claim.

*Id.* (likening the recovering alcoholics' claim to that made in *Cleburne*).

The City claims that it met its burden of showing legitimate purposes motivating its decision. The District Court observed that the City Council expressed concerns about heavy traffic, loitering, noise pollution, littering, double parking, and jaywalking. Yet we consider it inexplicable that the City failed to offer any evidence to support these concerns. Indeed, the District Court appears to have relied on depositions of the Council members which are not supported by the records of the three City Council meetings. Records of these meetings contain no reference by the Council members to jaywalking, loitering, littering, double parking, or increased traffic. The only reference appears in Cooper's response to Council member Figueroa's general question about "problem[s] with citizens of West Reading," to which he responded that loitering and littering problems at its West Reading facility were minimal. The concern raised by Council member Reed in her deposition about double parking does not account for NDTs's statement that the new facility would have 20 off-street parking spaces.

The able District Judge also failed to adequately consider whether any of these asserted legitimate concerns differentiated the proposed NDTs facility from permitted uses of the 700 Lancaster Avenue site. *See Cleburne*, 473 U.S. at 448 (holding that the City of Cleburne could not treat the facility for the mentally retarded differently “unless [it] would threaten legitimate interests of the city in a way that other permitted uses such as boarding houses and hospitals would not”). On remand, the District Court should consider whether asserted legitimate purposes apply equally to permitted uses when deciding whether the purported legitimate purposes are pre-textual. *Id.* The Lancaster Avenue site is zoned commercial highway and therefore includes among its permitted uses gas stations, beer distributors, convenience stores, emergency health care facilities, motels, nightclubs, and miniature golf courses. The prior occupant, the Berks Counseling Center, treated recovering drug and alcohol addicts as well as mentally ill patients. The record contains no evidence of complaints from nearby residents. The District Court should focus particularly on whether there is any rational reason to differentiate methadone treatment centers, such as those operated by NDTs, from non-methadone drug treatment centers, such as the Berks Counseling Center.

A reasonable trier of fact could conclude, on the present record, that no “reasonably conceivable state of facts . . . could provide a rational basis” for denying NDTs’s requested permit. *Bd. of Trustees of the Univ. of Ala. v. Garrett*, 531 U.S. 356, 367 (2001). What is presented, then, is a triable issue of material

fact.

**4. Whether the District Court abused its discretion by denying the motion for class certification.**

NDTS argues that the District Court abused its discretion by denying without prejudice their motion for class certification. The District Court's only stated reason was that NDTS had failed to "provid[e] Defendant with the information necessary for Defendant to determine whether the named class representatives can represent the class adequately." It is not clear what further information is required, as NDTS responded to all the City's requests for information on the named plaintiffs, including their identities.<sup>13</sup>

The named plaintiffs bear the burden of showing class eligibility and failed to file affidavits specifically in support of their motion for class certification. However, the District Court's denial of class certification does not provide sufficient information for us to engage in meaningful appellate review. We have held that "[a]dequate representation depends on two factors: (a) the plaintiff's attorney must be qualified, experienced, and generally able to conduct the proposed

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<sup>13</sup>The District Court granted the individual plaintiffs' motion to proceed in pseudonym on the same day it denied their motion for class certification. The District Court required only that the Defendant's counsel receive the individual plaintiffs' full names, which was duly done.

litigation, and (b) the plaintiff must not have interests antagonistic to those of the class.” *Wetzel v. Liberty Mut. Ins. Co.*, 508 F.2d 239, 247 (3d Cir. 1975).

The City does not dispute that Plaintiffs’ counsel are able to handle the litigation, supporting the conclusion that the class would be adequately represented. *See Grasty v. Amalgamated Clothing & Textile Workers Union, etc.*, 828 F.2d 123, 129 (3d Cir. 1987) (noting that “the assurance of vigorous prosecution” by class counsel is a “significant factor” in the Rule 23(a)(4) analysis); *Greenfield v. Villager Industries, Inc.*, 483 F.2d 824, 832 (3d Cir. 1973) (“Experience teaches that it is counsel for the class representative, and not the named parties, who direct and manage these actions.”).

The record is sufficiently developed to support the conclusion that the named plaintiffs could adequately represent the class. Rule 23(a)(4)’s requirement that a class representative “fairly and adequately protect the interests of the class” mainly seeks “to uncover conflicts of interest between named parties and the class they seek to represent.” *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 532 (3d Cir. 2004); *see* FED. R. CIV. P. 23(a)(4). A class representative need only possess “a minimal degree of knowledge necessary to meet the adequacy standard.” *Szczubelek v. Cendant Mortgage Corp.*, 215 F.R.D. 107, 119 (D.N.J. 2003). Conflicts of interest are rare in Rule 23(b)(2) class actions seeking only declaratory and injunctive

relief.<sup>14</sup> See FED. R. CIV. P. 23(b)(2). Further discovery is unlikely to reveal any actual or potential conflict. The parties do not dispute that all of the class representatives' records were produced.

We are unable to perceive from the record or the briefs what additional information might be required to establish that there is no conflict of interest between the named individual plaintiffs and the other members of the putative class. However, the District Court did not rule on the other Rule 23(a) factors, numerosity, commonality, and typicality. Accordingly, we will vacate the District Court's order denying the motion for class certification.

### **III. Conclusion**

Neither the record nor the legislative history of 53 PA. CONS. STAT. ANN. § 10621 contain any evidence that would preserve the statute against the guarantees provided by the ADA

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<sup>14</sup>The City argues that there is doubt about whether the named plaintiffs can adequately represent the class because their claims for damages "predominate" over their request for injunctive relief. See *Allison v. Citgo Petroleum Corp.*, 151 F.3d 402, 413 (5th Cir. 1998). However, the individual plaintiffs seek damages only for themselves, and therefore they do not implicate possible future claims for damages by other members of the class. Accordingly, the City's argument on this point lacks merit.

and the Rehabilitation Act. We will reverse the judgment of the District Court denying summary judgment for NDTs with respect to the claim that 53 PA. CONS. STAT. ANN. § 10621 facially violates these federal statutes and remand for further proceedings consistent with this opinion.



FILED

DEC 17 2007

013:501

William A. Shaw  
Prothonotary/Clerk of Courts

4 CENT. ATT. (62)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CITY OF DUBOIS,

Plaintiff

: No. 06 - 1759 C.D.

vs.

RHJ MEDICAL CENTER, INC.,

Defendant

: Type of Case: ACTION IN EQUITY TO  
: ENFORCE THE PROVISIONS OF THE  
: PENNSYLVANIA MUNICIPALITIES  
: PLANNING CODE AND THE PROVISIONS  
: OF THE CITY OF DUBOIS ZONING  
: ORDINANCE

: Type of Pleading: ANSWER TO MOTION TO  
: DISSOLVE INJUNCTIONS

: Filed on Behalf of: CITY OF DUBOIS,  
: Plaintiff

: Counsel of Record for this Party:

: 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

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

CITY OF DUBOIS,	:
Plaintiff	:
	:
vs.	: No. 06 - 1759 C.D.
	:
RHJ MEDICAL CENTER, INC.,	:
Defendant	:

**ANSWER TO MOTION TO DISSOLVE INJUNCTIONS**

AND NOW, comes the Plaintiff, CITY OF DUBOIS, by and through its attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and answers the Motion to Dissolve Injunctions filed by Defendant, RHJ MEDICAL CENTER, INC., as follows:

1. DENIED as stated. On or about October 27, 2006, the City of DuBois filed a Complaint in Equity seeking to enforce the provisions of the Pennsylvania Municipalities Planning Code but, more importantly, seeking to enforce the provisions of the City of DuBois Zoning Ordinance, Section 703 of Chapter 27, Part 7, requiring that no change in the use of a structure be effected until and unless a Certificate of Use had been requested and awarded by the Zoning Officer of the City of DuBois. Because no such Certificate of Use had been requested by the above-named Defendant, the City of DuBois sought an injunction to prevent a change of use in the structure at 994 Beaver Drive in the City of DuBois, Pennsylvania.

2. ADMITTED.

3. DENIED. On the contrary, RHJ did concede that the Court's decision to issue the preliminary injunction was correct both factually and as a matter of law and did not reserve any

right to challenge the Court's issuance of the preliminary injunction as evidenced by the fact that RHJ stipulated to the entry of a permanent injunction on December 7, 2006, rather than litigate the issue of the propriety and legality of the preliminary injunction. A true and correct copy of the Order issued upon the Stipulation of the officers of RHJ and its attorneys of record is attached hereto and made a part hereof as Plaintiff's Exhibit "1".

4. ADMITTED in part and DENIED in part. While it is ADMITTED that an Order was issued by Your Honorable Court on December 7, 2006, by Stipulation of the Plaintiff and Defendant, all other aspects of Paragraph 4 are DENIED. By way of further answer, it is averred that the Order entered by Stipulation of the parties is attached hereto as Exhibit "1" and speaks for itself. Plaintiff is without sufficient knowledge to attest to why RHJ entered into such an Order but believes and therefore avers that RHJ Medical Center, Inc., did not wish to have a hearing on the continuation of the preliminary injunction which was scheduled to held before Your Honorable Court on December 7, 2006.

5. DENIED as stated. RHJ Medical Center, Inc., filed an application for an occupancy permit or certificate of use with the City of DuBois by application dated January 3, 2007, and paid the fee required for public hearing which was received by the City of DuBois on January 29, 2007.

6. DENIED. On the contrary, the City of DuBois denied the request of RHJ Medical Center, Inc., for an occupancy permit or change in use certificate for all of the reasons set forth in its Findings of Fact including, but not limited to, the non-availability of adequate on-site parking in violation of the requirements of the City's ordinance. Such decision was not appealed by the Defendant within the time allowed by law and the decision is now final.

7. ADMITTED.

8. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is averred that the Third Circuit's decision in *New Directions Treatment Services v. City of Reading*, filed at No. 05-4353 speaks for itself.

9. DENIED as s conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that the Third Circuit's decision in *New Directions* is directly controlling in the case at hand because the City of DuBois permits drug treatment facilities and methadone treatment facilities in certain zoning districts of the City of DuBois and does not prevent the location of drug treatment facilities or methadone treatment facilities within the City of DuBois. On the contrary, the City of DuBois has specifically allowed the existence of drug treatment facilities and methadone treatment facilities in the O-1 Office Districts and at least three separate O-1 Office Districts are located within the City of DuBois.

10. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that the actual physical circumstances in this case have changed because the location of a drug treatment center in the zoning district in which the structure at 994 Beaver Drive is located is prohibited by the zoning ordinances of the City of DuBois.

11. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that the City of DuBois does not have the right to enforce its own ordinances and to refuse to allow a business to operate in violation of the ordinances of the City of DuBois.

12. ADMITTED in part and DENIED in part. While it is ADMITTED that Your Honorable Court has jurisdiction over the preliminary matters filed to No. 06-1759 C.D., it is DENIED that Your Honorable Court has jurisdiction to override the decision of the City of DuBois issued on May 29, 2007, denying the request of RHJ Medical Center, Inc., for a certificate of use because no appeal from that decision was taken by RHJ Medical Center, Inc., within the time allowed by law for an appeal from a decision by a municipality. Consequently, the decision of the municipality is final and RHJ Medical Center, Inc., cannot collaterally attack that decision through a request to dissolve the injunction issued in the above-captioned case.

13. DENIED as stated. The City of DuBois refused to issue a change of use certificate as required by Section 703 of Chapter 27, Part 7. of the City's Code or Ordinances because, among other reasons, the premises at 994 Beaver Drive, DuBois, Pennsylvania, did not have adequate parking to meet the requirements of the City's ordinances whether or not Section 621 of the MPC was considered.

14. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that RHJ's application for a certificate of use filed January 3, 2007, can be remanded to the City of DuBois for further action. On the contrary, the City acted on the Defendant's request for a change in the use of the premises and issued Findings of Fact as a result of a hearing on May 29, 2007. Those Findings were issued to RHJ Medical Center, Inc., on June 1, 2007, and no appeal from those Findings of Fact, Conclusions of Law and Written Decision was taken by the said RHJ Medical Center, Inc., although the time in which to do so has long since passed. Consequently, RHJ Medical Center preserved no

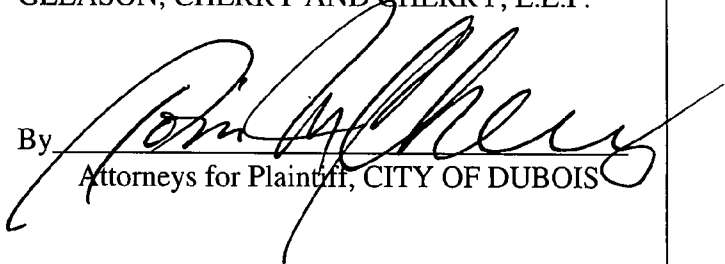
rights of appeal from the City's decision of May 29, 2007. Therefore, should RHJ Medical Center, Inc., desire to have the City of DuBois determine whether it is entitled to a certificate of use under Section 703 of Chapter 27, Part 7, of the City's Code of Ordinances in light of the Third Circuit's decision in *New Directions Treatment Services v. City of Reading*, filed at No. 05-4353, it must file a new application for a certificate of use as the previous application was decided, no appeal was taken therefrom and any action on that application is now *res judicata*.

WHEREFORE, the City of DuBois respectfully requests Your Honorable Court to deny RHJ Medical Center, Inc., all of the relief requested in its Motion to Dissolve Injunctions.

Respectfully submitted,

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

By

  
Attorneys for Plaintiff, CITY OF DUBOIS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CITY OF DUBOIS,

Plaintiff

vs.

RHJ MEDICAL CENTER, INC.,

Defendant

:  
:  
:  
:  
:  
:  
:

No. 06 - 1759 C.D.

**ORDER OF COURT**

AND NOW, this 7<sup>th</sup> day of December, 2006, this being the date set for hearing on Plaintiff's Petition for Injunctive Relief continued to this time at the request of Defendant, and the parties have reached an agreement that a permanent injunction should be issued against Defendant without the need for hearing on the same as a result of Defendant's acknowledgment that the Beaver Meadow Walkway is a public park within the meaning of Section 621 of the Pennsylvania Municipalities Planning Code, as re-enacted and amended 53 P.S. §10621 and; as a result, that the methadone clinic opened by RHJ MEDICAL CENTER, INC., at 994 Beaver Drive, DuBois, Pennsylvania, is in violation of the terms of Section 621 because the site at 994 Beaver Drive is within 500 feet of the aforementioned public park and RHJ MEDICAL CENTER, INC., did fail to obtain either an occupancy permit or a certificate of use from the City of DuBois before opening said clinic at such location, it is hereby ORDERED, ADJUDGED AND DECREED THAT:

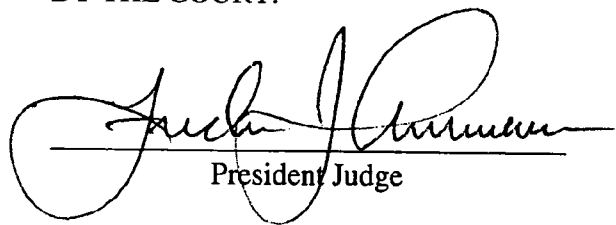
1. RHJ MEDICAL CENTER, INC., is permanently enjoined from opening and operating a methadone treatment facility at 994 Beaver Drive, DuBois, Pennsylvania, unless and until such time as it: (a) receives approval from the City of DuBois after application

therefor and at least one public hearing is held on said request; and (b) obtains a certificate of use from the City of DuBois for the location and operation of a methadone clinic at 994 Beaver Drive, DuBois, Pennsylvania; and

2. RHJ MEDICAL CENTER, INC., is permanently enjoined from advertising the location of a methadone treatment facility at 994 Beaver Drive, DuBois, Pennsylvania, and the free-standing sign located upon said premises shall be covered or the name of RHJ MEDICAL CENTER, INC., shall be removed from said sign until and unless the City of DuBois issues a certificate of use to RHJ MEDICAL CENTER, INC.; and

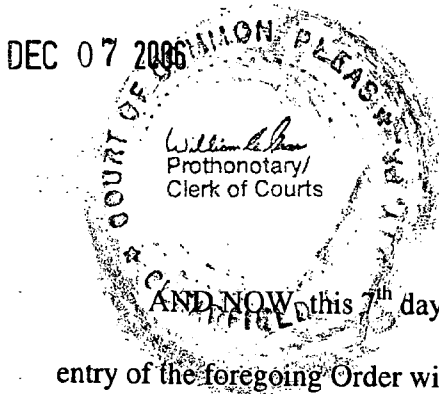
3. All claims by the CITY OF DUBOIS for penalties, fines and attorney's fees for violation of its ordinances and Section 621 of the Pennsylvania Municipalities Planning Code raised in its Complaint and the Defendant's defenses thereto are not waived by the issuance of this permanent injunction by consent of the parties.

BY THE COURT:

  
President Judge

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

Attest.



## STIPULATION

AND NOW, this 7<sup>th</sup> day of December, 2006, the parties hereto stipulate and agree to the entry of the foregoing Order without the necessity of a hearing before the Court on the issues



added in Plaintiff's Petition for Injunctive Relief.

FOR THE CITY OF DUBOIS, PLAINTIFF:

ATTEST:

Marcus L. Lewis  
City Clerk

By John L. Lewis  
Mayor and President of Council

Forrest Cherry  
Attorney for the CITY OF DUBOIS

FOR RHJ MEDICAL CENTER, INC., DEFENDANT:

ATTEST:

Forrest Cherry  
Secretary

By Forrest Cherry  
President

Forrest Cherry  
Attorney for RHJ MEDICAL CENTER, INC.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CITY OF DUBOIS,

Plaintiff

vs.

RHJ MEDICAL CENTER, INC.,

Defendant

:  
:  
:  
: No. 06 - 1759 C.D.  
:  
:  
:

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of December, 2007, a true and correct copy of Plaintiff's Answer to Motion to Dissolve Injunctions was served upon 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:

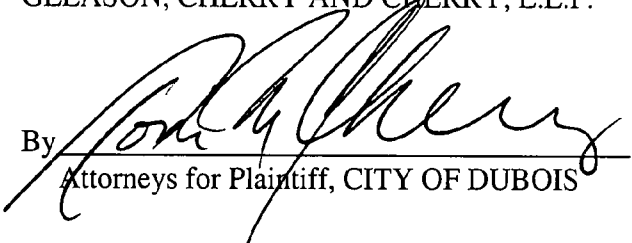
DUSTY ELIAS KIRK, ESQ.  
JENNIFER F. SHUGARS, ESQ.  
Pepper Hamilton LLP  
One Mellon Center, 50<sup>th</sup> Floor  
500 Grant Street  
Pittsburgh, PA 15219-2502

SEAN DELANEY, ESQ.  
Pepper Hamilton LLP  
Suite 200, 100 Market Street  
Harrisburg, PA 17101

BARBARA E. RANSOM, ESQ.  
Public Interest Law Center of Philadelphia  
125 South 9<sup>th</sup> Street, Suite 700  
Philadelphia, PA 19107

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

By

  
Attorneys for Plaintiff, CITY OF DUBOIS

Dated: December 17, 2007

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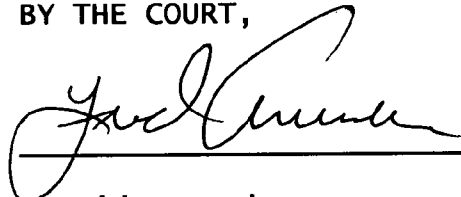
IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

CITY OF DUBOIS :  
-vs- : No. 06-1759-CD  
RHJ MEDICAL CENTER, INC. :

O R D E R

AND NOW, this 15th day of January, 2008, following argument on the Defendant's Motion to Dissolve Injunction, it is the ORDER of this Court that counsel for both parties submit appropriate brief to the Court within no more than forty-five (45) days from this date.

BY THE COURT,

  
\_\_\_\_\_  
President Judge

FILED

01/14/08  
JAN 16 2008

William A. Shaw  
Prothonotary/Clerk of Courts

1cc Attys:  
T. Cherry  
Kirk  
Alpern  
Ransom

@60

FILED

JAN 16 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 1/16/08

☐ 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:

**FILED**

**JAN 25 2008** <sup>(2)</sup>

m/10:35/6

William A. Shaw

Prothonotary/Clerk of Court

1 CENT TO ATT

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

**CIVIL DIVISION**

CITY OF DUBOIS,

Plaintiff,

NO. 06-1759 C.D.

vs.

RHJ MEDICAL CENTER, INC.

Defendant

Type of Case: ACTION IN EQUITY TO  
ENFORCE THE PROVISIONS OF THE  
PENNSYLVANIA MUNICIPALITIES  
PLANNING CODE AND THE PROVISIONS  
OF THE CITY OF DUBOIS ZONING  
ORDINANCE

Type of Pleading: PRAECIPE TO  
WITHDRAW APPEARANCE

Filed on behalf of  
David F. Alpern, Esquire

Counsel for this party:

David F. Alpern, Esquire  
Supreme Court ID No. 11129

David F. Alpern, Esquire  
916 Fifth Avenue  
Pittsburgh, PA 15219  
(412) 471-1960

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

CITY OF DUBOIS,  
Plaintiff,

NO. 06-1759 C.D.

vs.

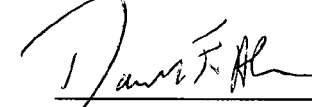
RHJ MEDICAL CENTER, INC.  
Defendant

**PRAECIPE TO WITHDRAW APPEARANCE**

To the Prothonotary:

Kindly withdraw my appearance in the above-captioned case, the Defendant being represented by Dusty Kirk and Barbara Ransom.

Respectfully submitted:

  
\_\_\_\_\_  
David F. Alpern, Esquire  
PA Attorney ID No. 11129

David F. Alpern, Esquire  
916 Fifth Avenue  
Pittsburgh, PA 15219  
(412) 471-1960

FILED

JAN 25 2008

William A. Shaw  
Prothonotary/Clerk of Courts

CA

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

CITY OF DUBOIS,  
Plaintiff

vs.

RHJ MEDICAL CENTER, INC.,  
Defendant

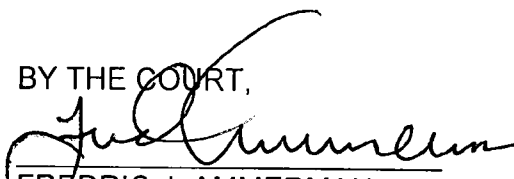
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NO. 06-1759-CD

ORDER

NOW, this 6<sup>th</sup> day of March, 2008, in consideration of the Defendant's Motion to Dissolve Injunctions and in reliance upon the decision of United States Court of Appeals for the Third Circuit in New Directions Treatment Services v. City of Reading, which held that § 621 of the Municipal Planning Code violates the Americans with Disabilities Act and the Federal Rehabilitation Act by singling out methadone treatment facilities for different zoning treatment and thereby discriminating against persons with drug addictions, the Defendant's Motion to Dissolve Injunctions is hereby granted. The injunctions issued by this Court dated October 27, 2006 and December 7, 2006 are hereby dissolved.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

FILED  
013:50301  
MAR 07 2008

William A. Shaw  
Prothonotary/Clerk of Courts

Atty: T. Cherry  
Kirk  
Ransom

GR



FILED

MAR 07 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 3/7/08

☐ 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:

CITY OF DUBOIS,

Plaintiff,

vs.

RHJ MEDICAL CENTER, INC.,

Defendant.

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

:  
: CIVIL ACTION NO. 06-1759 C.D.

:  
: ACTION IN EQUITY

**PRAECIPE FOR WITHDRAWAL OF APPEARANCE**  
**WITHOUT LEAVE OF COURT (Pa. R. Civ. P. 1012(b)(2)(i))**

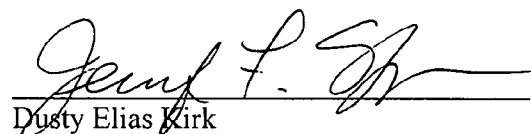
TO THE PROTHONOTARY:

Kindly withdraw the appearance of Pepper Hamilton LLP, and attorneys Dusty Elias Kirk, Jennifer F. Shugars, Thomas B. Schmidt, III, and Sean Delaney, on behalf of Defendant RHJ Medical Center Inc.

Barbara E. Ransom, Esquire and the Public Interest Law Center of Philadelphia entered their appearance and remain attorneys of record for the aforementioned party.

I certify that this change is not intended to, nor will it, delay this proceeding to the best of my knowledge, information, and belief.

Respectfully submitted,

  
Dusty Elias Kirk

PA I.D. No. 30702

Jennifer F. Shugars

PA I.D. No. 84797

PEPPER HAMILTON LLP

Firm I.D. No. 143

One Mellon Center, 50<sup>th</sup> Floor

500 Grant Street

Pittsburgh, PA 15219-2502

Telephone: (412) 454-5000

Fax: (412) 281-0717

August 15, 2008

**FILED**

M 11:10 P.M. SK

**AUG 18 2008**

ICC Amy

William A. Shaw  
Prothonotary/Clerk of Courts



Thomas B. Schmidt, III  
PA I.D. No. 19196  
Sean Delaney  
PA I.D. No. 85996  
PEPPER HAMILTON LLP  
Suite 200, 100 Market Street  
Harrisburg, PA 17101  
Telephone: (717) 255-1124  
Fax: (717) 238-0575

Former attorneys for the Defendant  
RHJ Medical Center, Inc.

CITY OF DUBOIS,

Plaintiff,

vs.

RHJ MEDICAL CENTER, INC.,

Defendant.

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

:  
: CIVIL ACTION NO. 06-1759 C.D.

:  
: ACTION IN EQUITY  
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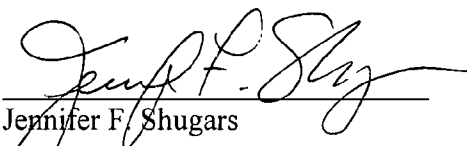
**CERTIFICATE OF SERVICE**

I hereby certify that on August 15, 2008, I served a copy of the foregoing document on counsel and the Defendant, via U.S. mail, first class postage prepaid, addressed as follows:

Toni M. Cherry, Esquire  
Solicitor for the City of Dubois  
Gleason, Cherry and Cherry, L.L.P.  
One North Franklin Street  
P.O. Box 505  
DuBois, PA 15801

Barbara E. Ransom, Esquire  
PA I.D. No. 64166  
Public Interest Law Center of Philadelphia  
125 South 9<sup>th</sup> Street, Suite 700  
Philadelphia, PA 19107

Keith Jones  
RHJ Medical Center, Inc.  
123 Woodbine Drive  
Cranberry Township, PA 16006

  
Jennifer F. Shugars