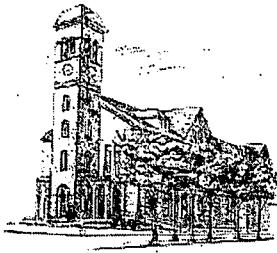


08-1814-CD In Re: Boro of Treasure  
Lake TIPOA et al



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

<b>William A. Shaw</b> Prothonotary/Clerk of Courts	<b>Jacki Kendrick</b> Deputy Prothonotary/Clerk of Courts	<b>Bonnie Hudson</b> Administrative Assistant	<b>David S. Ammerman</b> Solicitor
--	--	--	---------------------------------------

PO Box 549, Clearfield, PA 16830 • Phone: (814) 765-2641 Ext. 1330 • Fax: (814) 765-7659 • [www.clearfieldco.org](http://www.clearfieldco.org)

January 28, 2010

Commonwealth Court of Pennsylvania  
601 Commonwealth Ave., Ste. 2100  
PO Box 69185  
Harrisburg, PA 17106-9185

RE: In Re: Incorporation of the  
Borough of Treasure Lake

Treasure Lake Property Owners Association, Inc.,  
Richard Rehermann, and William Reznor

No. 2008-1814-CD  
Commonwealth Court No. 2283 CD 2009

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office. Please also find enclosed two transcripts and one set of exhibits, made of 8 separate pieces.

Sincerely,



William A. Shaw  
Prothonotary

FILED

01/28/2010

Jan 28 2010  
William A. Shaw  
Prothonotary/Clerk of Courts

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

---

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

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

2008-1814-CD  
In Re: Incorporation of the  
Borough of Treasure Lake

Treasure Lake Property Owners Association, Inc.,  
Richard Rehermann, and William Reznor

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

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

The date on which the record had been transmitted to the Appellate Court is  
January 28, 2010

  
\_\_\_\_\_  
William A. Shaw

Prothonotary/Clerk of Courts

(seal)

Date: 1/28/2010

Time: 10:31 AM

Page 1 of 4

**Clearfield County Court of Common Pleas**

User: BHUDSON

**RÖA Report**

Case: 2008-01814-CD

Current Judge: Fredric Joseph Ammerman

In Re:Borough of Treasure Lake, et al

**Civil In Re-COUNT**

Date	Judge
1/25/2008	New Case Filed.
	Filing: Petition for Incorporation of the Borough of Treasure Paid by: Treasure Lake Property Owners Association, Inc. (subject) Receipt number: 1926038 Dated: 9/25/2008 Amount: \$95.00 (Check) For: Borough of Treasure Lake (subject) 2 Cert. to Atty.
	Exhibits "A" through "E" filed in Conjunction with the Petition for Incorporation of the Borough of Treasure Lake, filed by s/ Michael P. Yeager Esq. 2CC Atty.
	Exhibit A-2, filed by s/ Michael P. Yeager Esq. 2CC Atty.
	Exhibit A-3, filed by s/ Michael P. Yeager Esq. 2CC Atty.
	Exhibit A-4, filed by s/ Michael P. Yeager Esq. 2CC Atty.
	Exhibit B, filed by s/ Michael P. Yeager Esq. 2CC Atty.
	Exhibit C, filed by s/ Michael P. Yeager Esq. CC Atty.
	Exhibit D, filed by s/ Michael P. Yeager Esq. 2CC Atty.
	Exhibit E, filed by s/ Michael P. Yeager Esq. 2CC Atty.
	Certificate of Service, filed. That on September 25, 2008, copies of the Petition, Order and Exhibits in the above-captioned matter were hand delivered to: Sandy Township and Clearfield County, additionally, Notice of the filing of the Petition has been delivered to both the Courier Express as well as the Clearfield County Legal Journal with regard to publication, filed by s/ Michael P. Yeager Esq. No CC.
1/26/2008	Scheduling Order and Rule to Show Cause, NOW, this 26th day of Sept., 2008, it is Ordered that an argument on the Petition for Incorporation of the Borough of Treasure Lake is scheduled for the 26th day of Nov., 2008, at 9:00 a.m. in Courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 2cc Atty. Yeager
0/20/2008	Certificate of Service, filed. That on September 30, 2008, a copy of the Scheduling Order in the above-captioned matter was mailed to Gregory M. Kruk Esq., filed by s/ Michael P. Yeager Esq. No CC.
0/21/2008	Objections, filed by s/ Carol A. Rusnak. No CC
0/22/2008	Exceptions of the Township of Sandy, Richard A. Castonguay, Jr. Individually, and Brady Laborde, Individually, to the Petition for Incorporation of the Borough of Treasure Lake, filed by Atty. Kruk 5 Cert. to Atty.
	Entry of Appearance, filed by Atty. Kruk 3 Cert. to Atty.
0/24/2008	Exceptions of R. A. Castonguay, Jr., Et Al., Individuals, to the Petition For Incorporation of The Borough of Treasure Lake, filed by s/ Gregory M. Kruk, Esquire. 5 CC to Atty.
	Affidavit of Service filed, on the 22nd day of Oct., I mailed a copy of the Exceptions of the Township of Sandy, Richard A. Catonguay, Jr., Individually and Brady LaBord, individually, to the Petition for Incorporation of the Borough of Treasure Lake and Entry of Appearance by first class mail, to: Michael P. Yeager, Esquire, and Alan Price Young, Esquire. Filed by s/ Gregory M. Kruk, Esquire.
0/28/2008	Entry of Appearance, filed. Please enter our appearance as attorneys for R. Fredric Joseph Ammerman A. Castonguay Jr., et al in the above-captioned matter, filed by s/ Gregory M. Kruk Esq and s/ R. Edward Ferraro Esq. No CC. copy to C/A.

Date: 1/28/2010

Time: 10:31 AM

Page 2 of 4

**Clearfield County Court of Common Pleas**

User: BHUDSON

**ROA Report**

**Case: 2008-01814-CD**

**Current Judge: Fredric Joseph Ammerman**

**In Re: Borough of Treasure Lake, et al**

**Civil In Re-COUNT**

<b>Date</b>	<b>Judge</b>
0/28/2008	Affidavit of Service filed. That on the 24th day of October 2008, mailed a copy of the Exceptions of R. A. Castonguay Jr., et al individuals, to the Petition for Incorportion of the Borough of Treasure Lake by first class mail to Michael P. Yeager Esq. and Alan Price Young Esq., filed by s/ Gregory M. Kruk Esq. No CC. Fredric Joseph Ammerman
0/31/2008	Exceptions, filed by s/Nancy J. Kunselman No CC Fredric Joseph Ammerman Exceptions, filed by s/Patricia Mellors No CC Fredric Joseph Ammerman
1/5/2008	Affidavit of Service, the Request of the Township of Sandy Et Al. For Production of Documents to the Treasure Lake Property Owners Association, Richard Rehermann and William Reznor, was served in person to Michael P. Yeager, Esquire on the 5th day of Nov., 2008, and by first class mail on the 5th day of Nov., 2008 to Alan Price Young, Esquire. filed by s/ Gregory M. Kruk, Esquire. No CC. Fredric Joseph Ammerman
	Affidavit of Service filed. The First Set of Interrogatories Directed to Treasure Lake Property Owners Association, Inc., Richard Rehermann and William Reznor was served by: In person on the 5th day of Nov., 2008 to Michael P. Yeager, Esquire; and By First Class Mail to Alan Price Young, Esquire. Filed by s/ Gregory M. Kruk, Esquire. no CC. Fredric Joseph Ammerman
1/6/2008	Affidavit of Service filed. Served upon the public by publication in The Courier-Express on September 26, 2008; October 3, 2008; October 10, 2008 and October 17, 2008 and by publication in Clearfield County Legal Journal weeks of October 3, 2008; October 10, 2008; October 17, 2008 and October 24, 2008, filed by s/ Michael P. Yeager Esq. Fredric Joseph Ammerman
1/14/2008	Order, this 14th day of Nov., 2008, it is Ordered that the hearing scheduled on Nov. 26, 2008 be an "on the record" status conference. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty: Yeager, Kruk/Ferraro Fredric Joseph Ammerman
2/1/2008	Order, this 26th day of Nov, 2008, further status conference is scheduled in Courtroom 1 at 9:00 a.m. on Jan. 16, 2009. The Exceptants pre-trial brief shall be due by Jan. 9, 2009. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty: Yeager, Kruk/Ferraro Fredric Joseph Ammerman
2/16/2009	Order, this 16th day of Jan., 2009, it is Ordered that Evidentiary hearing on Exceptions is scheduled for May 5, 2009 and May 6, 2009 at 9:00 a.m. both days, in Courtroom 1. By the Court, /s/ fredric J. Ammerman, Pres. Judge. 2CC Atty: Yeager, Kruk/Ferraro, Young Fredric Joseph Ammerman
2/17/2009	Excerpt Transcript of Proceedings, Testimony of Mathew S. Begley held before The Honorable Fredric J. Ammerman, Pres. Judge, on Jan. 16, 2009 Fredric Joseph Ammerman
2/1/2009	Motion for a View, filed by s/Gregory M. Kruk, Esq. One CC Attorney Kruk Fredric Joseph Ammerman
2/2/2009	Order AND NOW, this 2nd day of April 2009, the Court being in receipt of and having reviewed the Motion for A View filed on behalf of the Township of Sandy and Richard A. Castonguay Jr; it is the ORDER of this Court that said Motion be and is hereby DENIED. The parties are to obtain and present photos of the sites they wish the Court to review at time of hearing on May 5 and 6, 2009. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 4CC Atty Kruk. Fredric Joseph Ammerman

Date: 1/28/2010

Time: 10:31 AM

Page 3 of 4

**Clearfield County Court of Common Pleas**

**ROA Report**

Case: 2008-01814-CD

User: BHUDSON

Current Judge: Fredric Joseph Ammerman

In Re: Borough of Treasure Lake, et al

**Civil In Re-COUNT**

Date	Judge
1/6/2009	Order, NOW, this 5th day of May 2009, following the conclusion of taking of Fredric Joseph Ammerman testimony relative the exception filed on behalf of Sandy Township and other individuals concering the Petition for Incorporation of Treasure Lake, it is the ORDER of this Court that Sandy Township and the individuals filing execptions have no more than sixty (60) days from this date within which to supply the Court with appropriate brief. The Petitioner shall have no more than thirty (30) days thereafter in which to respond with their brief to the Court. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Atty: Yeager, Young, Ferraro and Kruk.
1/27/2009	Praeclipe to File Stipulations, filed by Atty. Kruk 2 Cert. to Atty. Stipulations, filed by s/ Atty. Kruk.
1/16/2009	Supplemental Stipulations, filed by s/ Michael P. Yeager, Esquire, Alan Price Young, Esquire, and Gregory M. Kruk, Esquire. 3CC Atty. Yeager
1/23/2009	Transcript of Proceedings, Evidentiary Hearing on Exceptions held before the Honorable Fredric J. Ammerman, P.J., Tuesday, May 5, 2009, filed.
1/6/2009	Certificate of Service, filed. That the Brief of Exceptants on Jurisdiction, Proposed Findings of Fact and Proposed Conclusions of Law were served by first class mail this 2nd day of July 2009 to Michael P. Yeager Esq., and Alan Price Young Esq., filed by s/Gregory M. Kruk Esq. No CC.
1/28/2009	Stipulations Regarding Documents, filed by s/Gregory M. Kruk, Esquire. Signed, Michael P. Yeager, Esquire; Alan Price Young, Esquire; and Gregory M. Kruk, Esquire. 2CC to Atty. Second Supplemental Stipulations, filed by s/ Gregory M. Kruk, Esquire. Signed, Michael P. Yeager, Esquire; Alan Price Young, Esquire; and Gregory M. Kruk, Esquire. 3CC to Atty.
1/13/2009	Motion to Strike, filed by Atty. Kruk no cert. copies. Affidavit of Service filed. On the 12th day of August, 2009, a copy of the Motion to Strike, filed on behalf of the Exceptants, was sent by First Class mail to: Michael P. Yeager, Esquire, and Alan Price Young, Esquire. Filed by s/ Gregory M. Kruk, Esquire. 1CC to Atty.
1/14/2009	Order, this 13th day of August 2009, the court being in receipt of and having reviewed the Motion to Strike, it is the ORDER of this Court that argument on said Motion be and is hereby scheduled for the 22nd day of September 2009 at 9:00 am in Courtroom No. 1. Thirty minutes has been reserved for this proceeding. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty: Yeager and Kruk.
1/24/2009	Petitioners' Answer to Exceptants' Motion to Strike, filed by s/ Michael P. Yeager, Esquire. 4CC to Atty.
1/22/2009	Order, this 22nd day of Sept., 2009, it is Ordered: 1. Exceptant Sandy Township's Motion to Strike the Petitioner's Brief Exhibit is hereby GRANTED in that Petitioner's Brief Exhibit will not be filed; and 2. Discussion of the Exhibit will be stricken from Petitioner's Brief, pages 29, 30, and 31. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty: Yeager/Young, Kruk/Ferraro
1/28/2009	Brief of Exceptants on Jurisdiction, filed by s/ Gregory M. Kruk, Esquire. no CC

Date: 1/28/2010

Time: 10:31 AM

Page 4 of 4

**Clearfield County Court of Common Pleas**

ROA Report

Case: 2008-01814-CD

User: BHUDSON

In Re:Borough of Treasure Lake, et al

Current Judge: Fredric Joseph Ammerman

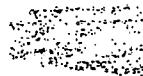
**Civil In Re-COUNT**

date	Judge
1/28/2009	Brief of Petitioners on Jurisdictional Issues, filed by s/ Michael P. Yeager, Esquire. no CC Fredric Joseph Ammerman
1/30/2009	Opinion and Order, this 29th day of Sept., 2009, following hearing and upon Fredric Joseph Ammerman consideration of the Jursidictional Issue of the Incorporation of the Borough of Treasure Lake and Exceptions filed thereto by the Township of Sandy, it is Ordered: 1. Exceptions 3(a), 3(f), 8, 9, 11, 12, and 17 are hereby DENIED. 2. Exceptions 4, 5, 6, 7, 10, 13, 14, 15, 16, 18, and 19 were not considered because the Court finds that these are proper for the Borough Advisory Committe to consider. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC to Attys: Yeager, Young, Kruk, Ferraro; 1CC D. Mikesell & Law Library (without memo).
0/23/2009	Application for Amendment of Interlocutory Order, filed s/ Gregory M. Kruk Fredric Joseph Ammerman Esq. 3CC Atty Kruk
0/27/2009	Affidavit of Service filed. On the 26th of Oct., 2009, a copy of the Application for Amendment of Interlocutory Order was served by first class mail to Michael P. Yeager, Esquire, and Alan Price Young, Esquire. filed by s/ Gregory M. Kruk, Esquire. 1CC to Atty. Order, this 26th of Oct., 2009, the previous Order dated Sept. 29, 2009 is amended by the addition of the following paragraphs: (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Kruk
1/24/2009	Petition For Permission to Appeal From Interlocutory Order, filed by s/ Gregory M. Kruk, Esquire, and Edward Ferraro, Esquire. No CC Fredric Joseph Ammerman
2/21/2009	Order, filed NOW, December 16, 2009 RE: Petition for Permission to Appeal Sept. 29, 2009, order as amended on October 26, 2009. Permissions Granted by the Court s/Keith B. Quigley, Sr. Judge.
1/28/2010	January 28, 2010, Mailed Appeal to Commonwealth Court. Fredric Joseph Ammerman January 28, 2010, Notification of mailing appeal mailed to Michael P. Yeager, Esq., Alan Price Young, Esq., and Gregory M. Kruk, Esq., with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).

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

JAN 28 2010

Attest.



William B. Ammerman  
Prothonotary/  
Clerk of Courts

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

**No. 08-1814-CD**  
***In Re: Incorporation of the***  
***Borough of Treasure Lake***

***Treasure Lake Property Owners Association, Inc.,***  
***Richard Rehermann, and William Reznor***

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
01	09/25/08	Petition for Incorporation of the Borough of Treasure Lake	16
		Exhibits "A" through "E" filed in Conjunction with the Petition for Incorporation of the Borough of Treasure Lake (8 separate parts listed below)	
02	09/25/08	Exhibit A-1	Separate Cover (200 pgs.)
03	09/25/08	Exhibit A-2	Separate Cover (216 pgs.)
04	09/25/08	Exhibit A-3	Separate Cover (123 pgs.)
05	09/25/08	Exhibit A-4	Separate Cover (4 pgs.)
06	09/25/08	Exhibit B	Separate Cover (1 pg. with over-sized map)
07	09/25/08	Exhibit C	Separate Cover (89 pgs.)
08	09/25/08	Exhibit D	Separate Cover (3 pgs.)
09	09/25/08	Exhibit E	Separate Cover (3 pgs.)
10	09/25/08	Certificate of Service	01
11	09/26/08	Scheduling Order and Rule to Show Cause	03
12	10/20/08	Certificate of Service	02
13	10/21/08	Objections, filed by Carol A. Rusnak	63
14	10/22/08	Exceptions of the Township of Sandy, Richard A. Castonguay, Jr. Indiv., and Brady Laborde, Indiv., to the Petition for Incorporation of the Borough of Treasure Lake	10
15	10/22/08	Entry of Appearance	02
16	10/24/08	Exceptions of R.A. Castonguay, Jr., et al, Individuals, to the Petition for Incorporation of the Borough of Treasure Lake	16
17	10/24/08	Affidavit of Service	02
18	10/28/08	Entry of Appearance	02
19	10/28/08	Affidavit of Service	02
20	10/31/08	Exceptions, filed by Nancy J. Kunselman	02
21	10/31/08	Exceptions, filed by Patricia Mellors	01.
22	11/05/08	Affidavit of Service, Request of the Township of Sandy et al for Production of Documents to the Treasure Lake Property Owners Association, Richard Rehermann, and William Reznor	07
23	11/05/08	Affidavit of Service, First Set of Interrogatories Directed to Treasure Lake Property Owners Association, Inc., Richard Rehermann, and William Reznor	16
24	11/06/08	Affidavit of Service, Re: service upon the public by publication	06
25	11/14/08	Order, Re: Hearing scheduled on November 26, 2008, be an "on the record" status conference	02
26	12/01/08	Order, Re: further status conference scheduled	01
27	01/16/09	Order, Re: Evidentiary hearing on Exceptions is scheduled	01

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

**No. 08-1814-CD**  
***In Re: Incorporation of the***  
***Borough of Treasure Lake***

***Treasure Lake Property Owners Association, Inc.,***  
***Richard Rehermann, and William Reznor***

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
28	02/17/09	Excerpt Transcript of Proceedings, Testimony of Matthew S. Begley, held before the Honorable Fredric J. Ammerman, P.J., on January 16, 2009	Separate Cover
29	04/01/09	Motion for a View	05
30	04/02/09	Order, Re: Motion for a View is Denied	01
31	05/06/09	Order, Re: briefs to be filed	01
32	05/27/09	Praecipe to File Stipulations	01
33	05/27/09	Stipulations	23
34	06/16/09	Supplemental Stipulations	02
35	06/23/09	Transcript of Proceedings, Evidentiary Hearing on Exceptions held before the Honorable Fredric J. Ammerman, P.J., Tuesday, May 5, 2009	Separate Cover
36	07/06/09	Certificate of Service, Re: Brief of Exceptants on Jurisdiction, Proposed Findings of Fact, and Proposed Conclusions of Law	02
37	07/28/09	Stipulations Regarding Documents	184
38	07/28/09	Second Supplemental Stipulations	03
39	08/13/09	Motion to Strike	03
40	08/13/09	Affidavit of Service, Re: Motion to Strike filed on behalf of the Exceptants	02
41	08/14/09	Order, Re: hearing on Motion to Strike scheduled	01
42	08/24/09	Petitioners' Answer to Exceptants' Motion to Strike	05
43	09/22/09	Order, Re: Exceptant Sandy Township's Motion to Strike the Petitioner's Brief Exhibit is Granted in that Petitioner's Brief Exhibit will not be filed; discussion of the Exhibit will be stricken from Petitioner's Brief, pages 29, 30, and 31	01
44	09/28/09	Brief of Exceptants on Jurisdiction	24
45	09/28/09	Brief of Petitioners on Jurisdictional Issues	36
46	09/30/09	Opinion and Order	21
47	10/23/09	Application for Amendment of Interlocutory Order	05
48	10/27/09	Affidavit of Service, Re: Application for Amendment of Interlocutory Order	02
49	10/27/09	Order, Re: Order dated September 29, 2009, is amended	01
50	11/24/09	Petition for Permission to Appeal from Interlocutory Order	24
51	12/21/09	Order, Re: Petition for Permission to Appeal September 29, 2009, Order as amended on October 26, 2009. Permissions granted by the Court.	01
52	1/28/10	Notification of mailing appeal mailed to Michael P. Yeager, Esq., Alan Price Young, Esq., and Gregory M. Kruk, Esq., with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c)	07

IN THE COURT OF COMMON PLEAS  
CLEARFIELD COUNTY, PENNSYLVANIA

COPY

In Re: Incorporation of the Borough  
of Treasure Lake

Treasure Lake Property Owners  
Assoc., Inc., Richard Rehmann, and  
William Reznor

Case No. 2008-01814-CD

FILED

2010  
FEB 01 2010

William A. Shaw  
Prothonotary/Clerk of Courts

CERTIFICATE OF CONTENTS

NOW, this 28th day of January, 2010, the undersigned, Prothonotary or Deputy Prothonotary of the Court of Common Pleas of Clearfield County, Pennsylvania, the said Court of record, does hereby certify that attached is the original record of the case currently on Appeal.

An additional copy of this Certificate is enclosed with the original hereof and the Clerk or Prothonotary of the Commonwealth Court is hereby directed to acknowledge receipt of the Appeal Record by executing such copy at the place indicated by forthwith returning the same to this Court.

By: William A. Shaw

William A. Shaw, Prothonotary

Record, Etc. Received:

Date: \_\_\_\_\_

(Signature & Title)

29 JAN 2010 09 29  
RECEIVED & FILED  
PROTHONOTARY'S OFFICE  
OF PENNSYLVANIA  
CLEARFIELD COUNTY

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Incorporation of the Borough  
of Treasure Lake

2008-1814-CD

Treasure Lake Property Owners  
Association, Inc., Richard Rehermann  
and William Reznor

No. 2283 C.D. 2009

Argued: April 19, 2010

Appeal of: Township of Sandy

BEFORE: HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JOHNNY J. BUTLER, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

FILED  
JUL 02 2010  
m/11/2010  
William A. Shaw  
Notary/Clerk of Courts

**OPINION**  
**BY JUDGE SIMPSON**

**FILED: June 30, 2010**

In this interlocutory appeal by permission, we are asked if owners of time-shares and campground lots in a planned residential community are residing freeholders eligible to sign a borough incorporation petition under Section 202 of The Borough Code (Borough Code), Act of February 1, 1966, P.L. (1965) 1656, as amended, 53 P.S. §45202. Under the facts of this case, we conclude they are not, and we affirm the order of the Court of Common Pleas of Clearfield County (trial court).

### **I. Background**

The Borough Code establishes a multi-step process for incorporating a borough. At issue in this appeal is the first part of the process—the petition stage. The petition stage requires incorporators to gather signatures “by a petition signed by a majority of the freeholders residing within the limits of the proposed borough.” Section 202 of the Borough Code, 53 P.S. §45202 (emphasis added). This residing freeholders signature requirement is currently at issue. These

signatures must be obtained within three months of the filing of the petition.

Section 202 of the Borough Code also requires that an incorporation petition be signed by "the freeholders of a majority of the territory within the limits of the proposed borough." While satisfaction of this territory signature requirement is not at issue, it will be mentioned below.

After the necessary signatures are obtained and the petition is presented to the trial court, a borough advisory committee shall be appointed. The composition of the committee is statutorily established. The committee is required to evaluate the proposed incorporation and advise the trial court. The court must conduct a hearing on the petition and determine whether a preponderance of the evidence establishes the desirability of incorporating the proposed borough. If so, the trial court is required to certify the question of whether the proposed borough should be incorporated to the county board of election for referendum vote.

#### **A. Treasure Lake**

The Township of Sandy, which has a population of approximately 10,000, is a second class township in Clearfield County. Treasure Lake is a privately owned, 8,044 acre, gated community wholly within the township. Approximately half of the Treasure Lake acreage is subdivided and developed. Development continues. Treasure Lake is a mixed use development, presently consisting of: single lots, recreational areas and facilities (lakes, beaches, two golf courses, ski slopes, parks, children's playgrounds, sports fields), commercial areas (shops and four restaurants), roads, a campground, and undeveloped land.

## **B. Incorporation Petition and Challenge**

Treasure Lake contains 7,125 plotted single family residential lots, of which, 2,044 are improved with residences. Incorporators<sup>1</sup> concluded that owners of lots improved with a taxed residence were residing freeholders and sought their signatures. A majority of these owners, 1,215 of 2,044 individual Treasure Lake lot owners, signed the incorporation petition. The Incorporators filed the petition with the trial court.

For the residing freeholders signature requirement, Incorporators did not obtain signatures from property interest owners in the campground portion of Treasure Lake, called Cayman Landing, or from the townhouse time-share portions of Treasure Lake, called Wolf Run Manor and Silverwoods.

The Township of Sandy (Challenger)<sup>2</sup> challenged the incorporation petition, arguing these other property interest holders were also freeholders. Challenger argued that the incorporation petition lacked signatures from a majority of freeholders residing within the limits of the proposed borough, thus depriving the trial court of jurisdiction.

---

<sup>1</sup> Incorporators are joined by the Pennsylvania State Association of Boroughs as *amicus curiae*.

<sup>2</sup> Township of Sandy is joined by the Pennsylvania State Association of Township Supervisors as *amicus curiae*.

### **C. Lots and Ownership Interests at Issue**

#### **1. Cayman Landing Campground -Individually Owned Lots (Section 19 Lots)**

There are 830 distinct, plotted campground lots, of which 590 were separately sold to individuals or families. Each lot owner receives a deed for his lot. Each deed, however, is subject to several restrictions: (1) permanent structures or homes are not permitted; (2) only moveable trailers or recreational vehicles may be used; and (3) the lot may not be occupied for more than 90 consecutive days.

There are additional attributes of the Section 19 lots which are noteworthy for our analysis. The lots have access to five Comfort Centers, which provide water, bathroom, shower and laundry facilities. Only one Comfort Center remains open throughout the year. There is no sewage for individual lots.

Each lot is separately taxed, and taxes are assessed on the land itself. Significantly, none of these assessments include any residential structures on the land. The lot owner individually pays the real estate taxes for his property.

When gathering signatures for the petition. Incorporators treated the owners of Section 19 lots as freeholders (for purposes of the territory signature requirement), but not as residing freeholders (for purposes of the statutory requirement at issue now). Reproduced Record (R.R.) at 71a, 90a-91a, 155a. Incorporators based this distinction on Clearfield County real estate tax records which showed that, consistent with restrictions on the Section 19 lots, none is improved with structures. R.R. at 95a-96a, 160a-65a.

## **2. Cayman Landing Campground - Undivided Ownership Interest (UDI Lots)**

There are 380 lots available for undivided ownership interest (UDI). UDI purchasers receive a deed for an undivided 1/3000 interest in the whole of these lots. Approximately 1,700 of these interests were sold.

Each deed provides several restrictions. UDI owners may only use recreational vehicles on these lots. Additionally, UDI owners may only stay for 30-day intervals. UDI interests conveyed by deed are transferable and devisable.

UDI owners do not pay taxes on their interest. The Treasure Lake Property Owners Association owns the land that makes up these 380 lots, and an earlier court case rendered these UDI lands exempt from taxation. R.R. at 96a. Similar to the Section 19 lots, the UDI lots do not have any improvements. Id.

## **3. Time-share/Interval Ownership—Wolf Run Manor and Silverwoods**

“Wolf Run Manor” and “Silverwoods” are two distinct sections consisting of townhouses located near a ski slope and golf course, respectively. There are a total of 168 units within these two areas.

Wolf Run Manor Corporation sold time-share interests for units in both Wolf Run Manor and Silverwoods. There are a total of 6,489 active accounts (3,690 in Silverwoods and 2,799 in Wolf Run Manor). Each interest is for a one-week interval of ownership, and each deed identifies the particular week of

ownership conveyed.<sup>3</sup> Wolf Run Manor Corporation retained an interest of one to two weeks in each of the 168 units.

Both Wolf Run Manor and Silverwoods have an owners' association. The owners' associations are responsible for overseeing and maintaining the properties. Wolf Run Manor Corporation conveyed its interest in each unit to the owners' associations. The associations perform maintenance on each unit during the association's period of ownership.

Interest owners pay a yearly fee to their owners' association, which is used to pay maintenance costs and real estate taxes. Interest owners do not pay real estate taxes individually.

### **C. Trial Court Proceedings**

The trial court conducted hearings on the exceptions. The trial court denied Challenger's exception. The trial court concluded freeholder status required an owner to have the right to exclude others and to exercise control. The trial court held that while the owners may possess their interests for life or greater, deed restrictions and restrictive covenants prevent the owners from having actual continual and uninterrupted ownership. The trial court explained:

The owners of interests within the particular sections do not have continuing exercise of ownership over their land; rather they have an interrupted exercise of ownership of their land. In

---

<sup>3</sup> For 15 of the units, all the available weekly interests are owned by a specific owner. The deeds to these 15 units do not identify any particular weeks of ownership.

addition, they do not exercise control over their lot to the exclusion of all others, because they are required to vacate at delineated time periods, nor are they allowed to improve the land in any manner they choose. Further, the restrictions on the owners go far beyond that of mere restrictive covenants on use and are inconsistent with a freehold interest in land.

Tr. Ct. Op., Slip Op. at 12-13. Additionally, the trial court reasoned that these restrictions prevent the interest holders from establishing residency in the Borough.

The trial court concluded that a majority of the residing freeholders signed the petition, and it ordered the next stage of the incorporation process to begin. Subsequently, the trial court stayed the appointment of the borough advisory committee pending the resolution of this interlocutory appeal.

Challenger sought interlocutory review of this issue. The trial court certified the case as having a controlling issue of law, and this Court granted permission to address the following issue:

Does the trial court have jurisdiction, because owners of time-shares and campground lots do not have a continuous uninterrupted exercise of ownership of land and are therefore not “freeholders” eligible to sign an incorporation petition under The Borough Code?

## **II. ARGUMENTS**

Challenger contends the trial court erred in concluding the owners of these ownership interests were not residing freeholders for the purpose of borough incorporation proceedings. It contends the owners are freeholders because they have estates in land which are not of certain duration but instead are for life or longer. They own their interests in perpetuity. The owned interests have several

common attributes: the interests are received by deed; they are transferable and inheritable; owners have exclusive ownership of their interests; owners have exclusive possession of their ownership interests; and, the interests are continuing.

In addition, each of the owners can meet the residency requirement. Challenger argues that the residency requirement does not require proof of domicile, and it can be satisfied by an owner living for one day at his property.

Finally, Challenger contends that any restriction on an owner's occupation does not restrict the fact of ownership status.

Incorporators argue in response that the interest holders' ownership interests fall short of the requirements for a freehold. The conveyed interests do not constitute continuous rights of ownership and possession for an indeterminate period, the essential characteristics of freehold estates. In the deed declarations that expressly except and reserve rights to the developer that interrupt periods of ownership and possession, Incorporators see the developer's intent not to convey freehold estates. Incorporators urge us to affirm the trial court's conclusion that jurisdiction under the statute is established.

In reply, Challenger makes several points: Challenger disputes Incorporators' argument regarding the developer's intent; it disputes whether a definition of freehold estate requires a continuous right to possession; it decries Incorporators' failure to fully address the distinction between occupancy and possession; it draws analogies to a borough annexation case; it contends that

designation as a campground area does not prevent owners of Section 19 and UDI interests from “residing;” it asserts Incorporators do not adequately address an admission during the hearing that owners of Section 19 interests are “freeholders;” and, it urges a separate analysis of each type of interest.

### **III. DISCUSSION**

#### **A. Residing Freeholders**

By its plain terms, the statutory requirement at issue, “freeholders residing within the limits of the proposed borough,” has two components. First, the person whose signature is required must own an estate of freehold. Second, the person must be residing within the limits of the proposed borough.

##### **1.**

As to the first component, the General Assembly did not define the term “freeholders” in the Borough Code. “At common law, [a freeholder] was he who has the actual possession of land for life, or a greater estate ....” In re Mountville Borough, 31 Pa. Super. 18, 1906 WL 3703 (1905) (quoting Clippinger v. Creps, 2 Watts 45, 1833 WL 3364 at \*3). Historically, Pennsylvania freehold estates include fee simple and life estates. Ladner Pennsylvania Real Estate Law, §2.02 (Bisel, 5<sup>th</sup> ed. 2006). Non-freehold estates include an estate for years, estate at will and estate at sufferance. Ladner §2.05. Under Pennsylvania law:

[T]he key attribute of all freehold estates is the right to create other interests including ownership interests carved out of all or part of the freehold estate. Non-freehold estates do not have that attribute. The holder of a non-freehold estate may have the right to transfer that interest and even the right to create other

residence there for tax purposes. Whatever may be on these lots, their owners have not accepted the tax burden associated with a residence, and it was not error for the trial court to treat them in a manner consistent with their real estate tax posture.

### **C. Cayman Landing Campground-Undivided Ownership Interests (UDI Lots)**

Similarly, we discern no error in the trial court's conclusion that owners of UDI lots are not residing freeholders. The legal restrictions applicable to the lots are more pronounced than those for the Section 19 lots. Like the Section 19 lots, the UDI lots do not have sewer service. Moreover, the owners pay no real estate taxes whatsoever, not even for the unimproved land. In this sense, neither Challenger nor any other taxing authority treats the owners as freeholders, much less residing freeholders. It was not error for the trial court to treat these owners in a manner consistent with their real estate tax posture.

### **D. Interval Ownership-Wolf Run Manor and Silverwoods**

We discern no error in the trial court's conclusion that owners of time-share interests are not residing freeholders. Clearly, these interests are less than life estates and fee simple estates, which are the only two types of historical freehold estates still existing in Pennsylvania. Ladner §§2.02, 2.03. This is because the time-share owners cannot exclude all others from their property for a period of indefinite duration.

Grantees of the Wolf Run Manor and Silverwoods time-shares received finite periods of possession—not a right to exclusive possession continuing for an indefinite period. That these intervals of possession recur

annually does not change their non-continuous, finite character. Even within the 15 units whose available periods are owned by single owner, each unit has a maintenance week during which owners are precluded from using the properties. The respective owners' association holds an ownership interest in that maintenance week.

Also, there is no statute which declares these ownership interests to be freehold estates. Because the time-share interests are not freehold estates at common law, and no statute declares them to be freehold estates under statutory law, there is no legal authority for this Court to declare the owners freeholders.

Significantly, the parties act in a manner consistent with the conclusion that the owners of interval interests are not freeholders. Thus, the time-share owners do not pay real estate taxes; rather, real estate taxes are levied upon and paid by the owners' associations. See Townsend v. Boyd, 217 Pa. 386 (1907); Ladner §2.05(a) (estate for years, a less than freehold estate because it is held for a specified, definite period of time, is personal property, not real property). It was not error for the trial court to treat the time-share owners in a manner consistent with their real estate tax posture.

#### **E. Disenfranchisement**

We also reject Challenger's assertion that being counted as freeholders is the only opportunity for these various interest holders to participate in the incorporation debate. The trial court is required to conduct hearings on the merits of incorporation. These hearings will provide the interest holders with an

opportunity to present their views on the merits of incorporation Treasure Lake as a Borough.

#### **IV. CONCLUSION**

The incorporation process is at a preliminary stage. Incorporators successfully obtained the signatures of a majority of residing freeholders, and the trial court took appropriate steps to continue that process. The statutory process provides ample opportunity for the interest holders at issue in this case to express their views as the merits of incorporating this private development as a borough.

For all the above reasons, we affirm the order of the trial court and remand the matter for further proceedings.



---

ROBERT SIMPSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Incorporation of the Borough  
of Treasure Lake :  
Treasure Lake Property Owners : No. 2283 C.D. 2009  
Association, Inc., Richard Rehmann  
and William Reznor :  
Appeal of: Township of Sandy :  
:

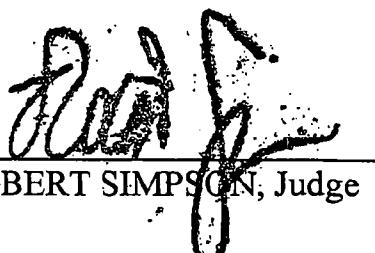
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JUL 02 2010  
MUS/   
William A. Shaw  
Prothonotary/Clerk of Courts

**ORDER**

AND NOW, this 30<sup>th</sup> day of June, 2010, the order of the Court of Common Pleas of Clearfield County in the above captioned matter is **AFFIRMED**. The case is remanded for further proceedings consistent with this opinion.

Jurisdiction is relinquished.



ROBERT SIMPSON, Judge

Certified from the Record

JUN 30 2010

and Order Exit



## Supreme Court of Pennsylvania

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

Western District

August 2, 2010

801 City-County Building  
414 Grant Street  
Pittsburgh, PA 15219  
(412) 565-2816  
[www.pacourts.us](http://www.pacourts.us)

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

RE: In Re: Incorporation of the Borough  
of Treasure Lake

Treasure Lake Property Owners Association,  
Inc., Richard Rehmann and William  
Reznor

Petition of: Township of Sandy  
No. 410 WAL 2010  
Trial Court Docket No: 2008-1814-CD

Commonwealth Docket Number: 2283 CD 2009  
Appeal Docket No:

Date Petition for Allowance of Appeal Filed: July 29, 2010  
Disposition:  
Disposition Date:

Reargument/Reconsideration Disposition:  
Reargument/Reconsideration Disposition Date:

/kao

FILED  
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AUG 04 2010  
William A. Shaw  
Prothonotary/Clerk of Courts

CA

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

IN RE: INCORPORATION OF THE  
BOROUGH OF TREASURE LAKE

: No. 2008 – 1814 - C.D.

TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION, INC.,  
RICHARD REHERMANN and  
WILLIAM REZNOR,  
Petitioners

: Type of Case: Civil  
Borough Incorporation

**FILED**

NOV 05 2010

William A. Shaw  
Prothonotary/Clerk of Courts

**JOINT MOTION FOR STATUS CONFERENCE**

**COME NOW**, the TREASURE LAKE PROPERTY OWNERS ASSOCIATION, INC.  
("Petitioner") by and through its counsel, Michael P. Yeager, Esquire and its co-counsel,  
Alan Price Young, Esquire of YOUNG & HAROS, LLC and the TOWNSHIP OF SANDY  
("Respondent"), by and through its counsel, Gregory M. Kruk, Esquire, of FERRARO,  
KRUK & FERRARO, LLP and file the within Motion for a Status Conference whereof the  
following is a statement:

1. The Petitioner filed a Petition for Incorporation of a Borough to the above number and term on or about September 25, 2008.
2. The Respondent filed Exceptions on or about October 24, 2008, some of which remain at issue.
3. Jurisdictional issues remain unresolved in that the parties await the decision of the Pennsylvania Supreme Court relative to the granting of Respondent's request to appeal the decision of the Commonwealth Court.
4. While the parties remain unsure as to the resolution of those jurisdictional issues until some decision of the Supreme Court, the parties are mindful of potential

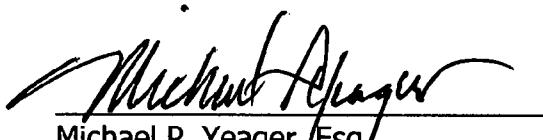
upcoming problems in the event the matter continues to move toward incorporation.

5. Chief among the problems yet to be determined in the event the matter moves to the next step in the borough process are the following:

- (a) Choice of the Committee members and how that function should take place.
- (b) Costs of that Committee function.
- (c) Timing as to both the specific date of appointment of the Committee as well as adherence to any requirement specified in the law relative to timing;
- (d) How testimony will be elicited at the Committee level and how that testimony might be either introduced or reintroduced at a future hearing before the Court.

WHEREFORE, both Petitioner and Respondent jointly request that the Court grant a Status Conference to the parties at the Court's convenience to discuss a possible upcoming Committee function as part of the Borough Incorporation process incorporated within this Petition request.

Respectfully submitted:



Michael P. Yeager, Esq.  
Attorney I.D. No. 15587  
P.O. Box 752  
110 North Second Street  
Clearfield, PA 16830  
(814) 765-9611  
*Counsel for Petitioners*

YOUNG & HAROS, LLC



---

ALAN PRICE YOUNG, ESQ.  
Attorney ID # 27649  
GREGORY D. MALASKA, ESQ.  
Attorney ID # 85524  
802 Main Street  
Stroudsburg, PA 18360  
*Co-Counsel for Petitioners*



---

Gregory M. Kruk, Esquire  
FERRARO, KRUK & FERRARO, LLP  
Attorney ID#27048  
690 Main Street  
Brockway, PA 15824  
Counsel for Respondent

CA

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

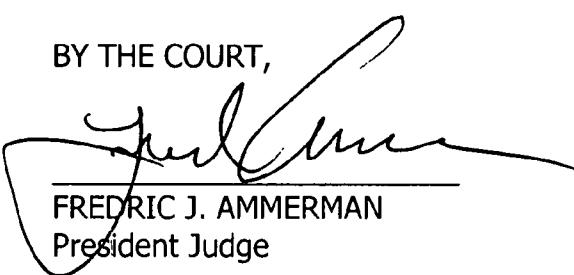
IN RE: INCORPORATION OF THE BOROUGH \* NO. 08-1814-CD  
OF TREASURE LAKE \*

TREASURE LAKE PROPERTY OWNERS \*  
ASSOCIATION; INC., RICHARD REHERMANN \*  
and WILLIAM REZNOR, \*  
Petitioners \*

**ORDER**

NOW, this 12<sup>th</sup> day of November, 2010, after review and consideration of the Joint Motion for Status Conference filed November 5, 2010 and the Court noting that this case is pending decision by the Pennsylvania Supreme Court; it is the ORDER of this Court that no proceedings will be scheduled until appeal proceedings have been concluded.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

FILED <sup>cc</sup>  
S 014:00-201 Attn: Yeager  
NOV 12 2010 Kruh

William A. Shaw  
Prothonotary/Clerk of Courts

(cc)



## Supreme Court of Pennsylvania

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

Western District

December 10, 2010

801 City-County Building  
414 Grant Street  
Pittsburgh, PA 15219  
(412) 565-2816  
[www.pacourts.us](http://www.pacourts.us)

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

2008-1814-CD

RE: In Re: Incorporation of the Borough  
of Treasure Lake

Treasure Lake Property Owners Association,  
Inc., Richard Rehmann and William  
Reznor

Petition of: Township of Sandy  
No. 410 WAL 2010  
Consolidated Cases:

Trial Court Docket No: 2008-1814-CD

Commonwealth Docket Number: 2283 CD 2009

Appeal Docket No:

Date Petition for Allowance of Appeal Filed: July 29, 2010  
Disposition: Order Denying Petition for Allowance of Appeal  
Disposition Date: November 23, 2010

Reargument/Reconsideration Disposition:  
Reargument/Reconsideration Disposition Date:

/kao

S **FILED** NO  
M 12:57 AM CC  
DEC 13 2010  
BPA  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE SUPREME COURT OF PENNSYLVANIA  
WESTERN DISTRICT

IN RE: INCORPORATION OF THE : No. 410 WAL 2010  
BOROUGH OF TREASURE LAKE :  
  
TREASURE LAKE PROPERTY OWNERS: Petition for Allowance of Appeal from the  
ASSOCIATION, INC., RICHARD : Order of the Commonwealth Court  
REHERMANN AND WILLIAM REZNOR :  
  
PETITION OF: TOWNSHIP OF SANDY :  
:

ORDER

PER CURIUM

AND NOW, this 23rd day of November, 2010, the Petition for Allowance of  
Appeal is **DENIED**.

A True Copy Patricia Nicola  
As of: November 23, 2010  
Attest: *Patricia Nicola*  
Chief Clerk  
Supreme Court of Pennsylvania

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

IN RE: INCORPORATION OF THE BOROUGH \* NO. 08-1814-CD  
OF TREASURE LAKE \*

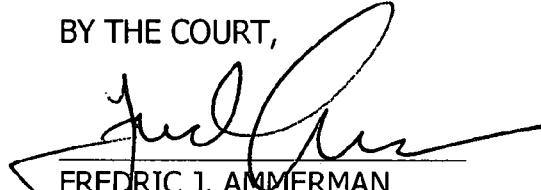
TREASURE LAKE PROPERTY OWNERS \*  
ASSOCIATION, INC., RICHARD REHERMANN \*  
and WILLIAM REZNOR, \*  
Petitioners \*

**ORDER**

NOW, this 14<sup>th</sup> day of December, 2010, it is the ORDER of this Court that a status conference with the Court and the above-referenced parties be and is hereby scheduled in Chambers for the 26<sup>th</sup> day of January, 2011 at 10:30 a.m. at the Clearfield County Courthouse, Clearfield, Pennsylvania.

Thirty minutes has been reserved for this conference.

BY THE COURT,



FREDRIC J. AMMERMAN

President Judge

**FILED**

*01/31/10*  
DEC 15 2010

(60)

William A. Shaw  
Prothonotary/Clerk of Courts

ICC Atty's:

Yeager

A. Young

Krekl/Ferraro

**FILED**

DEC 15 2010

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 12/15/10

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:



## Commonwealth Court of Pennsylvania

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

Pennsylvania Judicial Center  
601 Commonwealth Avenue, Suite 2100  
P.O. Box 69185  
Harrisburg, PA 17106-9185  
[www.pacourts.us](http://www.pacourts.us)

December 15, 2010

### CERTIFICATE OF REMITTAL/REMAND OF RECORD

TO: Mr. Shaw  
Prothonotary

RE: Twp of Sandy v. Inc. of the Bor of Treasure  
2283 CD 2009  
Trial Court Clearfield County Court of Common Pleas  
Trial Court Docket No: 2008-1814-CD

**FILED**

DEC 20 2010 (610)  
n/a  
William A. Shaw  
Prothonotary/Clerk of Courts  
1/20/10  
Clerk to  
Court

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

#### Original Record contents:

Item	Filed Date	Description
trial court record	January 29, 2010	1 box

#### Remand/Remittal Date:

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

Respectfully,

Commonwealth Court Filing Office



Twp of Sandy v. Inc. of the Bor of Treasure  
2283 CD 2009

December 15, 2010

Letter to: Mr. William A. Shaw

**Acknowledgement of Certificate of Remittal/Remand of Record (to be returned):**

A handwritten signature in black ink, appearing to read "William A. Shaw".

Signature

12-17-10

Date

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
Printed Name 1st Monday in Jan, 2014  
Clearfield Co., Clearfield, PA

08-1814-CD

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

In Re: Incorporation of the Borough  
of Treasure Lake

**FILED**

Treasure Lake Property Owners  
Association, Inc., Richard Rehmann  
and William Reznor

No. 2283 C.D. 2009

DEC 20 2010

m19:00/61  
William A. Shaw  
Prothonotary/Clerk of Courts

Appeal of: Township of Sandy

Argued: April 19, 2010

BEFORE: HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JOHNNY J. BUTLER, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

**OPINION**

**BY JUDGE SIMPSON**

**FILED: June 30, 2010**

In this interlocutory appeal by permission, we are asked if owners of time-shares and campground lots in a planned residential community are residing freeholders eligible to sign a borough incorporation petition under Section 202 of The Borough Code (Borough Code), Act of February 1, 1966, P.L. (1965) 1656, as amended, 53 P.S. §45202. Under the facts of this case, we conclude they are not, and we affirm the order of the Court of Common Pleas of Clearfield County (trial court).

**I. Background**

The Borough Code establishes a multi-step process for incorporating a borough. At issue in this appeal is the first part of the process—the petition stage. The petition stage requires incorporators to gather signatures “by a petition signed by a majority of the freeholders residing within the limits of the proposed borough.” Section 202 of the Borough Code, 53 P.S. §45202 (emphasis added). This residing freeholders signature requirement is currently at issue. These

signatures must be obtained within three months of the filing of the petition.

Section 202 of the Borough Code also requires that an incorporation petition be signed by "the freeholders of a majority of the territory within the limits of the proposed borough." While satisfaction of this territory signature requirement is not at issue, it will be mentioned below.

After the necessary signatures are obtained and the petition is presented to the trial court, a borough advisory committee shall be appointed. The composition of the committee is statutorily established. The committee is required to evaluate the proposed incorporation and advise the trial court. The court must conduct a hearing on the petition and determine whether a preponderance of the evidence establishes the desirability of incorporating the proposed borough. If so, the trial court is required to certify the question of whether the proposed borough should be incorporated to the county board of election for referendum vote.

#### **A. Treasure Lake**

The Township of Sandy, which has a population of approximately 10,000, is a second class township in Clearfield County. Treasure Lake is a privately owned, 8,044 acre, gated community wholly within the township. Approximately half of the Treasure Lake acreage is subdivided and developed. Development continues. Treasure Lake is a mixed use development, presently consisting of: single lots, recreational areas and facilities (lakes, beaches, two golf courses, ski slopes, parks, children's playgrounds, sports fields), commercial areas (shops and four restaurants), roads, a campground, and undeveloped land.

## **B. Incorporation Petition and Challenge**

Treasure Lake contains 7,125 plotted single family residential lots, of which, 2,044 are improved with residences. Incorporators<sup>1</sup> concluded that owners of lots improved with a taxed residence were residing freeholders and sought their signatures. A majority of these owners, 1,215 of 2,044 individual Treasure Lake lot owners, signed the incorporation petition. The Incorporators filed the petition with the trial court.

For the residing freeholders signature requirement, Incorporators did not obtain signatures from property interest owners in the campground portion of Treasure Lake, called Cayman Landing, or from the townhouse time-share portions of Treasure Lake, called Wolf Run Manor and Silverwoods.

The Township of Sandy (Challenger)<sup>2</sup> challenged the incorporation petition, arguing these other property interest holders were also freeholders. Challenger argued that the incorporation petition lacked signatures from a majority of freeholders residing within the limits of the proposed borough, thus depriving the trial court of jurisdiction.

---

<sup>1</sup> Incorporators are joined by the Pennsylvania State Association of Boroughs as *amicus curiae*.

<sup>2</sup> Township of Sandy is joined by the Pennsylvania State Association of Township Supervisors as *amicus curiae*.

## **C. Lots and Ownership Interests at Issue**

### **1. Cayman Landing Campground -Individually Owned Lots (Section 19 Lots)**

There are 830 distinct, plotted campground lots, of which 590 were separately sold to individuals or families. Each lot owner receives a deed for his lot. Each deed, however, is subject to several restrictions: (1) permanent structures or homes are not permitted; (2) only moveable trailers or recreational vehicles may be used; and (3) the lot may not be occupied for more than 90 consecutive days.

There are additional attributes of the Section 19 lots which are noteworthy for our analysis. The lots have access to five Comfort Centers, which provide water, bathroom, shower and laundry facilities. Only one Comfort Center remains open throughout the year. There is no sewage for individual lots.

Each lot is separately taxed, and taxes are assessed on the land itself. Significantly, none of these assessments include any residential structures on the land. The lot owner individually pays the real estate taxes for his property.

When gathering signatures for the petition. Incorporators treated the owners of Section 19 lots as freeholders (for purposes of the territory signature requirement), but not as residing freeholders (for purposes of the statutory requirement at issue now). Reproduced Record (R.R.) at 71a, 90a-91a, 155a. Incorporators based this distinction on Clearfield County real estate tax records which showed that, consistent with restrictions on the Section 19 lots, none is improved with structures. R.R. at 95a-96a, 160a-65a.

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UDI owners do not pay taxes on their interest. The Treasure Lake Property Owners Association owns the land that makes up these 380 lots, and an earlier court case rendered these UDI lands exempt from taxation. R.R. at 96a. Similar to the Section 19 lots, the UDI lots do not have any improvements. Id.

## **3. Time-share/Interval Ownership—Wolf Run Manor and Silverwoods**

“Wolf Run Manor” and “Silverwoods” are two distinct sections consisting of townhouses located near a ski slope and golf course, respectively. There are a total of 168 units within these two areas.

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Both Wolf Run Manor and Silverwoods have an owners' association. The owners' associations are responsible for overseeing and maintaining the properties. Wolf Run Manor Corporation conveyed its interest in each unit to the owners' associations. The associations perform maintenance on each unit during the association's period of ownership.

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### **C. Trial Court Proceedings**

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<sup>3</sup> For 15 of the units, all the available weekly interests are owned by a specific owner. The deeds to these 15 units do not identify any particular weeks of ownership.

addition, they do not exercise control over their lot to the exclusion of all others, because they are required to vacate at delineated time periods, nor are they allowed to improve the land in any manner they choose. Further, the restrictions on the owners go far beyond that of mere restrictive covenants on use and are inconsistent with a freehold interest in land.

Tr. Ct. Op., Slip Op. at 12-13. Additionally, the trial court reasoned that these restrictions prevent the interest holders from establishing residency in the Borough.

The trial court concluded that a majority of the residing freeholders signed the petition, and it ordered the next stage of the incorporation process to begin. Subsequently, the trial court stayed the appointment of the borough advisory committee pending the resolution of this interlocutory appeal.

Challenger sought interlocutory review of this issue. The trial court certified the case as having a controlling issue of law, and this Court granted permission to address the following issue:

Does the trial court have jurisdiction, because owners of time-shares and campground lots do not have a continuous uninterrupted exercise of ownership of land and are therefore not "freeholders" eligible to sign an incorporation petition under The Borough Code?

## **II. ARGUMENTS**

Challenger contends the trial court erred in concluding the owners of these ownership interests were not residing freeholders for the purpose of borough incorporation proceedings. It contends the owners are freeholders because they have estates in land which are not of certain duration but instead are for life or longer. They own their interests in perpetuity. The owned interests have several

common attributes: the interests are received by deed; they are transferable and inheritable; owners have exclusive ownership of their interests; owners have exclusive possession of their ownership interests; and, the interests are continuing.

In addition, each of the owners can meet the residency requirement. Challenger argues that the residency requirement does not require proof of domicile, and it can be satisfied by an owner living for one day at his property.

Finally, Challenger contends that any restriction on an owner's occupation does not restrict the fact of ownership status.

Incorporators argue in response that the interest holders' ownership interests fall short of the requirements for a freehold. The conveyed interests do not constitute continuous rights of ownership and possession for an indeterminate period, the essential characteristics of freehold estates. In the deed declarations that expressly except and reserve rights to the developer that interrupt periods of ownership and possession, Incorporators see the developer's intent not to convey freehold estates. Incorporators urge us to affirm the trial court's conclusion that jurisdiction under the statute is established.

In reply, Challenger makes several points: Challenger disputes Incorporators' argument regarding the developer's intent; it disputes whether a definition of freehold estate requires a continuous right to possession; it decries Incorporators' failure to fully address the distinction between occupancy and possession; it draws analogies to a borough annexation case; it contends that

designation as a campground area does not prevent owners of Section 19 and UDI interests from “residing;” it asserts Incorporators do not adequately address an admission during the hearing that owners of Section 19 interests are “freeholders;” and, it urges a separate analysis of each type of interest.

### **III. DISCUSSION**

#### **A. Residing Freeholders**

By its plain terms, the statutory requirement at issue, “freeholders residing within the limits of the proposed borough,” has two components. First, the person whose signature is required must own an estate of freehold. Second, the person must be residing within the limits of the proposed borough.

##### **1.**

As to the first component, the General Assembly did not define the term “freeholders” in the Borough Code. “At common law, [a freeholder] was he who has the actual possession of land for life, or a greater estate ....” In re Mountville Borough, 31 Pa. Super. 18, 1906 WL 3703 (1905) (quoting Clippinger v. Creps, 2 Watts 45, 1833 WL 3364 at \*3). Historically, Pennsylvania freehold estates include fee simple and life estates. Ladner Pennsylvania Real Estate Law, §2.02 (Bisel, 5<sup>th</sup> ed. 2006). Non-freehold estates include an estate for years, estate at will and estate at sufferance. Ladner §2.05. Under Pennsylvania law:

[T]he key attribute of all freehold estates is the right to create other interests including ownership interests carved out of all or part of the freehold estate. Non-freehold estates do not have that attribute. The holder of a non-freehold estate may have the right to transfer that interest and even the right to create other

interests, but there is no right to create an ownership interest in the property.

Ladner §2.05.

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Regarding the second component, there is scant appellate court authority on which to rely. In In re Incorporation of Borough of Pocono Raceway, 562 A.2d 6 (Pa. Cmwlth.), appeal denied, 539 Pa. 658, 651 A.2d 544 (1994) cert. denied sub nom. Mattioli v. Tunkhannock Township, 514 U.S. 1064 (1995), this Court held that persons who owned commercial property within a proposed borough which contained no construction other than billboards were not resident freeholders.

An older trial court opinion from Adams County addressed the issue of freeholders residing within the limits of the proposed borough for purposes of incorporation under the statute. In Carroll Valley Borough Incorporation, 60 D. & C. 2d. 536 (C.P. Adams, 1972), Judge MacPhail (later a judge of this Court), was confronted with a situation where many landowners in the proposed borough only occupied their homes seasonally or on weekends. Judge MacPhail highlighted another trial court opinion<sup>4</sup> that held summer residents with vastly more expensive properties than year-round residents had as much interest in the form of local government. He concluded that a freeholder who lives, however briefly, within the geographical boundaries of the area proposed to be incorporated,

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<sup>4</sup> In re: Harvey's Lake Boro. Incorporation (No. 1), 57 Luz. 45 (C.P. Luzerne 1966).

must be considered in determining what constitutes a majority of the freeholders for the purpose of incorporation.

In the cases which held persons were residing in a place, there was some structure affixed to the real property which could accommodate human occupancy. Thus, in Carroll Valley there were homes. In contrast, in Pocono Raceway, where the property had no structures for human habitation, the owners were not residing freeholders.

#### **B. Cayman Landing Campground- Individually Owned Lots (Section 19 Lots)**

For the following reasons, we discern no reversible error in the trial court's conclusion that owners of Section 19 lots are not residing freeholders. Initially, we note that the parties act in a manner consistent with the conclusion that owners of these lots are freeholders. Thus, the taxing authorities levy real estate taxes upon, and the owners are responsible for paying, real estate taxes on unimproved land. Also, Incorporators treated the owners of Section 19 lots as freeholders for the territory signature requirement.

Nevertheless, the legal restrictions applicable to the lots, especially the prohibition of permanent structures or homes, and the lack of sewer service, are relevant to the "residing" component of the statutory requirement. Further, consistent with the legal restrictions, the county does not assess any owner of a Section 19 lot for a residential structure, and there is no evidence that any owner pays real estate taxes for a residence. In particular, there is no evidence that Challenger, a taxing authority, treats any owner of a Section 19 lot as having a

residence there for tax purposes. Whatever may be on these lots, their owners have not accepted the tax burden associated with a residence, and it was not error for the trial court to treat them in a manner consistent with their real estate tax posture.

### **C. Cayman Landing Campground-Undivided Ownership Interests (UDI Lots)**

Similarly, we discern no error in the trial court's conclusion that owners of UDI lots are not residing freeholders. The legal restrictions applicable to the lots are more pronounced than those for the Section 19 lots. Like the Section 19 lots, the UDI lots do not have sewer service. Moreover, the owners pay no real estate taxes whatsoever, not even for the unimproved land. In this sense, neither Challenger nor any other taxing authority treats the owners as freeholders, much less residing freeholders. It was not error for the trial court to treat these owners in a manner consistent with their real estate tax posture.

### **D. Interval Ownership-Wolf Run Manor and Silverwoods**

We discern no error in the trial court's conclusion that owners of time-share interests are not residing freeholders. Clearly, these interests are less than life estates and fee simple estates, which are the only two types of historical freehold estates still existing in Pennsylvania. Ladner §§2.02, 2.03. This is because the time-share owners cannot exclude all others from their property for a period of indefinite duration.

Grantees of the Wolf Run Manor and Silverwoods time-shares received finite periods of possession—not a right to exclusive possession continuing for an indefinite period. That these intervals of possession recur

annually does not change their non-continuous, finite character. Even within the 15 units whose available periods are owned by single owner, each unit has a maintenance week during which owners are precluded from using the properties. The respective owners' association holds an ownership interest in that maintenance week.

Also, there is no statute which declares these ownership interests to be freehold estates. Because the time-share interests are not freehold estates at common law, and no statute declares them to be freehold estates under statutory law, there is no legal authority for this Court to declare the owners freeholders.

Significantly, the parties act in a manner consistent with the conclusion that the owners of interval interests are not freeholders. Thus, the time-share owners do not pay real estate taxes; rather, real estate taxes are levied upon and paid by the owners' associations. See Townsend v. Boyd, 217 Pa. 386 (1907); Ladner §2.05(a) (estate for years, a less than freehold estate because it is held for a specified, definite period of time, is personal property, not real property). It was not error for the trial court to treat the time-share owners in a manner consistent with their real estate tax posture.

#### **E. Disenfranchisement**

We also reject Challenger's assertion that being counted as freeholders is the only opportunity for these various interest holders to participate in the incorporation debate. The trial court is required to conduct hearings on the merits of incorporation. These hearings will provide the interest holders with an

opportunity to present their views on the merits of incorporation Treasure Lake as a Borough.

#### **IV. CONCLUSION**

The incorporation process is at a preliminary stage. Incorporators successfully obtained the signatures of a majority of residing freeholders, and the trial court took appropriate steps to continue that process. The statutory process provides ample opportunity for the interest holders at issue in this case to express their views as the merits of incorporating this private development as a borough.

For all the above reasons, we affirm the order of the trial court and remand the matter for further proceedings.



ROBERT SIMPSON, Judge

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

In Re: Incorporation of the Borough :  
of Treasure Lake :  
  
Treasure Lake Property Owners : No. 2283 C.D. 2009  
Association, Inc., Richard Rehmann :  
and William Reznor :  
  
Appeal of: Township of Sandy :  
:

**ORDER**

**AND NOW**, this 30<sup>th</sup> day of June, 2010, the order of the Court of Common Pleas of Clearfield County in the above captioned matter is **AFFIRMED**. The case is remanded for further proceedings consistent with this opinion.

Jurisdiction is relinquished.



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ROBERT SIMPSON, Judge

CA

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

IN RE: INCORPORATION OF THE BOROUGH \* NO. 08-1814-CD  
OF TREASURE LAKE \*

TREASURE LAKE PROPERTY OWNERS \*  
ASSOCIATION, INC., RICHARD REHERMANN \*  
and WILLIAM REZNOR, \*  
Petitioners \*

**ORDER**

NOW, this 26<sup>th</sup> day of January, 2011, it is the ORDER of this Court that a status conference with the Court and the above-referenced parties be and is hereby scheduled in **Chambers** for the 4<sup>th</sup> day of April, 2011 at 1:30 p.m. at the Clearfield County Courthouse, Clearfield, Pennsylvania.

One hour has been reserved for this conference.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

**FILED**

019-5530 Attns:  
JAN 27 2011

S William A. Shaw  
Prothonotary/Clerk of Courts

Leager  
Young  
Kruha  
Ferraro

**FILED**

JAN 27 2011

William A. Show  
Prothonotary/Clerk of Courts

DATE: 1/27/11

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  Other

Special Instructions:

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

IN RE: INCORPORATION OF THE BOROUGH \* NO. 08-1814-CD  
OF TREASURE LAKE \*

TREASURE LAKE PROPERTY OWNERS \*  
ASSOCIATION, INC., RICHARD REHERMANN \*  
and WILLIAM REZNOR, \*  
Petitioners \*

**FILED**

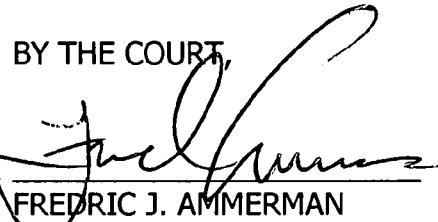
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William A. Shaw  
Prothonotary/Clerk of Courts  
Chancery to  
YERGER, Kew

**ORDER**

NOW, this 4<sup>th</sup> day of April, 2011, it is the ORDER of this Court that a status conference with the Court and the above-referenced parties be and is hereby scheduled in **Chambers** for the 29<sup>th</sup> day of August, 2011 at 1:30 p.m. at the Clearfield County Courthouse, Clearfield, Pennsylvania.

One hour has been reserved for this conference.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

## IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Incorporation of the Borough  
of Treasure Lake

Treasure Lake Property Owners  
Association, Inc., Richard Rehermann  
and William Reznor

Argued: April 19, 2010

Appeal of: Township of Sandy

BEFORE: HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JOHNNY J. BUTLER, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

FILED *(R)*

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M 11-306  
William A. Shaw  
Prothonotary/Clerk of Courts

**OPINION**  
**BY JUDGE SIMPSON**

**FILED: June 30, 2010**

In this interlocutory appeal by permission, we are asked if owners of time-shares and campground lots in a planned residential community are residing freeholders eligible to sign a borough incorporation petition under Section 202 of The Borough Code (Borough Code), Act of February 1, 1966, P.L. (1965) 1656, as amended, 53 P.S. §45202. Under the facts of this case, we conclude they are not, and we affirm the order of the Court of Common Pleas of Clearfield County (trial court).

### I. Background

The Borough Code establishes a multi-step process for incorporating a borough. At issue in this appeal is the first part of the process—the petition stage. The petition stage requires incorporators to gather signatures “by a petition signed by a majority of the freeholders residing within the limits of the proposed borough.” Section 202 of the Borough Code, 53 P.S. §45202 (emphasis added). This residing freeholders signature requirement is currently at issue. These

signatures must be obtained within three months of the filing of the petition.

Section 202 of the Borough Code also requires that an incorporation petition be signed by "the freeholders of a majority of the territory within the limits of the proposed borough." While satisfaction of this territory signature requirement is not at issue, it will be mentioned below.

After the necessary signatures are obtained and the petition is presented to the trial court, a borough advisory committee shall be appointed. The composition of the committee is statutorily established. The committee is required to evaluate the proposed incorporation and advise the trial court. The court must conduct a hearing on the petition and determine whether a preponderance of the evidence establishes the desirability of incorporating the proposed borough. If so, the trial court is required to certify the question of whether the proposed borough should be incorporated to the county board of election for referendum vote.

#### **A. Treasure Lake**

The Township of Sandy, which has a population of approximately 10,000, is a second class township in Clearfield County. Treasure Lake is a privately owned, 8,044 acre, gated community wholly within the township. Approximately half of the Treasure Lake acreage is subdivided and developed. Development continues. Treasure Lake is a mixed use development, presently consisting of: single lots, recreational areas and facilities (lakes, beaches, two golf courses, ski slopes, parks, children's playgrounds, sports fields), commercial areas (shops and four restaurants), roads, a campground, and undeveloped land.

## **B. Incorporation Petition and Challenge**

Treasure Lake contains 7,125 plotted single family residential lots, of which, 2,044 are improved with residences. Incorporators<sup>1</sup> concluded that owners of lots improved with a taxed residence were residing freeholders and sought their signatures. A majority of these owners, 1,215 of 2,044 individual Treasure Lake lot owners, signed the incorporation petition. The Incorporators filed the petition with the trial court.

For the residing freeholders signature requirement, Incorporators did not obtain signatures from property interest owners in the campground portion of Treasure Lake, called Cayman Landing, or from the townhouse time-share portions of Treasure Lake, called Wolf Run Manor and Silverwoods.

The Township of Sandy (Challenger)<sup>2</sup> challenged the incorporation petition, arguing these other property interest holders were also freeholders. Challenger argued that the incorporation petition lacked signatures from a majority of freeholders residing within the limits of the proposed borough, thus depriving the trial court of jurisdiction.

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<sup>1</sup> Incorporators are joined by the Pennsylvania State Association of Boroughs as *amicus curiae*.

<sup>2</sup> Township of Sandy is joined by the Pennsylvania State Association of Township Supervisors as *amicus curiae*.

### C. Lots and Ownership Interests at Issue

#### **1. Cayman Landing Campground -Individually Owned Lots (Section 19 Lots)**

There are 830 distinct, plotted campground lots, of which 590 were separately sold to individuals or families. Each lot owner receives a deed for his lot. Each deed, however, is subject to several restrictions: (1) permanent structures or homes are not permitted; (2) only moveable trailers or recreational vehicles may be used; and (3) the lot may not be occupied for more than 90 consecutive days.

There are additional attributes of the Section 19 lots which are noteworthy for our analysis. The lots have access to five Comfort Centers, which provide water, bathroom, shower and laundry facilities. Only one Comfort Center remains open throughout the year. There is no sewage for individual lots.

Each lot is separately taxed, and taxes are assessed on the land itself. Significantly, none of these assessments include any residential structures on the land. The lot owner individually pays the real estate taxes for his property.

When gathering signatures for the petition. Incorporators treated the owners of Section 19 lots as freeholders (for purposes of the territory signature requirement), but not as residing freeholders (for purposes of the statutory requirement at issue now). Reproduced Record (R.R.) at 71a, 90a-91a, 155a. Incorporators based this distinction on Clearfield County real estate tax records which showed that, consistent with restrictions on the Section 19 lots, none is improved with structures. R.R. at 95a-96a, 160a-65a.

## **2. Cayman Landing Campground - Undivided Ownership Interest (UDI Lots)**

There are 380 lots available for undivided ownership interest (UDI). UDI purchasers receive a deed for an undivided 1/3000 interest in the whole of these lots. Approximately 1,700 of these interests were sold.

Each deed provides several restrictions. UDI owners may only use recreational vehicles on these lots. Additionally, UDI owners may only stay for 30-day intervals. UDI interests conveyed by deed are transferable and devisable.

UDI owners do not pay taxes on their interest. The Treasure Lake Property Owners Association owns the land that makes up these 380 lots, and an earlier court case rendered these UDI lands exempt from taxation. R.R. at 96a. Similar to the Section 19 lots, the UDI lots do not have any improvements. *Id.*

## **3. Time-share/Interval Ownership—Wolf Run Manor and Silverwoods**

“Wolf Run Manor” and “Silverwoods” are two distinct sections consisting of townhouses located near a ski slope and golf course, respectively. There are a total of 168 units within these two areas.

Wolf Run Manor Corporation sold time-share interests for units in both Wolf Run Manor and Silverwoods. There are a total of 6,489 active accounts (3,690 in Silverwoods and 2,799 in Wolf Run Manor). Each interest is for a one-week interval of ownership, and each deed identifies the particular week of

ownership conveyed.<sup>3</sup> Wolf Run Manor Corporation retained an interest of one to two weeks in each of the 168 units.

Both Wolf Run Manor and Silverwoods have an owners' association. The owners' associations are responsible for overseeing and maintaining the properties. Wolf Run Manor Corporation conveyed its interest in each unit to the owners' associations. The associations perform maintenance on each unit during the association's period of ownership.

Interest owners pay a yearly fee to their owners' association, which is used to pay maintenance costs and real estate taxes. Interest owners do not pay real estate taxes individually.

### **C. Trial Court Proceedings**

The trial court conducted hearings on the exceptions. The trial court denied Challenger's exception. The trial court concluded freeholder status required an owner to have the right to exclude others and to exercise control. The trial court held that while the owners may possess their interests for life or greater, deed restrictions and restrictive covenants prevent the owners from having actual continual and uninterrupted ownership. The trial court explained:

The owners of interests within the particular sections do not have continuing exercise of ownership over their land; rather they have an interrupted exercise of ownership of their land. In

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<sup>3</sup> For 15 of the units, all the available weekly interests are owned by a specific owner. The deeds to these 15 units do not identify any particular weeks of ownership.

addition, they do not exercise control over their lot to the exclusion of all others, because they are required to vacate at delineated time periods, nor are they allowed to improve the land in any manner they choose. Further, the restrictions on the owners go far beyond that of mere restrictive covenants on use and are inconsistent with a freehold interest in land.

Tr. Ct. Op., Slip Op. at 12-13. Additionally, the trial court reasoned that these restrictions prevent the interest holders from establishing residency in the Borough.

The trial court concluded that a majority of the residing freeholders signed the petition, and it ordered the next stage of the incorporation process to begin. Subsequently, the trial court stayed the appointment of the borough advisory committee pending the resolution of this interlocutory appeal.

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Also, there is no statute which declares these ownership interests to be freehold estates. Because the time-share interests are not freehold estates at common law, and no statute declares them to be freehold estates under statutory law, there is no legal authority for this Court to declare the owners freeholders.

Significantly, the parties act in a manner consistent with the conclusion that the owners of interval interests are not freeholders. Thus, the time-share owners do not pay real estate taxes; rather, real estate taxes are levied upon and paid by the owners' associations. See Townsend v. Boyd, 217 Pa. 386 (1907); Ladner §2.05(a) (estate for years, a less than freehold estate because it is held for a specified, definite period of time, is personal property, not real property). It was not error for the trial court to treat the time-share owners in a manner consistent with their real estate tax posture.

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#### **IV. CONCLUSION**

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For all the above reasons, we affirm the order of the trial court and remand the matter for further proceedings.



ROBERT SIMPSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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:

**ORDER**

AND NOW, this 30<sup>th</sup> day of June, 2010, the order of the Court of Common Pleas of Clearfield County in the above captioned matter is **AFFIRMED**. The case is remanded for further proceedings consistent with this opinion.

Jurisdiction is relinquished.

  
ROBERT SIMPSON, Judge

Certified from the Record

JUN 30 2010

and Order Exit

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

83

IN RE: : No. 2008 - 1814 - CD  
INCORPORATION OF THE :  
BOROUGH OF TREASURE LAKE : Type of Case: Borough Incorporation  
TREASURE LAKE PROPERTY OWNERS :  
ASSOCIATION, INC., RICHARD : Type of Pleading: Joint Motion For  
REHERMANN and WILLIAM REZNOR, : Scheduling Order  
Petitioners :  
Petitioners : Filed on Behalf of: Petitioners

: Counsel of Record for these Parties:  
: Michael P. Yeager, Esq.  
: Attorney I.D. No. 15587  
: P.O. Box 752  
: 110 North Second Street  
: Clearfield, PA 16830  
: (814) 765-9611  
: Counsel for Petitioners  
: Alan Price Young, Esq.  
: Attorney I.D. No. 27649  
: Young & Haros, LLC  
: 802 Main Street  
: Stroudsburg, PA 18360-1602  
: (570) 424-9800  
: Co-counsel for Petitioners  
: Gregory M. Kruk, Esquire  
: Attorney I.D. No. 27048  
: FERRARO, KRUK & FERRARO, LLP  
: 690 Main Street  
: Brockway, PA 15824  
: (814)268-2202

FILED  
OCT 18 2011

1cc  
Atty Yeager

William A. Shaw  
Prothonotary/Clerk of Courts

6K

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

**IN RE: INCORPORATION OF THE  
BOROUGH OF TREASURE LAKE** : **No. 2008 – 1814 - C.D.**  
:  
**TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION, INC.,  
RICHARD REHERMANN and  
WILLIAM REZNOR,  
Petitioners** : **Type of Case: Civil  
Borough Incorporation**  
:  
:

**JOINT MOTION FOR SCHEDULING ORDER**

Petitioners, Treasure Lake Property Owners Association, Inc., Richard Rehermann, and William Reznor, by and through their counsel, Michael P. Yeager, Esq. and Exceptants by and through their attorneys, FERRARO, KRUK & FERRARO, LLP, hereby move the Court to enter a scheduling Order and, in support thereof, aver as follows:

1. The Parties most recently met with the Court for a status conference on August 29, 2011.
2. At the status conference, the Court discussed:
  - a. the submission of a stipulated record for review by the ultimate Borough Advisory Committee;
  - b. the subsequent submission by the Parties of proposed findings of fact, conclusions of law, and supporting briefs;
  - c. the proposed submission of appointees to the Borough Advisory Committee;
  - d. the proposed format and scheduling of the Borough Advisory Committee process; and

e. the resolution of any outstanding exceptions filed by the Respondent subject to any applicable appeal rights of the parties.

3. The Petitioners desire the approval of a procedure for submitting and resolving the items identified in #2 above.

4. Petitioners aver that it is in the best interests of the parties to address each of these items prior to appointing the Borough Advisory Committee.

5. Attached as Exhibit "A" to this motion is a draft Order reflecting the Petitioner's proposal and timeline for moving the matter into the Borough Advisory Committee process and beyond.

6. Petitioners aver that the proposed process is a fair and efficient method to move the litigation forward.

7. No party will be prejudiced by the schedule contained in the proposed order.

WHEREFORE, Petitioners respectfully request that the Court enter an order, similar to that attached as Exhibit "A" to this Motion, setting a schedule for resolving the existing issues and moving the matter forward through the Borough Advisory Committee process.

Respectfully submitted:



Michael P. Yeager, Esquire  
Attorney I.D. No. 15587  
P.O. Box 752  
110 North Second Street  
Clearfield, PA 16830  
(814) 765-9611  
*Counsel for Petitioners*

Alan Price Young

Alan Price Young, Esq.  
Attorney I.D. No. 27649  
Young & Haros, LLC  
802 Main Street  
Stroudsburg, PA 18360-1602  
(570) 424-9800  
*Co-counsel for Petitioners*

Gregory M. Kruk

Gregory M. Kruk, Esquire  
Attorney I.D. No. 27048  
FERRARO, KRUK & FERRARO, LLP  
690 Main Street  
Brockway, PA 15824  
(814)268-2202

CA

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

IN RE: INCORPORATION OF THE BOROUGH \* NO. 08-1814-CD  
OF TREASURE LAKE \*

TREASURE LAKE PROPERTY OWNERS \*  
ASSOCIATION, INC., RICHARD REHERMANN \*  
and WILLIAM REZNOR, \*  
Petitioners \*

**FILED** <sup>1CC</sup> <sub>01/12/2011</sub> GK  
<sub>NOV 04 2011</sub> Attn:  
William A. Shaw Yeager  
Prothonotary/Clerk of Courts Young  
Krukl Ferraro

**ORDER**

NOW, this 3<sup>rd</sup> day of November, 2011, upon review of the Petitioner's Joint Motion for Scheduling Order, said Motion is hereby GRANTED and the Court hereby imposes the following schedule upon the Parties:

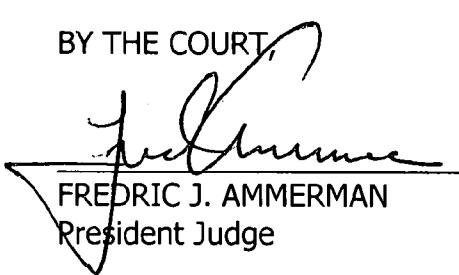
1. The Parties shall exchange any and all requested information other than the expert reports by no later than November 15, 2011.
2. The Parties shall exchange any and all expert reports by no later than December 15, 2011.
3. The Parties shall agree upon and submit a joint stipulated record, including any rebuttal reports submitted by the respective experts, by no later than January 31, 2012.
4. The Parties shall submit proposed findings of fact, conclusions of law and supporting briefs by no later than February 29, 2012.
5. The Parties shall submit briefs on Exception # 4 by no later than March 31, 2012 which questions:

*Whether the Court can approve the incorporation of a borough which is described in the Petition for Incorporation as having the same boundaries as a privately owned gated residential community?*

6. Oral argument on the exception listed in Paragraph 5 of this Order and all other outstanding exceptions is hereby scheduled for the **16<sup>th</sup> day of April, 2012 at 9:00 a.m.** in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
7. The Court shall rule on said exceptions by no later than May 7, 2012.
8. The Parties shall submit names of their two respective designees to the Borough Advisory Committee by no later than May 17, 2012.
9. Upon ruling on said exceptions, the Court shall meet with counsel on **May 17, 2012 at 9:00 a.m.** in Chambers to develop a framework and schedule for the Borough Advisory Committee and the Court will appoint the Committee no later than 14 days after the meeting with counsel in accordance with Section 202 of the Borough Code (50 P.S. § 45202(b)). The Director of the County Planning Commission, Jodi Brennan, shall serve as advisor to the Committee.
10. The Committee review period shall run for 60 days in accordance with Section 202 of the Borough Code (50 P.S. § 45202(b)).
11. The Borough Advisory Committee shall issue a report of its findings to the Court within no more than 60 days of its creation, in accordance with Section 202 of the Borough Code (50 P.S. § 45202(c)).
12. Within no more than 10 days after the receipt of the Borough Advisory Committee findings, the Court shall issue an order scheduling a hearing for the purpose of hearing the parties interested and their witnesses on the issue of whether the incorporation matter should be certified for a vote.

13. Not later than 30 days after the hearing(s), the Court shall rule on the issue of whether the matter shall be placed on a ballot in accordance with Section 202 of the Borough Code (50 P.S. § 45202(d)).

BY THE COURT,



Fredric J. Ammerman

FREDRIC J. AMMERMAN  
President Judge

**FILED**

NOV 04 2011

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 11/4/11

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:  
 Plaintiff(s) Attorney  Other  
 Plaintiff(s)  Defendants' Attorney  
 Defendants'  Defendants' Counsel  
 Defendants' Counsel

Attorneys Yager, Yang, Kruck,  
and Ferraro

CA

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

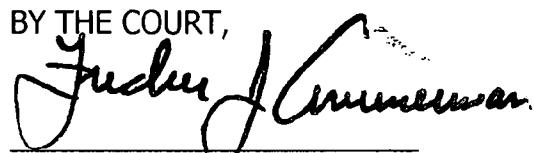
IN RE: INCORPORATION OF THE BOROUGH \* NO. 08-1814-CD  
OF TREASURE LAKE \*

TREASURE LAKE PROPERTY OWNERS \*  
ASSOCIATION, INC., RICHARD REHERMANN \*  
and WILLIAM REZNOR, \*  
Petitioners \*

**ORDER**

NOW, this 29<sup>th</sup> day of February 2012, upon request of counsel for the parties; it  
is the ORDER of this Court that a status conference be and is hereby scheduled for the  
**6<sup>th</sup> day of March, 2012 at 2:00 p.m. in Chambers**, Clearfield County Courthouse,  
Clearfield, Pennsylvania.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

FILED  
S 01/31/2012  
FEB 29 2012  
1CC Attns:  
William A. Shaw  
Prothonotary/Clerk of Courts  
Reager  
Young  
Kruky Ferraro

6C

**FILED**

**FEB 20 2012**

**William A. Sharv  
Prothonotary/Clark of Courts**

DATE 2/20/12

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to:  
 Plaintiff(s) Attorney: \_\_\_\_\_ Other \_\_\_\_\_  
 Defendant(s) Attorney: \_\_\_\_\_ Other \_\_\_\_\_  
 Special Litigant(s): \_\_\_\_\_

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
FORTY-SIXTH JUDICIAL DISTRICT  
CIVIL DIVISION

IN RE: INCORPORATION OF THE  
BOROUGH OF TREASURE LAKE

No. 2008-1814-CD

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC., RICHARD  
REHERMANN and WILLIAM REZNOR,

Petition for Incorporation of a  
Borough – 53 P.S. § 45202

Petitioners

Judge Ammerman

SANDY TOWNSHIP,

Objectors

PRAECIPE FOR ENTRY OF APPEARANCE

To the Prothonotary:

Please enter my appearance of behalf of Objectors, Sandy Township, Dick Castonguay  
and Brady Laborde in the above-captioned matter.

Date: 3.28.12

  
\_\_\_\_\_  
Scott T. Wyland  
Salzmann Hughes, P.C.  
354 Alexander Spring Road, STE 1  
Carlisle, PA 17015  
717-249-6333  
717-249-7334  
Attorney I.D. No. 52660  
swyland@salzmannhughes.com

FILED  
S MAR 29 2012  
William A. Shaw  
Prothonotary/Clerk of Courts  
Copy to CIA  
6V

CERTIFICATE OF SERVICE

I, Scott T. Wyland, Esquire, hereby certify that on this 28th day of March 2012, I have served the foregoing Praeclipe for Entry of Appearance by depositing the same in the United States Mail, by First Class Mail, postage prepaid, addressed as follows:

Michael P. Yeager, Esquire  
P.O. BOX 752  
110 North Second Street  
Clearfield, PA 16830  
*Counsel for Petitioners*

Alan Price Young, Esquire  
Young & Haros, LLC  
802 Main Street  
Stroudsburg, PA 18360-1602  
*Co-Counsel for Petitioners*

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

Date: 3.28.12



\_\_\_\_\_  
Scott T. Wyland

**COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**  
**FORTY-SIXTH JUDICIAL DISTRICT**  
**CIVIL DIVISION**

IN RE: : No. 2008 – 1814 - CD  
INCORPORATION OF THE : Type of Case: Borough Incorporation  
BOROUGH OF TREASURE LAKE : Type of Pleading: Certificate of Service  
TREASURE LAKE PROPERTY OWNERS :  
ASSOCIATION, INC., RICHARD :  
REHERMANN and WILLIAM REZNOR, : Filed on Behalf of: Petitioners  
Petitioners : Counsel of Record for these Parties:  
: Michael P. Yeager, Esq.  
: Attorney I.D. No. 15587  
: P.O. Box 752  
: 110 North Second Street  
: Clearfield, PA 16830  
: (814) 765-9611  
: Alan Price Young, Esq.  
: Attorney I.D. No. 27649  
: Young & Haros, LLC  
: 802 Main Street  
: Stroudsburg, PA 18360-1602  
: (570) 424-9800

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William A. Shaw  
Prothonotary/Clerk of Courts

**COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**  
**FORTY-SIXTH JUDICIAL DISTRICT**  
**CIVIL DIVISION**

IN RE: INCORPORATION OF THE  
BOROUGH OF TREASURE LAKE

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC., RICHARD  
REHERMANN and WILLIAM REZNOR,

Petitioners

NO. 2008 - 1814 - CD

(Petition for Incorporation of a  
Borough - 53 P.S. § 45202)

: (Judge Ammerman)

**CERTIFICATE OF SERVICE**

I hereby certify that on the 3<sup>rd</sup> day of April, 2012, a true and correct copy of the *Petitioners' Brief In Opposition To Respondents' Exception #4* was served by first class mail, postage prepaid, as follows:

Scott T. Wyland, Esquire  
SALZMANN HUGHES, PC  
354 Alexander Spring Road, Suite 1  
Carlisle, PA 17015

Date: April 3, 2012

  
MICHAEL P. YEAGER, ESQ.

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

IN RE: INCORPORATION OF THE BOROUGH : NO. 08-1814-CD  
OF TREASURE LAKE

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC., RICHARD REHERMANN  
and WILLIAM REZNOR,  
Petitioners

FILED  
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APR 03 2012

ICC Atty's:  
Reager  
Young  
Kruhl/Ferraro

William A. Shaw  
Prothonotary/Clerk of Courts

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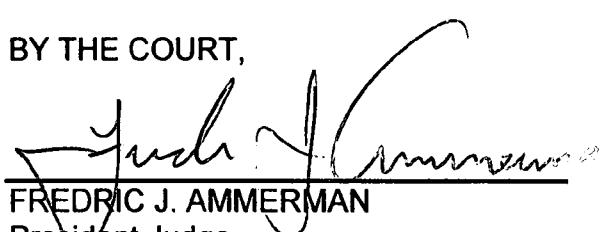
REVISED ORDER

NOW, this 2<sup>nd</sup> day of April, 2012, upon review of this Court's prior Scheduling Order of November 3, 2011, and after consultation with the attorney for the Petitioners and an attorney for expectants, the Order of November 3, 2011 is revised as follows:

1. The date for the submission of the joint stipulated record, including any rebuttal report, set forth in paragraph 3 of the Order is hereby changed to June 1, 2012.
2. The date for the submission of the proposed findings of fact, conclusions of law and supporting brief set forth in paragraph 4 is hereby changed to June 1, 2012.
3. The words "no later than 14 days after the meeting with counsel" is hereby eliminated from paragraph 9 of the Order.
4. Paragraph 10 is modified by adding the words "unless expanded to a longer period of time at the request of the Court or committee and appropriate waivers are signed by the parties."

In all other respects the Order of November 3, 2011 remains unchanged.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

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

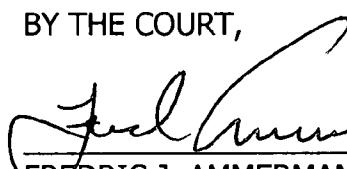
IN RE: INCORPORATION OF THE BOROUGH \* NO. 08-1814-CD  
OF TREASURE LAKE \*

TREASURE LAKE PROPERTY OWNERS \*  
ASSOCIATION, INC., RICHARD REHERMANN \*  
and WILLIAM REZNOR, \*  
Petitioners \*

**ORDER**

NOW, this 9<sup>th</sup> day of May, 2012, following argument relative Sandy Township's Exception # 4, and the Court's receipt and review of the parties briefs and reply briefs; it is the ORDER of this Court that the said exception be and is hereby DISMISSED.

BY THE COURT,

  
\_\_\_\_\_  
FREDRIC J. AMMERMAN  
President Judge

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Prothonotary/Clerk of Courts  
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**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW**

**IN RE: INCORPORATION OF THE  
BOROUGH OF TREASURE LAKE** : **No. 2008 – 1814 - C.D.**  
:  
:  
**TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION, INC.,** : **Type of Case: Civil**  
**RICHARD REHERMANN and** : **Borough Incorporation**  
**WILLIAM REZNOR,** :  
**Petitioners** :

**FILED**

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William A. Straw  
Prothonotary/Clerk of Courts

Yeager

**SUGGESTED DOCUMENTS**

Petitioners, Treasure Lake Property Owners Association, Inc. ("TLPOA"), et al.,  
by and through their Counsel, Michael Yeager, Esq. and Alan P. Young, Esq., and  
Respondents/Objectors, Sandy Township ("S Twp"), et al., by and through their  
Counsel, Gregory Kruk, Esq. and Scott T. Wyland, Esq., hereby suggest that the  
Borough Advisory Committee review and consider the admission of the following  
documents.

**1. Miscellaneous maps**

- (a) TL Petition map
- (b) TL undeveloped land map
- (c) S Twp DuBois & TL map
- (d) S Twp without TL map
- (e) S Twp zoning map
- (f) Surrounding area zoning maps
- (g) S Twp map showing City of DuBois, TL PRD, State Game Lands, State  
Forests and City property in Township.

**2. Relevant provisions of the Borough Code – 53 P.S. § 45201 - § 45219**

**3. TLPOA/TL deeds: (Deeds from Recreation Land Corporation to TLPOA of the  
following)**

- (a) Roads
- (b) Lakes
- (c) Parks

- (d) Development purchase deed
- (e) TL examples of Deeds for:

- i. Single family lots
- ii. Time Shares
- iii. Campground lots
- iv. UDI interests

4. Covenants and Declarations for all sections of the existing Treasure Lake planned community
5. Articles of Incorporation for the TLPOA
6. Bylaws of the TLPOA
7. TLPOA Security Regulations currently in effect
8. Pleadings/Transcripts/Opinions

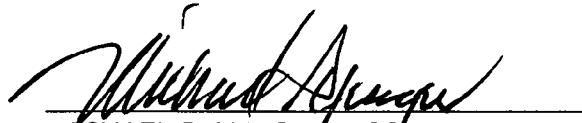
- (a) Petition for Incorporation with Exhibits
- (b) Exceptions filed by various parties opposed to the incorporation of TL as a Borough
- (c) Stipulations
- (d) Hearing transcripts
- (e) Opinions
  - (i) Clearfield County (J. Ammerman) on the Exceptions
  - (ii) Commonwealth Court on the issue of "Freeholders"
  - (iii) Exception 4 (Private Borough)

9. Expert Reports
  - (a) S Twp - PA Economy League "Independent Analysis of the Fiscal Impact of The Formation of a New Borough in Sandy Township 2011"
  - (b) S Twp - Catalano, Case, Catalano & Fanin "Report on Treasure Lake Matter"
  - (c) S Twp - Richard Custonguay "Fiscal Impact Analysis"
  - (d) TL - Michael Weir Local Government Solutions, LLC "The Potential Impact of The Incorporation of the Borough of Treasure Lake"
  - (e) S Twp - Rebuttal PA Economy League "Executive Summary"
  - (f) TL - Rebuttal Michael Weir LGS LLC "Sandy Township Can Survive Without \$1.4 Millions In Treasure Lake Dollars"
10. S Twp Budgets 2009 to 2011
11. TLPOA Budgets 2009 to 2011

12. S Twp Audits including balance sheets 2009 to 2011
13. TLPOA Audits including balance sheets 2009-11
14. S Twp Comprehensive Plan (disk) incorporating any intermunicipal planning agreements
15. TLPOA Strategic Plan/infrastructure reserve study
16. S Twp Criminal Activity Summary for TL years 2010 and 2011
17. S Twp Union Police Contract ending December 31, 2013
18. S Twp AFSCME Contract ending December 31, 2014

This list may not necessarily constitute a complete listing; and may be supplemented upon agreement of the parties, Borough Advisory Committee, and/or Judge.

Respectfully submitted:



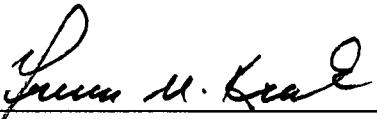
MICHAEL P. YEAGER, ESQ.  
Attorney I.D. No. 15587  
P.O. Box 752  
110 North Second Street  
Clearfield, PA 16830  
(814) 765-9611  
*Counsel for Petitioners*



---

ALAN PRICE YOUNG, ESQ.  
Attorney I.D. No. 27649  
GREGORY D. MALASKA, ESQ.  
Attorney I.D. No. 85524  
Young & Haros, LLC  
802 Main Street  
Stroudsburg, PA 18360-1602  
(570) 424-9800

*Co-counsel for Petitioners*



GREGORY M. KRUK, ESQ.  
FERRARO, KRUK & FERRARO, LLP  
690 Main Street  
Brockway, PA 15824  
(814) 268-2202  
*Counsel for Respondents/Objectors*

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

IN RE: INCORPORATION OF THE BOROUGH \* NO. 08-1814-CD  
OF TREASURE LAKE \*

TREASURE LAKE PROPERTY OWNERS \*  
ASSOCIATION, INC., RICHARD REHERMANN \*  
and WILLIAM REZNOR, \*  
Petitioners \*

S **FILED** ICC Atty: Peager  
09/23/11 Young  
MAY 30 2012 Kruk/Ferraro  
William A. Shaw, II ICC Atty P. Smith  
Prothonotary/Clerk of Courts

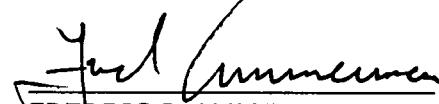
**ORDER**

NOW, this 25<sup>th</sup> day of May, 2012, following conference, in Chambers, with  
counsel for the parties, this Court notes and ORDERS as follows:

1. Sandy Township has submitted the names of Mark Sullivan and Brady LaBorde for appointment to the Boro Advisory Committee.
2. Treasure Lake has submitted the names of Robert M. Hanak, Esq. and Jason S. Gray for appointment to the Boro Advisory Committee.
3. The Court intends to appoint Peter F. Smith, Esq. of Clearfield as chairman of the Boro Advisory Committee.
4. The Court has previously ordered that Jodi Brennan, Director of the County Planning Commission, shall serve as advisor to the Committee.
5. Upon the request of both parties the date for submission of the joint stipulated record (as set forth in paragraph 3 of this Court's Order of November 3, 2011) and proposed findings of fact, conclusions of law and supporting brief is hereby reset to July 2, 2012. No further extensions shall be entertained.
6. At a later date, when public meetings and other arrangements have been scheduled and made, the Court will issue further Order formally appointing the members of the Boro Advisory Committee.

7. Upon receipt of the parties' documents on or before July 2, 2012, the Court shall schedule an informal meeting among the Court, parties and the individuals to be named to the Boro Advisory Committee in order that legal, scheduling and logistical issues may be discussed.
8. No individual listed in this Order who will be named to the Boro Advisory Committee is permitted to discuss their role therein or the issues in this case with the news media until the Committee has completed its duties and issued its report to the Court.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

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

IN RE: : No. 2008 - 1814 - CD  
INCORPORATION OF THE :  
BOROUGH OF TREASURE LAKE : Type of Case: Borough Incorporation  
TREASURE LAKE PROPERTY OWNERS :  
ASSOCIATION, INC., RICHARD : Type of Pleading: Certificate of Service  
REHERMANN and WILLIAM REZNOR, :  
Petitioners : Filed on Behalf of: Petitioners

: Counsel of Record for these Parties:  
: Michael P. Yeager, Esq.  
: Attorney I.D. No. 15587  
: P.O. Box 752  
: 110 North Second Street  
: Clearfield, PA 16830  
: (814) 765-9611  
:  
: Alan Price Young, Esq.  
: Attorney I.D. No. 27649  
: Young & Haros, LLC  
: 802 Main Street  
: Stroudsburg, PA 18360-1602  
: (570) 424-9800

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JUL 02 2012  
S  
William A. Shaw *WAS*  
Prothonotary/Clerk of Courts

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

IN RE: INCORPORATION OF THE  
BOROUGH OF TREASURE LAKE

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC., RICHARD  
REHERMANN and WILLIAM REZNOR,

Petitioners

NO. 2008 - 1814 - CD

**CERTIFICATE OF SERVICE**

I, MICHAEL P. YEAGER, attorney for the Petitioners, depose and say that on July 2, 2012, copies of Petitioners' Findings of Fact and Conclusions of Law as well as Petitioners' Brief in Support of their Findings of Fact and Conclusions of Law were hand delivered to Gregory M. Kruk, Esq., FERRARO, KRUK & FERRARO, LLP, 690 Main Street, Brockway, PA 15824 and mailed by first class mail, postage paid to Scott T. Wyland, Esquire, SALZMANN HUGHES, PC, 354 Alexander Spring Road, Suite 1, Carlisle, PA 17015,



\_\_\_\_\_  
Michael P. Yeager, Esquire  
Attorney for Petitioners

CA

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

IN RE: : No. 2008-1814-CD  
INCORPORATION OF THE :  
BOROUGH OF TREASURE LAKE :  
: Type of Case: Borough Incorporation  
: Type of Pleading:  
TREASURE LAKE PROPERTY OWNERS :  
ASSOCIATION, INC., RICHARD :  
REHERMANN and WILLIAM REZNOR, :  
Petitioners : **MOTION TO DISMISS APPLICATION  
FOR INCORPORATION**  
: Filed on behalf of:  
: **TOWNSHIP OF SANDY and  
RICHARD A. CASTONGUAY, JR.**  
: Counsel of Record for this Party:  
: **SCOTT T. WYLAND**  
: Supreme Court No. No. 52660  
: **SALZMANN HUGHES, P.C.**  
: 354 Alexander Spring Rd., Suite 1  
: Carlisle, PA 17015  
: 717-249-6333  
: **R. EDWARD FERRARO**  
: Supreme Court No. 05880  
: **GREGORY M. KRUK**  
: Supreme Court No. 27048  
: **FERRARO, KRUK & FERRARO, LLP**  
: 690 Main Street  
: Brockway, PA 15824  
: 814-268-2202

5  
**FILED**  
O 8:35 a.m. 6K  
JUL 31 2012  
William A. Shaw  
Prothonotary/Clerk of Courts

4cc Atty Kruk  
6K

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

IN RE: :  
INCORPORATION OF THE :  
BOROUGH OF TREASURE LAKE :  
TREASURE LAKE PROPERTY OWNERS : No. 2008-1814-CD  
ASSOCIATION, INC., RICHARD :  
REHERMANN and WILLIAM REZNOR, :  
Petitioners :  
:

**MOTION TO DISMISS APPLICATION FOR INCORPORATION  
FOR BOROUGH OF TREASURE LAKE**

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

**AND NOW,** come Exceptants, **TOWNSHIP OF SANDY** and **RICHARD A. CASTONGUAY, JR.**, and set forth the following Motion to Dismiss the Application for Incorporation of the Borough of Treasure Lake, and in support thereof set forth as follows:

1. The Pennsylvania Borough Code was amended and reenacted effective July 16, 2012.
2. The prerequisite for filing an Application for Incorporation was amended in Section 202 of the Borough Code.
3. Section 202 required that the Application for Incorporation be made by a petition signed "by a majority of the freeholders residing within the limits of the proposed Borough..."
4. Section 202 of the Borough Code now requires that for purposes of said Application, the residence of freeholders shall be established by "evidence of domicile in a permanent structure" (emphasis added).

5. The domicile has been clearly defined by the Pennsylvania Supreme Court as follows:

A domicile is that place where people have their true, fixed and permanent home and principal establishment, and to which whenever they are absent they have the intention of returning.

*In re Residents Hearing before the Board of School Directors, 744 A.2d 1272, 1275 (Pa. 2000)*  
(internal citations and punctuation omitted).

6. On the current record, the Application is deficient because it does not clearly set forth fifty (50%) percent of the signatures of domiciled freeholders as required by Section 202, as amended.

7. In fact the Application for Incorporation filed in this matter included petitions signed by individuals who listed their address as an address other than Treasure Lake. See the attached Exhibit A.

8. Also, the record clearly demonstrates that signatures were accepted from residents of Treasure Lake who spent as little as one day per year “residing” at Treasure Lake. Reference is made to the testimony taken at the Hearing of January 16, 2009, as shown by the attached Exhibit B.

9. The Borough Code now requires that the total number of domiciled individuals (in permanent structures within Treasure Lake) be established and that at least fifty (50%) percent of those freeholders must submit signatures in order for the Application for Incorporation to proceed.

10. It is the burden and obligation of the Petitioners to set forth and to “establish by evidence” both the total number of those domiciled and that they have satisfied the fifty percent jurisdictional threshold for filing of the Application.

11. Because the Application is deficient on its face, the Petitioner respectfully request that the proceedings be immediately halted and the Application be dismissed summarily.

12. The requirements of the recently amended Borough Code are applicable to this matter. *In re Incorporation of the Borough Ashcombe, 646 A.2d 06 (Pa. Commw. 1994)* change in minimum number of residents for creation of new Borough adopted through legislative change after the filing of the Petition was held to be applicable to the Petition because Applicants had not established a "vested right" merely because of the filing of the Petition.)

**WHEREFORE**, Exceptants, Township of Sandy and Richard A. Castoguay, Jr., respectfully request that the Court enter an Order immediately dismissing the Application for lack of jurisdiction.

Respectfully Submitted,

**SALZMANN HUGHES, P.C.**

BY: Scott T. Wyland  
Scott T. Wyland *CK*

**FERRARO, KRUK & FERRARO, LLP**

BY: Gregory M. Kruk  
Gregory M. Kruk

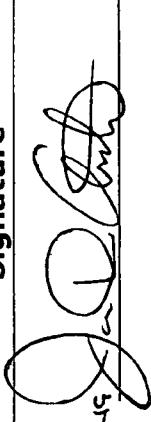
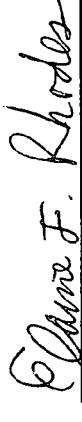
**VERIFICATION**

I, Richard A. Castonguay, Jr., Manager of the Township of Sandy, on behalf of the Township of Sandy and myself, verify that the statements made in the within document are true and correct to the best of my knowledge and I understand that false statements herein are made subject to the penalties of **18 Pa. C.S.A. Section 4904**, relating to unsworn falsification to authorities.

DATE: 7/30/12

Richard A. Castonguay, Jr.  
RICHARD A. CASTONGUAY, JR.

We, the undersigned, own property in Treasure Lake, Sandy Township, Clearfield County, Pennsylvania, property proposed to be in the new Borough. By signing this Exhibit we are joining in the Petition to Incorporate the Borough of Treasure Lake. We have also noted if we live in Treasure Lake. We signed this Exhibit on August 20, 2008.

Printed Name	Signature	Section / Lot	Mailing Address	Residence
1 James D. Armstrong		6B / 1	122 Pagoda Rd. Prospect Pa	16052 ✓
2 Elaine F. Rhodes		103/04 4	103 Westwood Cir. State College	PA 16803 ✓
3 <del>John</del> -		208 / 13A 210. 13 A		
4				
5 				

#### VERIFICATION

I, Mark Glassman, based on my knowledge, information and belief, hereby (1) verify that the statements made in this Petition are true and correct; (2) certify that the freeholders who signed the exhibit to this Petition did so within three months of the date of filing of this Petition with the Court of Common Pleas; (3) certify that the freeholders who signed did so intending to join in support of the Petition for the Incorporation of the Borough of Treasure Lake; (4) certify that a majority of the freeholders who reside in the proposed Borough have signed the exhibit in support of this Petition; and (5) certify that freeholders owning a majority of the land area in the proposed Borough have signed the exhibit in support of this Petition. I understand that false statements herein are made subject to penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: 8/20/08



Treasure Lake Property Owners Association, Inc.

Entered 8/20/08  


We, the undersigned, own property in Treasure Lake, Sandy Township, Clearfield County, Pennsylvania, property proposed to be in the new Borough. By signing this Exhibit we are joining in the Petition to Incorporate the Borough of Treasure Lake. We have also noted if we live in Treasure Lake. We signed this Exhibit on August 27, 2008.

Printed Name	Signature	Section / Lot	Mailing Address	Residence
1. <u>Carol Gossbauer</u>	<u>Carol Gossbauer</u>	<u>5-3C</u>	<u>1001 Saint Marys Rd.</u>	<u>Yes</u>
2. <u>HERBERT J. LE GRYS, JR.</u>	<u>Herb Le Grys</u>	<u>11-58</u>	<u>604 Virginia Rd.</u>	<u>—</u>
3. <u>MARTHA A. CLARK</u>	<u>Marta Clark</u>	<u>18-150</u>	<u>3312 Soderstrom Dr.</u>	<u>No</u>
4. <u>MARYMARD BAUER</u>	<u>Marymard Bauer</u>	<u>11-25</u>	<u>2026 Battleground Rd.</u>	<u>Yes</u>
5. <u>JO D</u>	<u>JO D</u>	<u>—</u>	<u>—</u>	<u>—</u>

#### VERIFICATION

I, Carol Gossbauer, based on my knowledge, information and belief, hereby (1) verify that the statements made in this Petition are true and correct; (2) certify that the freeholders who signed the exhibit to this Petition did so within three months of the date of filing of this Petition with the Court of Common Pleas; (3) certify that the freeholders who signed did so intending to join in support of the Petition for the Incorporation of the Borough of Treasure Lake; (4) certify that a majority of the freeholders who reside in the proposed Borough have signed the exhibit in support of this Petition; and (5) certify that freeholders owning a majority of the land area in the proposed Borough have signed the exhibit in support of this Petition. I understand that false statements herein are made subject to penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: 8/27/08 Entered 8/29/08

Carol Gossbauer  
Treasure Lake Property Owners Association, Inc.  
Carol Gossbauer

We, the undersigned, own property in Treasure Lake, Sandy Township, Clearfield County, Pennsylvania, property proposed to be in the new Borough. By signing this Exhibit we are joining in the Petition to Incorporate the Borough of Treasure Lake. We have also noted if we live in Treasure Lake. We signed this Exhibit on August 15, 2008.

Printed Name	Signature	Section / Lot	Mailing Address	Residence
1 <u>Eric L. Mountain</u>	<u>Eric L. Mountain</u>	<u>7-209</u>	<u>3429 Birchwood</u>	<u>X</u>
2 <u>ESTHER G. WACHS</u>	<u>Esther G. Wachs</u>	<u>8-1</u>	<u>2405 Beechwood Blvd.</u> <u>Pittsburgh, PA 15217</u>	<u>X</u>
3 <u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>
4 <u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>
5 <u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>

#### VERIFICATION

I, Orla Gossman, based on my knowledge, information and belief, hereby (1) verify that the statements made in this Petition are true and correct; (2) certify that the freeholders who signed the exhibit to this Petition did so within three months of the date of filing of this Petition with the Court of Common Pleas; (3) certify that the freeholders who signed did so intending to join in support of the Petition for the Incorporation of the Borough of Treasure Lake; (4) certify that a majority of the freeholders who reside in the proposed Borough have signed the exhibit in support of this Petition; and (5) certify that freeholders owning a majority of the land area in the proposed Borough have signed the exhibit in support of this Petition. I understand that false statements herein are made subject to penalties of 18 Pa. C.S. § 4904 relating to unworn falsification to authorities.

Date: 8/15/08

Entered 8/18/08

Orla Gossman  
Treasure Lake Property Owners Association, Inc.

Carla R. Goodland

1 actually had an informational meeting, a training session.

2 We provided them with credentials so, that when they  
3 were getting a signature, that they were able to identify  
4 themselves to the property owner that they were attempting to get  
5 a petition. I believe those have been made part of the responses  
6 back to the township, and also in my information.

7 But the first thing we did is, is verify who the  
8 person was by some form of identification, or if the person  
9 directly knew who the individual was. So the first thing we did  
10 was verify who the individual was that was going to sign the  
11 petition.

12 Then we had them fill out the petition in its  
13 completeness, you know, name, lot and section, address, all the  
14 way down through to whether or not they were a resident and had a  
15 residence and had resided in it for at least one day in the last  
16 12 months.

17 Q. Let's just look at a representative page. I pulled  
18 open to the first page of Exhibit A1. Is that the petition  
19 document that was signed --

20 A. Yes, it was.

21 Q. -- or a copy of the signed petition document signed?

22 A. Yes.

23 ATTORNEY YEAGER: Your Honor, that A1 that he's  
24 referring to was attached to the petition. Township has a copy  
25 and has had a copy.

1 day with a new number.

2           But they correlate back to our database for record  
3 purposes, also. So if we would open up our database and see  
4 that -- and there is an example in the handout that I gave out  
5 today that shows a copy of our database, and on the bottom it  
6 refers to the petition number, and it says page 50. And if you  
7 go back and look at page 50, here you'll find the correlating  
8 signature.

9           Q.     Good. You went a little bit farther, but I was going  
10 there anyway. The individual whose signature is represented on a  
11 particular line, what else is indicated on the petition relative  
12 to that individual?

13           A.     Well, his -- they print his name; they sign their  
14 name; they put their section and lot number; their mailing  
15 address; and they indicate whether or not they resided, if they  
16 have a residence and if they resided in the residence for at  
17 least one day over the last 12 months.

18           Q.     That one-day requirement, how was that communicated?

19           A.     By each of the canvassers and the person that was  
20 securing the signature.

21           Q.     You also indicated that there was some  
22 double-checking. Once an individual signs one of these petitions  
23 and indicates that he is or is not a resident, then what did you  
24 do to verify that check?

25           A.     Well, when the petition came back to the borough

1 what did you tell them?

2           A. Well, again, we verified that they owned property in  
3 Treasure Lake. We had, you know, a lot of people that signed the  
4 petition that were not resident freeholders but owned a  
5 single-family residential lot without a building.

6           We also solicited their signature and used that  
7 particular signature in the calculation of getting the 50 percent  
8 of the acreage. And there was -- you know, all of those were  
9 also counted.

10          Q. However, if an individual approached a canvasser out  
11 in the field and signed one of the petitions and indicated that  
12 they were not a resident or were a resident, but let's assume for  
13 the sake of discussion that they had indicated that they weren't  
14 a resident. Was that information verified by Ms. Gasbarre, as  
15 well?

16          A. Yes. If they had an ownership interest, you know,  
17 and was in the two thresholds we were trying to meet, we did  
18 count the vote. If we had somebody sign a petition that was not  
19 an owner, not a record owner, and we could not verify owners,  
20 that information was not counted on that particular lot.

21          Q. You indicated that you asked them for information as  
22 to their residence and you told them that the criteria was based  
23 upon one day per year. And then you also indicated that your  
24 residence conclusions were also developed as a result of the work  
25 with the database, the county records, as well as your own

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

FILED

AUG 01 2012

W. A. Shaw  
Prothonotary/Clerk of Courts

no 9c

IN RE:  
INCORPORATION OF THE  
BOROUGH OF TREASURE LAKE  
  
TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC., RICHARD  
REHERMANN and WILLIAM REZNOR,  
  
Petitioners  
  
: No. 2008-1814-CD  
  
: Type of Case: Borough Incorporation  
  
: Type of Pleading:  
  
: **CERTIFICATE OF SERVICE**  
  
: Filed on behalf of:  
  
: **TOWNSHIP OF SANDY and**  
: **RICHARD A. CASTONGUAY, JR.**  
  
: Counsel of Record for this Party:  
**SCOTT T. WYLAND**  
Supreme Court No. No. 52660  
**SALZMANN HUGHES, P.C.**  
354 Alexander Spring Rd., Suite 1  
Carlisle, PA 17015  
717-249-6333  
**R. EDWARD FERRARO**  
Supreme Court No. 05880  
**GREGORY M. KRUK**  
Supreme Court No. 27048  
**FERRARO, KRUK & FERRARO, LLP**  
690 Main Street  
Brockway, PA 15824  
814-268-2202

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

IN RE: :  
INCORPORATION OF THE :  
BOROUGH OF TREASURE LAKE :  
TREASURE LAKE PROPERTY OWNERS : No. 2008-1814-CD  
ASSOCIATION, INC., RICHARD :  
REHERMANN and WILLIAM REZNOR, :  
Petitioners :  
:

CERTIFICATE OF SERVICE

I, Gregory M. Kruk, Esquire, hereby certify that on this 31<sup>st</sup> day of July, 2012, I have served the foregoing Motion by depositing the same in the United States Mail, by First Class Mail, postage prepaid, addressed as follows:

Michael P. Yeager, Esquire  
P.O. BOX 752  
110 North Second Street  
Clearfield, PA 16830  
*Counsel for Petitioners*

Alan Price Young, Esquire  
Young & Haros, LLC  
802 Main Street  
Stroudsburg, PA 18360-1602  
*Co-Counsel for Petitioners*

Date: July 31, 2012

  
\_\_\_\_\_  
Gregory M. Kruk

CA

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

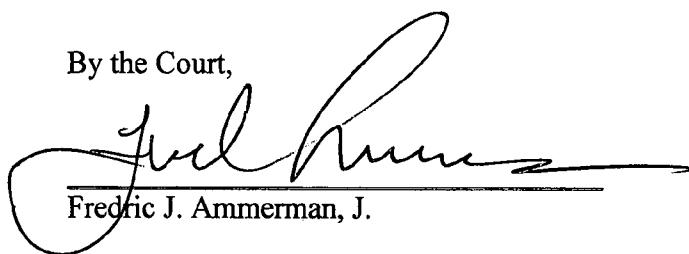
IN RE: :  
INCORPORATION OF THE :  
BOROUGH OF TREASURE LAKE :  
TREASURE LAKE PROPERTY OWNERS : No. 2008-1814-CD  
ASSOCIATION, INC., RICHARD :  
REHERMANN and WILLIAM REZNOR, :  
Petitioners :  
:

**SCHEDULING ORDER**

AND NOW, this 3 day of August, 2012, upon consideration of the Motion to Dismiss filed by Exceptants, Sandy Township and Richard A. Castonguay, Jr.,

It is hereby ordered and decreed that a Rule to Show Cause is hereby issued upon the Petitioners, (Treasure Lake Property Owners Association, et al.) to show cause why the Petition should not be granted. Rule Returnable and Argument to be held on said Motion at 2:00 PM o'clock in Court Room 1 of the Clearfield County Courthouse on September 14, 2012.

By the Court,

  
Fredric J. Ammerman, J.

**FILED**

20081814-CD  
AUG 14 2012

Atty Krock

William A. Shaw  
Prothonotary/Clerk of Courts

60

**FILED**

AUG 07 2012

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 8/7/12

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:

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

IN RE: INCORPORATION OF THE BOROUGH \* NO. 08-1814-CD  
OF TREASURE LAKE \*

TREASURE LAKE PROPERTY OWNERS \*  
ASSOCIATION, INC., RICHARD REHERMANN \*  
and WILLIAM REZNOR, \*  
Petitioners \*

1CC Atty's:  
**FILED** 01/9/2012 Peager  
AUG 22 2012 Young  
William A. Shaw Krusk/Ferraro  
Prothonotary/Clerk of Courts P. Smith  
6K

**CASE MANAGEMENT ORDER**

NOW, this 21<sup>st</sup> day of August, 2012, following conference among counsel, the Court and to be appointed Advisory Committee Chairman Peter F. Smith, Esquire; it is the ORDER of this Court as follows:

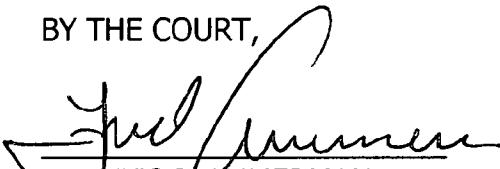
1. The parties shall provide Attorney Smith with a complete witness list, expert reports and exhibits by no later than September 7, 2012. Six (6) copies of each document shall be provided in order that Attorney Smith may provide each committee member, and Jodi Brennan, Director of Clearfield County Planning Commission, with a copy of the same.
2. The Court will issue an Order on Monday, September 24, 2012 officially appointing the Advisory Committee.
3. The Advisory Committee will hold hearings at the DuBois Area Middle School beginning at 6:00 p.m. on the evenings of Monday, September 24<sup>th</sup> and Tuesday, September 25<sup>th</sup>, if necessary. These hearings will be open to the general public. However, at both hearings the parties and their attorneys will present evidence in the form of witnesses and testimony to the Advisory Committee and be subject to direct and cross-examination. The general public shall not have the right at either of these two hearings to provide input.

4. A court reporter will be present for the hearings to be held September 24<sup>th</sup> and 25<sup>th</sup>, 2012. Treasure Lake shall make all arrangements for the court reporter and shall be responsible for the court reporters fee and costs.
5. The Committee will hold an informal hearing, open to the public, at the DuBois Area Middle School on Thursday, October 4<sup>th</sup>, 2012 beginning at 6:00 p.m. Any individual who wishes to speak to the Committee shall be permitted to do so for a period not to exceed five (5) minutes. Any individual who wishes to speak shall either make such a request in writing, in advance, to the Committee Chairman Peter F. Smith, Esquire, PO Box 130, Clearfield, Pa 16830, or shall upon arriving at the hearing sign a list indicating their desire to speak at the meeting. This informal hearing shall terminate no later than 9:00 p.m. No further informal hearings shall be held. Members of the public shall be heard in the order of when the Committee was advised that he/she wanted to speak.
6. It is the further ORDER of this Court that no member of the Advisory Committee shall be permitted to testify before the Committee itself. This prohibition does not apply to Committee Advisor Jodi Brennan.
7. During any of the hearings as described above, other than the court reporter to be present for the hearings on September 24<sup>th</sup> and 25<sup>th</sup>, 2012, no electronic recording or communication devices shall be permitted to be used. This prohibition also extends to anyone in the audience. The provisions of this paragraph apply to the hearings on September 24, 25 and October 4, 2012.
8. During the Advisory Committee hearings, the Chairman shall determine the appropriate method and policy to be used for the Committee Members to ask

questions of witnesses. The Chairman shall conduct the hearings in such a manner as he, in his sole discretion shall determine. The Chairman shall rule on any objections which may be made by any of counsel.

9. The Chairman, other Committee members and counsel for the parties shall cooperate with officials of the DuBois Area School to ensure the auditorium is appropriately set up for the hearings.
10. The Chairman shall also ensure that Committee Advisor Jodi Brennan is included at the hearings and determine the appropriate manner to receive her input.

BY THE COURT,



FREDRIC J. AMMERMAN

President Judge

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

IN RE: INCORPORATION OF THE  
BOROUGH OF TREASURE LAKE

TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION, INC.,  
RICHARD REHERMANN and  
WILLIAM REZNOR,  
Petitioners

No. 2008 – 1814 - CD

S **FILED**

SEP 14 2012

**PETITIONERS' MOTION FOR LEAVE TO FILE AN AFFIDAVIT**  
**RELATIVE TO AMENDMENTS TO THE BOROUGH CODE**  
**AND A SUPPLEMENTAL MEMORANDUM OF LAW IN OPPOSITION TO**  
**EXCEPTANTS' MOTION TO DISMISS RELATED THERETO**

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

**COME NOW,** Petitioners, **TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC., RICHARD REHERMANN AND WILLIAM REZNOR**, by and  
through their attorneys, Michael P. Yeager, Esq. and Alan Price Young, Esq., and file the  
within Motion for Leave to File an Affidavit Relative to Amendments to the Borough  
Code and a Supplemental Memorandum in Opposition to Exceptants' Motion to Dismiss  
Related Thereto; and in support thereof, indicate as follows:

1. On July 31, 2012, Exceptants, Township of Sandy and Richard A. Castonguay, Jr., filed a Motion to Dismiss the above-captioned matter, an application for incorporation of the Borough of Treasure Lake.
2. That Motion to Dismiss was based upon the fact that the Pennsylvania Borough Code was amended and reenacted, effective July 16, 2012.

3. The argument of the Exceptants focused on Section 202 of the Borough Code, as amended, which now requires that, for purposes of incorporation of a borough, the residents or freeholders shall be established by "evidence of domicile in a permanent structure".

4. Prior to this enactment, the above-captioned matter proceeded through the jurisdictional phase during which both this Honorable Court and the Commonwealth Court found that the Application for Incorporation in this matter, which was based upon a majority of the freeholders residing within the limits of the proposed borough, was entirely sufficient.

5. Petitioners aver that, in response to the Exceptants' Motion and changes in the Borough Code, Petitioners commissioned an analysis of the original signature pages submitted with the original Petition and conclude that the Petition would still comply under the new requirements imposed by the July 2012 amendments to the Borough Code.

6. With this in mind and intending to supplement the record in direct response to the Exceptants' Motion, Petitioners request Leave of Court to file an Affidavit regarding its analysis of the signature pages in support of that position in addition to a Supplemental Memorandum of Law opposing Exceptants' Motion to Dismiss.

7. That Affidavit is attached and incorporated as "Exhibit A".

8. The Supplemental Memorandum of Law is attached hereto and incorporated as "Exhibit B".

WHEREFORE, Petitioners respectfully request that your Honorable Court grant them leave to file of record the Affidavit of Nicole Hanak Bankovich, Esq., containing

Petitioners' analysis of the impact of the amendments to Section 202 of the Borough Code on the signatures contained in the 2008 Incorporation Petition; and to file a Supplemental Memorandum of Law in Opposition to Exceptants' Motion to Dismiss.

Respectfully submitted:



Michael P. Yeager, Esq.  
Attorney I.D. No. 15587  
P.O. Box 752  
110 North Second Street  
Clearfield, PA 16830  
(814) 765-9611  
*Counsel for Petitioners*



Alan Price Young, Esq.  
Attorney I.D. No. 27649  
Young & Haros, LLC  
802 Main Street  
Stroudsburg, PA 18360-1602  
(570) 424-9800  
*Co-counsel for Petitioners*

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

IN RE:

INCORPORATION OF THE  
BOROUGH OF TREASURE LAKE

No. 2008-1814-CD

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC., RICHARD  
REHERMANN AND WILLIAM REZNOR,  
Petitioners

**AFFIDAVIT**

**Background:**

1. The affiant is Nicole Hanak Bankovich, a resident of Treasure Lake and Sandy Township, DuBois, Clearfield County, Pennsylvania. I have been a resident of Treasure Lake since approximately 1985 (27 years). I am employed as an associate attorney at Hanak, Guido and Taladay Law Offices in DuBois, Pennsylvania. I have been employed in this position since 1995 (17 years).
2. I was asked to make this affidavit by Attorney Michael Yeager in response to the recent Motion to Dismiss Application for Incorporation for Borough of Treasure Lake filed by the Exceptants, Sandy Township and Richard A. Constonguay, Jr..
3. I make this affidavit on my own free will in an effort to avoid unnecessary litigation, additional legal and research fees, and undue delays in the Borough application process. As a resident of both Sandy Township and Treasure Lake, I have a sincere and vested interest in keeping the cost of this litigation to a minimum and seeing the Borough Application process come to a swift and final resolution.
4. The purpose of this Affidavit is not to present a position or opinion for or against the incorporation of Treasure Lake as a borough; but rather to look at the Petition that was filed in 2008 in light of the re-enacted Borough Code and the Exceptants' Motion to Dismiss.
5. After reviewing the data used to support the Application for Incorporation when it was filed, I feel strongly that the present Motion to Dismiss is without merit. Accordingly, I volunteer this Affidavit and ask the parties and the Court to take into consideration the following analysis:



## Re-enacted Borough Code: Motion to Dismiss filed by Exceptants

6. As stated in the Exceptants' Motion to Dismiss, the Borough Code was recently amended by P.L. 262, No. 43, effective July 16, 2012. The re-enacted Code includes a refined definition at Section 202 of a "resident freeholder" for purposes of the majority required to endorse the Application for Incorporation of a Borough.
7. In the prior version (in effect in 2008 when the TL Application was filed), Section 202 required that the Application for Incorporation be made by a petition signed "by a majority of the freeholders residing within the limits of the proposed Borough..."<sup>1</sup>
8. The Petitioners concluded that owners of lots improved with a taxed residence (i.e. assessed with a "house") were residing freeholders. The total number of resident freeholders was determined by merging the Clearfield County Tax Assessment data for Treasure Lake "house" assessments with the TLPOA list of 911 physical addresses for "houses."
9. The total resident freeholders for purposes of the petition in 2008 was 2,044. See the Application for Incorporation; See also *In re Incorporation of Borough of Treasure Lake*, 999 A.2d 644 (2010)(the Court accepted and confirmed 2044 as the total pool of resident freeholders for purposes of determining if a majority signed the petition).
10. A majority of the resident freeholders, 1,215, signed the incorporation petition. Again, a signer was counted as a resident freeholder if they owned a house at Treasure Lake.
11. When the Petition was originally filed, the majority was determined by the formula:
$$\frac{1,215 \text{ resident freeholders signed}}{2,044 \text{ total resident freeholders}} = 59\%$$
12. The Exceptants initially challenged the Application for Incorporation on the basis that the pool of resident freeholders should have included property interests held by campground owners and time-share condominium units. In other words, the Exceptants sought to increase the denominator of the total resident freeholders to include the campground interests (UDI – undivided ownership interests) and time-share owners, thus yielding a less-than-majority of "resident freeholders" having endorsed the borough application.
13. Expectants' arguments were rejected by both the Clearfield County Common Pleas Court and Pennsylvania Commonwealth Court, on the basis that resident freeholders should include only those owners whose lots are improved with a permanent structure, paying real estate taxes for improved land (a house), having sewer service, and holding a fee simple interest in the property with the right to exclusive possession continuing for an indefinite period – as distinguished from the characteristics of campground and time-share interests. Id. 999 A.2d at 650-651.

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<sup>1</sup> Section 202 has an additional requirement that the petition be signed by the freeholders of a majority of the territory within the proposed borough. Satisfaction of the requirement of the territory majority is not at issue.

14. In direct response to the Commonwealth Court's opinion in *In re: Incorporation of Treasure Lake*, 999 A.2d 644 (2010), the legislature amended Section 202 of the Borough Code - Applications for Incorporation - for statutory clarification of a "freeholder residing." See *Executive Summary on the Revisions to the Borough Code, The Act of Feb. 1, 1966, Act 43 of 2012 (HB 1702, PN 3331)*. Section 202 was amended to require that the Application be signed by a majority of resident freeholders "as evidenced by domicile in a permanent structure." 53 PS 45202; See also PSAB (Pa. State Assoc. of Boroughs) legislative overview of Act 43 of 2012; [www.boroughcode.boroughs.org](http://www.boroughcode.boroughs.org) (stating that the amended language requiring "freeholder" to be established by evidence of domicile in a permanent structure was added in accordance with the decision in *In re Incorporation of the Borough of Treasure Lake*, 999 A.2d 644 (Pa. Cmwlth. 2010)).

15. It is submitted that use of the phrase "permanent structure" was implemented by the legislature in accordance with the prior litigation in this case, as a means to statutorily exclude from the term "resident freeholder" fractional ownerships, time-share interests and semi-permanent structures, such as campers. *Id.* Pursuant to the outcome of the prior litigation, the Petitioners have already satisfied their burden of proving that a majority of freeholders with "permanent structures" signed the petition.

16. The question presented by the new legislation and Exceptant's Motion to Dismiss is whether Petitioners have met the burden to establish by evidence that a majority of residents *domiciled* in a permanent structure at Treasure Lake signed the Petition.

17. I explored the data that was used by the Petitioners in 2008 when the original Petition was signed and filed. The purpose of the data analysis was to determine whether the existing data from 2008 is sufficient to meet the burden of proving that a majority of those domiciled at Treasure Lake joined the petition.

### **"Domicile"**

18. With respect to divorce, probate, and political nominations "domicile" means intent to reside indefinitely, the place where a person has a true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning. See 17 West Pa. Prac. Family Law §11:3. In those situations, although residence alone does not prove "domicile," proof of residence in Pennsylvania for a continuous period of six months results in a presumption of domicile. A person's mailing address is one factor used to determine the "domicile." See *In Re Nomination Petition of Roxanne H. Jones*, 102 Pa. Cmwlth. 103, 516 A.2d 776 (1984)(failure to change mailing address was one fact to belie an actual or intended change of domicile).

19. For purposes of subject matter jurisdiction in a divorce, probate or political nomination, however, "domicile" must only be established for the party in question. It is

generally required that evidence of domicile be supported by more than a self-serving statement of “domicile” or a self-designated “mailing address,” but evidence must include such additional factors as actual physical residence by testimony of neighbors and family, voter registration and driver’s license registration.

20. In this case, however, the legislature used the word “domicile” as a means to refine an entire pool of freeholders residing in permanent structures in the area of the proposed borough. We are now considering a pool in excess of 2,000 Treasure Lake residents. 2,044 freeholder residents counted for purposes of the denominator for the 2008 Petition as having a “permanent structure” (as opposed to time-share interest or camper); so, the question presented is whether those residents are actually “domiciled” at Treasure Lake.
21. I considered that actual physical presence is necessary to collect mail from the Treasure Lake Post Office, and that a “Treasure Lake” mailing address would be fair evidence of domicile at Treasure Lake. A mailing address was listed separately from the address for the Treasure Lake residence for purposes of the tax assessment information and the TLPOA 911 address list. Also, signers were asked to designate their “mailing address” in addition to the lot/section address for the Treasure Lake residence.<sup>2</sup> Where the owner received mail was not necessarily the same as the address for the Treasure Lake residence, so the “mailing address” was used as evidence of domicile.
22. For purposes of applying the new formula, “domicile” was deemed to be evidenced by those resident freeholders who have a permanent structure/residence at Treasure Lake and have a primary mailing address of Treasure Lake. In other words, if a “resident freeholder” who was qualified under the prior version of the Borough Code (as a freeholder owning a “permanent structure”) had a mailing address of “Treasure Lake” at the time the Petition was signed (2008), that resident is deemed to have also been “domiciled” at Treasure Lake for purposes of the Borough Petition application procedure.

#### **The new formula to determine a majority of the freeholders domiciled in Treasure Lake:**

23. In order to determine whether a majority of domiciled freeholders endorsed the petition under the amended Borough Code, 53 P.S. §45202, it is necessary to extract from the formula those who are not “domiciled” at Treasure Lake. Accordingly, resident freeholders who did not have a Treasure Lake mailing address were subtracted from both the numerator (signers) and denominator (total).

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<sup>2</sup> A self-designated mailing address may be considered self-serving evidence of domicile in a divorce case, but the owner’s designation of a mailing address in this case was not to establish jurisdiction or residency, but to determine where the owner actually wanted to receive mail. The issue of domicile was not a factor when the petitions were signed; rather, the mere designation of having a “residence” on the property was sufficient to constitute a “resident freeholder” under the old Code. Moreover, the mailing address was compared with the mailing address used for tax assessment purposes (real estate tax bills), TLPOA distributions and 911 emergency information.

24. The new formula to determine whether a majority of the freeholders domiciled in Treasure Lake signed the petition – as of the date the petition was presented to the court (2008) – is as follows:

$$\frac{\text{freeholders with a permanent structure and domicile at Treasure Lake (evidenced by TL mailing address) who signed the petition}}{\text{total freeholders with a permanent structure and domicile at Treasure Lake (evidenced by TL mailing address)}}$$

25. Stated otherwise - and revising the 2008 formula in accordance with the amended legislation - the new formula to determine the majority becomes:

$$\frac{(1,215 \text{ resident freeholders signed} - (\text{minus signers not domiciled at Treasure Lake (i.e. subtracting those not having a TL mailing address)}))}{(2,044 \text{ total freeholders with a permanent structure} - (\text{minus those who are not domiciled at TL (i.e. subtracting those not having a TL mailing address)}))}$$

**The new denominator: (total with permanent structure and domicile/TL mailing address):**

26. I took two steps to determine the total number of permanent residences at Treasure Lake that may be considered “domiciles” for purposes of the amended Borough Code. First, I reviewed the tax assessment data used in 2008. I extracted from the pool of owners assessed with “houses” (permanent structures), those that did not have a Treasure Lake mailing address. Secondly, I reviewed the Treasure Lake 911 address data from 2008, and again extracted those homeowners who did not have a Treasure Lake mailing address. To error on the side of caution, I added back into those figures any owners/addresses that were questionable as to a “domicile” at Treasure Lake. Again, to minimize the risk of error in determining whether a majority was met, I used the greater number as the denominator for the new fraction. A detailed explanation of the methodology follows:

#### A. Clearfield County Tax Assessment Data:

27. I learned from the TLPOA employees that the computer used to store the data from the 2008 petition process was “fried” and no longer accessible. Therefore, I met with Randy Mitchell, RAK Computers, who provided the computer programming services for Treasure Lake during the petition process and had stored the 2008 petition data saved on a hard drive.
28. Randy was able to access the 2008 database for the Clearfield County Assessments. Randy reduced the database to those who were assessed with a “house” in Treasure Lake. This resulted in a total of 2049 total freeholders with a residence at Treasure Lake – a difference of only 5 from the original denominator used in the Petition.
29. Randy then reduced the database to those with mailing addresses with a 15801 zipcode. This resulted in a total of 1,632 ( i.e. 1,632 assessments for a house in Treasure Lake with a 15801 mailing address).
30. The database was further reduced to list only those assessed with a “house” and a mailing address of “Treasure Lake”. This resulted in a total of 1,577.
31. The difference of total “houses” in Treasure Lake to total Treasure Lake mailing addresses was 472.
32. Comparing the database for the 15801 zipcodes with the database for Treasure Lake addresses, there was a difference of 55. In other words, there were 55 taxpayers who were assessed with a house at Treasure Lake, had a mailing address within 15801, but did not have an address of Treasure Lake. Of the non-TL addresses in the 15801 zipcode, 26 had a mailing address of “P.O. Box, DuBois.”
33. There are some Treasure Lake residents – domiciled at Treasure Lake - who choose to receive mail at a DuBois Post Office Box rather than at the Treasure Lake Post Office. Thus, to err on the side of caution for purposes of the new denominator, all **26 Post Office Boxes** in 15801 were considered to be “domiciles” at Treasure Lake, and added back into the total of taxpayers with houses and a mailing address of Treasure Lake (or DuBois P.O. Box).
34. There was also one assessment with a DuBois business location as the mailing address.<sup>3</sup> This owner has a permanent residence and “domicile” at Treasure Lake. This owner was counted as a “domiciled” owner with a TL address, and not extracted from the denominator.

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<sup>3</sup> Dr. Jeffrey Rice and his wife have a mailing address of 90 Beaver Drive, DuBois, which is the address for the medical office, but they are domiciled at Treasure Lake.

35. According to the 2008 Clearfield County Tax assessment data, the total freeholders with permanent structures (houses) and domicile (TL or DuBois PO Box/business mailing address) is 1,603:

$$\begin{aligned} & 1,577 \text{ assessed with "house" at TL and TL mailing address} \\ & + 26 \text{ assessed with "house" at TL and mailing address of P.O. Box, DuBois} \\ = & 1,603 \text{ resident freeholders with a domicile at TL (evidenced by TL or DuBois PO Box mailing address)} \end{aligned}$$

36. Using the tax assessment data, the total non-domiciled freeholders that must be extracted from the denominator is 446:

$$\begin{aligned} & 2049 \text{ total freeholders assessed with a "house" at TL} \\ & - (minus) 1,603 \text{ with TL domiciles} \\ = & 446 \text{ non-domiciled freeholders} \end{aligned}$$

## B. Treasure Lake 911 Addresses

37. Charlene Lutz, Treasure Lake employee, provided me with a hardcopy of the 2008 Treasure Lake Address List that included all homeowners with a permanent structure on the lot, and included the 911(physical) addresses for all residences.

38. Upon review of the TL address list, I determined that there were 2035 total "residences" listed with a 911 physical address.<sup>4</sup> This is a difference of 9 from the 2044 total residences considered for the original denominator when the Petition was filed.

39. The 911 address list contained 393 homeowners whose mailing addresses were not "Treasure Lake." Thus, the list contained 1,642 homeowners who had mailing addresses of "Treasure Lake."

40. Also, the Treasure Lake address list included 16 mailing addresses of "P.O. Box, DuBois." Because of the potential for domicile at Treasure Lake, the DuBois P.O. Box addresses were included in the total domiciled residences for purposes of the new denominator.<sup>5</sup>

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<sup>4</sup> Section 19 and 712 campground/condo owners were excluded from the list.

<sup>5</sup> Drs. Rice and Rapaport were both listed with a mailing address of "90 Beaver Drive, DuBois" which is the address for the medical offices. Both doctors are domiciled at Treasure Lake, and were therefore counted as such.

41. **Using the Treasure Lake 911 address list from 2008, the total homeowners with TL or DuBois PO Box (or business) mailing addresses is 1,658.**

$$\begin{aligned} & 1,642 \text{ homeowners with a TL address} \\ & + \underline{16 \text{ homeowners with a mailing address of P.O. Box, DuBois}} \\ = & 1,658 \text{ homeowners with a domicile at TL (evidenced by TL or DuBois PO} \\ & \text{Box mailing address)} \end{aligned}$$

42. **From the Treasure Lake 911 address list, the total non-domiciled homeowners that must be extracted from the denominator is 377:**

$$\begin{aligned} & 2035 \text{ total homeowners} \\ & - \underline{(\text{minus}) 1,658 \text{ homeowners with a TL domicile}} \\ = & 377 \text{ non-domiciled freeholders} \end{aligned}$$

### **C. Denominator: Reduction of Risk:**

- (a) The old denominator was 2,044. Under the revised Borough Code, this figure must be reduced by resident freeholders who are not “domiciled” at Treasure Lake.
- (b) To give the Exceptants the benefit of the doubt, I attempted to arrive at the maximum number for the total freeholders potentially having a domicile at Treasure Lake (as evidenced by TL or DuBois PO Box mailing address). In other words, the Exceptants’ position is benefitted by having the denominator be the largest pool possible.
- (c) Using the above data and methodology, the smallest number of non-domiciled residents was yielded from the Treasure Lake 911 address list. 377.
- (d) The total pool of resident freeholders (2,044) was reduced by 377 non-domiciled freeholders.
- (e) **The new denominator becomes 1,667.**

**The new numerator: (signers with permanent structure and domicile/TL mailing address)**

43. When the Petitioners secured the signature of resident freeholders who wished to endorse the borough petition in 2008, the signers were asked to provide the following information:

Name / Signature / Lot/Section / Mailing Address / Residence.

44. By the latter column, Petitioners sought to determine whether the signer had a residence on the Treasure Lake property. If the signer indicated “yes”, they were counted as a “resident freeholder”.<sup>6</sup>

45. The signatures yielded a total of 1,215 resident freeholders who signed to endorse the borough application.

46. The signature pages are included in the filed Petition at Exhibits A, B and C. I reviewed the signatures to determine who may have signed the Petition as a “resident freeholder,” but not having a Treasure Lake mailing address.

47. If the mailing address was designated something other than “Treasure Lake”, the signer was considered to *not* be “*domiciled*” at Treasure Lake, and was extracted from the numerator.

48. I counted 146 signers who indicated that they had a “residence” but designated a “mailing address” that was *not Treasure Lake*.

**Numerator: Reduction of Risk:**

(a) The original signers were screened by the Petitioners to eliminate those who signed as resident freeholders, but who did not meet the definition as applied in 2008. I counted 1,277 owners who signed indicating “yes” to “residence.” However, this pool of 1,277 resident signers had been reduced through the screening process to 1,215 signers who were actually counted as “resident freeholders” and accepted by the Court as constituting the majority.<sup>7</sup>

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<sup>6</sup> Although the affiant was not privy to the process used in 2008 to count resident freeholders, I was advised that the signers were screened to verify that the signature was of a qualified freeholder (undivided fee ownership) with a permanent residence (house). Discrepancies such as joint owners who provided multiple signatures were eliminated. Also, those who signed as resident owners but who owned campground/UDI or time-share interests were not counted.

<sup>7</sup> For example, in several instances a husband and wife signed separately. Although the petitions contain two signatures, their signatures would have been counted as only one “resident freeholder” for the petition. My figure of 1,277 – without screening – includes two signatures for this couple.

(b) To error on the side of caution, I did not attempt to repeat the screening process to reduce the pool of “resident signers” to 1,215 before extracting the non-Treasure Lake addresses. Instead, I extracted from *all* resident signers those who did not have a Treasure Lake address. Potentially a greater number of signers are being extracted from the numerator than necessary (as some may not have been counted in the numerator in the first place); but the goal is to eliminate all signers without a Treasure Lake address from the numerator, whether they were actually counted or not.<sup>8</sup>

(c) Also, I extracted *all* non-Treasure Lake addresses from the numerator – including DuBois Post Office Box addresses. There are some obvious problems with this methodology<sup>9</sup>, but the risk of error works against the Petitioners and in favor of Exceptants. Again, the purpose is to error on the side of eliminating all signers who may not have a domicile in Treasure Lake as evidenced by a TL mailing address.

49. By subtracting all non-Treasure Lake mailing addresses from the pool of signers, only signers with a mailing address of Treasure Lake are being counted for purposes of determining if a majority of domiciled residents signed in favor of the Borough Petition.

50. **The new numerator for calculating a majority of resident freeholders with a domicile at Treasure Lake is 1,069.**

$$\begin{aligned} & 1,215 \text{ resident freeholders who signed the Petition} \\ & - \underline{\text{(minus) 146 signers (unscreened) without a TL mailing address}} \\ & = 1,069 \text{ resident freeholders with a TL domicile (TL mailing address)} \end{aligned}$$

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<sup>8</sup> For example, in one case a husband and wife owned a residence at Treasure Lake, but did not have a Treasure Lake mailing address. As in the above example (FN6), they both signed the petition, but – through the screening – would have only been counted as one signer for purposes of the Petition. In other words, the husband and wife (although two separate signatures were acquired) constituted one (1) resident freeholder in the original numerator. By reviewing all signatures (not screened), I extracted both the husband and wife from the numerator, since I would have counted two signatures without a Treasure Lake address. (Note that only 1 would have been extracted from the denominator since it would be a single assessment).

<sup>9</sup> For example, the signer Carolyn Beatty has a residence and is domiciled at Treasure Lake, but she has a DuBois Post Office Box as her mailing address. She would have been counted as a resident freeholder, and she should also be counted as a domicile, but she is being extracted from the numerator under the new formula. (Note that because she has a DuBois PO Box, she was not extracted from the denominator as she was a *potential* TL domicile under the above methodology.) In the example of Mrs. Beatty, the numerator (signers) is being reduced by her signature as a non-TL address, while the denominator (total) is not so reduced for a DuBois address.

**The new formula:**

64%                    **New Numerator: 1,069 freeholders with a permanent structure and TL domicile (as evidenced by TL mailing address)**

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**New Denominator: 1,667 total freeholders with a permanent structure and TL domicile (as evidenced by TL mailing address)**

**Majority:**

51.        The new formula to determine whether a majority of the freeholders domiciled in Treasure Lake signed the petition – as of the date the petition was presented to the court (2008) – may be completed as follows:

$$\frac{1069 \text{ freeholders with a permanent structure and domicile at Treasure Lake (evidenced by TL mailing address) who signed the petition}}{1667 \text{ total freeholders with a permanent structure and domicile at Treasure Lake (evidenced by TL mailing address)}} = 64\%$$

52.        Stated otherwise - and revising the 2008 formula in accordance with the amended legislation - the new formula to determine the majority becomes:

$$\frac{(1,215 \text{ resident freeholders signed} - (\text{minus}) 146 \text{ signers not domiciled at Treasure Lake})}{(2,044 \text{ total freeholders with a permanent structure,} - (\text{minus}) 377 \text{ not domiciled at TL})} = \frac{1,069}{1,667} = 64\%$$

53. After reviewing data from 2008, the time the Petition was filed, I have concluded that a reduction in the number who signed the Petition for Incorporation by those who have mailing addresses outside of Treasure Lake (i.e. not “domiciled” in Treasure Lake”), and the corresponding reduction of the total pool of resident freeholders who are not “domiciled” in Treasure Lake (i.e. who do not have mailing addresses in TL), results in a greater majority of signers than that advanced by the Petition in 2008. The re-enactment of the Borough Code actually works in favor of the Petitioners in this case by reducing the pool of resident freeholders to only those actually domiciled at Treasure Lake. Of that lesser pool, a greater majority signed the Petition than was previously the case.

54. In sum, the data supports a conclusion that the denominator of the fraction (total resident freeholders) is more drastically reduced (to total with TL domiciles), than the numerator (signed resident freeholders) reduces to meet the new definition (signed with TL domicile). The percentage of those signers with TL domiciles becomes larger when compared with the total number of domiciles (as opposed to merely the number of houses).

#### **Additional Comments:**

55. For argument sake, and acknowledging the margin of error present by reviewing data from 2008, I considered first whether the Petitioners may have met the burden of proof by extracting all non-domiciled signers from the numerator, but *not* correspondingly changing the denominator used for the original petition. In other words, I extracted from the number of signers *all* signers who did not have a Treasure Lake mailing address. But, I did not likewise reduce the denominator pool.

56. This calculation is somewhat absurd because it assumes that the pool of 2044 resident freeholders *all* have a domicile in Treasure Lake, but that not all of the resident freeholders who signed have a Treasure Lake domicile.<sup>10</sup> Also, the risk is in favor of the Exceptants because all signers without a Treasure Lake address are being extracted, even if they were not part of the original numerator *or* denominator. The calculation is being made, however, to drive home the point that the Borough Code amendment actually works against the Exceptants and in favor of the Petitioners, and it would be extremely difficult to overcome the “majority” analysis regardless of how the figures are altered to meet the “domicile” requirement.

57. A review of the signature pages attached to the petition yielded approximately 146 signers who indicated they had a TL residence, but designated a mailing address other than Treasure Lake. Those signers were deducted from the numerator.

58. The total signers with Treasure Lake addresses is 1,069.

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<sup>10</sup> In fact, with the screening procedures used in the 2008 data collection process, a signature that was counted as a resident freeholder (numerator) must necessarily be part of the total pool of resident freeholders (denominator). Thus, the fraction would be reduced by a like ratio.

59. Using the numerator of 1,069 over the *original denominator* 2044, still yields a majority - 52%.

60. Because of the screening process applied to determine the majority for the original petition, a resident freeholder "signer" who was counted in the numerator, would also have been counted in the denominator/pool of total resident freeholders.

61. **Thus, as the numerator is reduced by non-domiciled signers, so too must the denominator be reduced.**

62. Considering the number of resident freeholders who signed the original petition (1,215) and the total pool of resident freeholders (2,044), the amendment to the Borough Code would only apply to defeat the "majority" if the numerator and denominator are each reduced by approximately 400. In other words, the number of signers who are not domiciled at Treasure Lake must be at least 400 – simultaneously reducing the total pool of resident freeholders by 400, in order to have less than a majority with the filings on record.

63. Of the 1,215 signers, a maximum of 146 had mailing addresses outside of Treasure Lake. Although, for purposes of this affidavit, only "mailing addresses" are being considered as evidence of domicile, it is difficult to imagine that a comprehensive review of drivers licenses, voter registration and testimony of neighbors, would result in a number greater than 400 who own a Treasure Lake residence, signed the petition, but are not "domiciled" at Treasure Lake.

64. Upon review of the data that is presently available from the 2008 petition process, and minimizing the risk in favor of the Exceptants, the Petitioners have met the burden of securing signatures endorsing the petition by a majority of *domiciled* resident freeholders (as evidenced by TL mailing addresses).

Date: September 11, 2012

Nicole Hanak Bankovich  
Nicole Hanak Bankovich

COMMONWEALTH OF PENNSYLVANIA

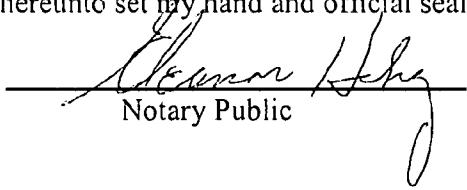
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COUNTY OF CLEARFIELD

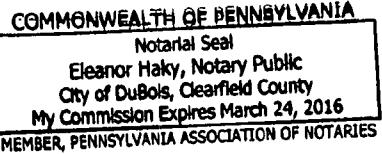
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On this, the 11th day of September, 2012, before me, the undersigned officer, personally appeared NICOLE HANAK BANKOVICH, known to me or satisfactorily proven to me to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public



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

IN RE: INCORPORATION OF THE :  
BOROUGH OF TREASURE LAKE :  
: :  
TREASURE LAKE PROPERTY : No. 2008 – 1814 - CD  
OWNERS ASSOCIATION, INC., :  
RICHARD REHERMANN and :  
WILLIAM REZNOR, :  
Petitioners : :  
:

**PETITIONERS' SUPPLEMENTAL MEMORANDUM OF LAW**  
**IN OPPOSITION TO EXCEPTANTS' MOTION TO DISMISS**

The Petitioners hereby submit this Supplemental Memorandum of Law in  
Opposition to the Motion to Dismiss the pending Application for Incorporation for  
Borough of Treasure Lake filed by the Exceptants, Township of Sandy and Richard A.  
Castonguay, Jr.

Exceptants have moved to dismiss the Application for Incorporation of Borough  
of Treasure Lake based on amendments to the Borough Code which became effective  
on July 16, 2012. Although the Exceptants have argued that the re-enacted Borough  
Code has "*changed* the filing requirements for an Application to Incorporate a  
Borough," in fact, the revisions to the Code merely clarify the definition of a resident  
freeholder in accordance with prior actions taken in the present case. Initially,  
Petitioners argue that the recent changes to the Borough Code do not impact the  
present litigation as the amendments were based solely on prior court rulings in the



instant case. Second, assuming, *arguendo*, that the Court would conclude that the changes to the Code are applicable to the present Petition, the present Petition would still comply with the requirements of the Borough Code and this Honorable Court would still retain subject matter jurisdiction over the proceedings.

At the time the present Petition was filed in September 2008, Section 202 of the Borough Code required that an Application for Incorporation of a Borough be signed by a majority of the freeholders residing within the limits of the proposed Borough. Exceptants unsuccessfully challenged the underlying Petition, arguing that the term "freeholders residing" should include campground owners and time-share condominium interests. See In re Incorporation of the Borough of Treasure Lake, 999 A.2d 644, 2010 WL 2598250 (Pa.Cmwlth. 2010). Recently, the General Assembly amended the petition requirements to require evidence of domicile in a permanent structure in order to establish freeholder status. In fact, the General Assembly specifically cited the Commonwealth Court's 2010 decision on the "freeholder" issue in the present case as the impetus for the change.

Exceptants now contend that the Petition does not meet the new "domicile" requirement because, as they allege, "there is no way to discern on the record how many permanently domiciled freeholders even exist in the proposed Borough." According to Exceptants' argument, because there is no set of data from which to conclusively establish the set of domiciled freeholders, there is no denominator from which to determine whether a majority of the domiciled freeholders supported the instant Application.

First, the new legislation would prevent this and any future petition for incorporation from succeeding because there can be no acceptable method to determine domiciled freeholders in a proposed borough. According to Exceptants, voting records, tax records, and mailing addresses are not acceptable as evidence to determine domiciled freeholders. Even more disconcerting is Exceptants' suggestion that there is no reliable method in which to establish a denominator in this case. Such an interpretation would be contrary to the clear intent of the legislation and would create an absurd result.

"The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions." 1 Pa. C.S. §1921(a). The intention of the General Assembly, if not clear from the words of the statute, may be ascertained by considering the circumstances under which it was enacted, the object to be obtained, and the consequences of a particular interpretation. 1 Pa. C.S. §1921(c).

The intent of the legislature in requiring evidence of domicile was not to defeat this application or to create an impractical threshold; rather, the intent was to refine the approval criteria in direct response to what the Courts have previously determined to be a qualified resident freeholder *in this case*. See 53 Pa. C.S. § 45202, *reenacted and amended*, May 17, 2012, P.S. 262, No. 43.

The legislative history to these changes provides even greater support for Petitioners' argument:

Statutory clarification of "freeholder residing" was added in accordance with the Commonwealth Court's decision in In re Incorporation of the Borough of Treasure Lake, 999 A.2d

644 (Pa.Cmwth. 2010)(freeholder status gives owner the right to exclude others and to exercise control; deed restrictions and restrictive covenants can prevent interest holders from establishing residency; court looked at whether there is evidence of paying real estate taxes for a residence; whether there is sewer service; and whether there is a prohibition on permanent structures or homes.) See Section-by-Section Commentary, Act 43 of 2012 (HB 1702, PN 3331).

The Local Government commission has also commented on the issue in stating:

*[S]tatutory clarification of the status of "freeholder residing" who may petition the court of common pleas for an application of incorporation was added in accordance with In re Incorporation of the Borough of Treasure Lake *supra*). See Pennsylvania General Assembly, Local Govt. Commission, Executive summary on the Revisions to the Borough Code, Act 43 of 2012 (HB 1702, PN 3331).*

Secondly, it is not necessary to plead or prove the denominator by exact terms.

In Borough of Mountville, 31 Pa.Super.18 (Pa. Super. 1905), the exceptants argued, *inter alia*, that the petition was defective on its face in that it did not show how many freeholders resided within the limits of the proposed borough and there was no accompanying affidavit or evidence to prove the denominator or that the persons who joined the petition constituted a majority. The Superior Court held:

The requirements of the petition for incorporation are purely statutory. The petition follows the requirements of the act in stating that the petitioners "are a majority of the freeholders residing within the limits of the" territory to be incorporated. There is nothing in the act which requires the application to set forth the number of freeholders residing within the proposed territory, nor is there any provision that it is to be verified by affidavit. The requirements of the act having been fully complied with, we see no merit in the third assignment of error. Id.

The Borough Code, even under the 2012 amendments, only requires that a majority sign the petition; the Code does not require the total domiciled freeholders to

be set forth in the application. See 53 P.S. §45202(a); see also In re Incorporation of Borough of Castle Shannon, 75 Pa.Super. 162 (1920)(A petition for incorporation of a borough, averring essential facts, including the sworn statement that it was signed by the requisite number of freeholders residing within the limits of the proposed borough, is sufficient to invoke the jurisdiction of the court.) Once exceptions are filed, the Court has discretion to ascertain the number of signers required for the petition as of the date the petition was presented to the Court. Id; see also In re Incorporation of Borough of Pocono Raceway, 646 A.2d 6 (Pa. Cmwlth. 1994) appeal denied; In re Incorporation of Borough of Chilton, 646 A.2d 13 (Pa. Cmwlth. 1994) appeal denied (Trial court has discretion in determining whether the criteria in Section 202 of the Borough Code have been met).

The Petition avers, and the record contains accepted proof, that there are 2044 resident freeholders with permanent structures (homes). This denominator may only be *reduced* by the new legislation, which arguably imposes an additional requirement of *domicile*. Even if the Court assumes that Exceptants' position regarding the precise definition of *domicile*, the Court understands that the denominator must be less than the originally-proffered 2,044. Commensurately, for each resident freeholder who is not "domiciled" under the new criteria, the numerator and denominator are also reduced. It is probable that the denominator (being the entire pool of resident freeholders) would necessarily be reduced by at least the same, if not a larger, number than the numerator (number of signers).

Notwithstanding the clear intent of the legislature to permit the Treasure Lake application and in adopting the recent amendments, the intended meaning of the word

"domicile", as added to Section 202 of the Borough Code, is a matter to be defined by the courts. "A proceeding to incorporate a borough is not in the nature of private litigation. Such a proceeding largely involves issues of fact and questions of expediency for the courts." In re Petition for Incorporation of Borough of Blandon, 126 A.2d 506 (Pa. Super. 1956). As such, the meaning of the word "domicile" is not the same for purposes of characterizing a large pool of residents to a proposed borough as it is for private litigation involving a specific individual's domicile. Even if the Court accepts the Exceptants' flawed arguments regarding domicile, for the reasons set forth in the Affidavit attached hereto and incorporated herein by reference, the present Application still meets the criteria of Section 202, and the record supports a finding that a majority of domiciled resident freeholders endorsed the petition. Thus, the Exceptants' motion must be DENIED.

Regardless of the fact that the denominator is not precisely discerned in the Application or on the present record, the Application contains the requisite facts to reconfirm the continuing jurisdiction of the Court in this case. Furthermore, the record contains sufficient data to establish that a majority of resident freeholders domiciled at Treasure Lake endorsed the petition. See attached Affidavit. Exceptants' Motion to Dismiss is without merit and must be denied.

WHEREFORE, Petitioners respectfully request that this Honorable Court DENY the Exceptants' Motion to Dismiss the Petition to Incorporate the Borough of Treasure Lake.

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Respectfully submitted:



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(570) 424-9800  
*Co-counsel for Petitioners*

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

IN RE: INCORPORATION OF THE  
BOROUGH OF TREASURE LAKE

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC., RICHARD  
REHERMANN and WILLIAM REZNOR,

Petitioners

NO. 2008 - 1814 - CD

FILED  
09/14/2012  
SEP 14 2012  
William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF SERVICE**

I, MICHAEL P. YEAGER, attorney for the Petitioners, depose and say that on September 14, 2012, I served a certified copy of *Petitioners' Motion for Leave to File an Affidavit Relative to Amendments to the Borough Code and a Supplemental Memorandum in Opposition to Exceptants' Motion to Dismiss Related Thereto* by hand delivering the same to the following:

Gregory M. Kruk, Esq.  
FERRARO, KRUK & FERRARO, LLP  
690 Main Street  
Brockway, PA 15824

Scott T. Wyland, Esquire  
SALZMANN HUGHES, PC  
354 Alexander Spring Road  
Suite 1, Carlisle, PA 17015

  
Michael P. Yeager, Esquire  
Attorney for Petitioners

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

IN RE: INCORPORATION OF THE BOROUGH \* NO. 08-1814-CD  
OF TREASURE LAKE \*

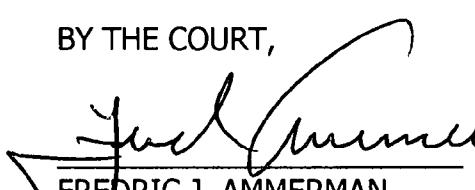
TREASURE LAKE PROPERTY OWNERS \*  
ASSOCIATION, INC., RICHARD REHERMANN \*  
and WILLIAM REZNOR, \*  
Petitioners \*

**ORDER**

NOW, this 24<sup>th</sup> day of September, 2012, pursuant to 53 P.S. § 45303.2(a); it is the ORDER of this Court that the following individuals are hereby named to constitute the Borough Advisory Committee:

1. Peter F. Smith, Esquire, as Chairman of the Committee;
2. Brady LaBorde and Mark Sullivan, as recommended by Sandy Township; and
3. Jason S. Gray and Robert M. Hanak, Esquire, as recommended by Treasure Lake.
4. The Borough Advisory Committee shall file with the record any reports and recommendations by no later than November 21, 2012.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

**FILED**

09/09/2012  
SEP 24 2012

William A. Shaw  
Prothonotary/Clerk of Courts

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Yeager  
Kruh Ferraro

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

IN RE: INCORPORATION OF THE  
BOROUGH OF TREASURE LAKE

TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION, INC.,  
RICHARD REHERMANN and  
WILLIAM REZNOR,

Petitioners

NO: 2008-1814-CD

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William A. Shaw  
Prothonotary/Clerk of Courts

Grant to Yerger  
Young  
Krause  
Fenner  
Miles  
Ludwig  
Wylam

**OPINION**

This matter is before the Court on a Motion to Dismiss the Application for Incorporation of the Borough of Treasure Lake filed by Exceptants, Township of Sandy and Richard A. Castonguay, Jr. As discussed herein, the Court finds that the pending Application for Incorporation is subject to the newly amended section 202 of the Pennsylvania Borough Code, as Petitioners have no vested right to incorporate. However, the Court finds that the amended section 202 does not require that the Application be signed by a majority of freeholders domiciled within the limits of the proposed borough, and therefore, Exceptants' Motion is denied.

**I. Background and Procedural History**

Treasure Lake is privately-owned gated community located within Sandy Township, Clearfield County. Consisting of 8,044 acres, Treasure Lake is subdivided and developed, containing 2,044 lots improved with single-family residences. On September 25, 2008, the Treasure Lake Property Owners Association ("TLPOA") President, Richard Rehermann, and Secretary, William Rezner, ("Petitioners") filed the Petition for Incorporation of the Borough of Treasure Lake. A majority of the owners of the residential lots with residences, 1,205 out of 2,044, signed the Petition before the filing with the Court.

Exceptions were filed on behalf of the Township of Sandy, Richard A. Castonguay, Jr. Individually, and Brady Laborde Individually, by and through Gregory M. Kruk, Esquire, (“Sandy Township”), including whether Petitioners had obtained the signatures of a majority of the freeholders residing within Treasure Lake as required under section 202(a) of The Borough Code.<sup>1</sup> *See* 53 P.S. § 45202(a) (West 2012). On September 29, 2009, this Court denied Sandy Township’s Exceptions, finding the owners at issue were not resident freeholders and were properly excluded by Petitioners. Sandy Township sought permission for interlocutory review on the issue, which was granted by the Court on December 16, 2009.

Arguments were heard before the Commonwealth Court of Pennsylvania on April 19, 2010. On June 30, 2010, the Commonwealth Court affirmed this Court’s Order, and remanded the case for further proceedings. *In Re: Incorporation of the Borough of Treasure Lake*, 999 A.2d 644, 652 (Pa. Commw. Ct. 2010). On July 31, 2012, Sandy Township filed a Motion to Dismiss Application for Incorporation on the basis that as of July 16, 2012, The Borough Code had been amended, and argued that, consequently, the Application was now deficient on its face under the amended section 202(a). *See* 53 P.S. § 45202(a) (July 16, 2012); H.B. 1702, 2011-12 Reg. Sess., PN 3331 (Pa. 2012).

On September 14, 2012, arguments on Exceptants’ Motion to Dismiss were held before this Court, with briefs submitted by both parties, making this issue ripe for decision.

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<sup>1</sup> Sandy Township argued that Petitioners had not met the ‘majority of freeholders residing’ requirement because the Petition was not signed by any of the lot or interest owners at Cayman Landing (campgrounds), or interval owners at Wolf Run Manor and Silverwoods (time-share townhouses).

## II. Analysis

### a. Application of the Amended Borough Code

On June 21, 2011, members of the Pennsylvania Local Government Commission, House Representatives Gingrich, Ross, Creighton, Freeman, and Santarsiero, and Representative Caltagirone introduced House Bill 1702 to the General Assembly of Pennsylvania, which proposed Act 43 – to reenact and amend the law relating to boroughs. H.B. 1702. The Bill was signed in the House on May 7, 2012, in the Senate on May 8, 2012, and approved by Governor Tom Corbett on May 17, 2012 with the effective date for the Act of July 16, 2012. Relevant to the matter before the Court, section 202(a) was amended by Act 43, deleting subsections (b)-(d), and adding to subsection (a): “[f]or the purposes of this subsection, the residence of freeholders shall be established by evidence of domicile in a permanent structure.” 53 P.S. § 45202(a).

Sandy Township avers that the Application, although filed in September 2008, is subject to the requirement that resident freeholders be established by ‘evidence of domicile,’ citing the Commonwealth Court case of *In re Incorporation of the Borough of Ashcombe*. 646 A.2d 606 (Pa. Commw. Ct. 1994). The Court finds *Ashcombe* controlling, and agrees.

At the onset, the Court notes generally “that statutes, other than those affecting procedural matters, must be construed prospectively except where the legislative intent that they shall act retrospectively is so clear as to preclude all questions as to the intention of the legislature.” *R & P Servs., Inc. v. Commonwealth Dep’t of Rev.*, 541 A.2d 432, 434 (Pa. Commw. Ct. 1988) (citing *Farmers Nat'l Bank & Trust Co. v. Berks County Real Estate C.*, 5 A.2d 94 (Pa. 1939)). Further “[a] retroactive law has been defined as one which relates back to and gives a previous transaction a legal effect different from that which it had under the law

in effect when it transpired.” *Id.* (citing *Dep’t of Labor and Industry, Bureau of Emp’t Sec. v. Pennsylvania Eng’g Corp.*, 421 A.2d 521 (Pa. Commw. Ct. 1980)). However, prior to addressing the legislative intent of retroactivity, it must be determined whether an imposition of the amended section 202(a) requirements upon the Application would, in fact, be retroactive.

In *Ashcome*, a group of residents of Monroe Township, Cumberland County, Pennsylvania filed a petition for incorporation of the Borough of Ashcombe on April 6, 1992. *In re Ashcome*, 646 A.2d at 606. Exceptions to the petition were denied and a five-member borough advisory committee had voted 3-2 against incorporation, filing an opinion with the trial court on December 7, 1992. *Id.* at 607. However, on December 18, 1992, Act 181 was signed into law by the Governor, which amended section 201 of The Borough Code to require a population of at least 500 residents in a proposed borough. *Id.* The trial court subsequently granted the township’s motion to dismiss on the basis that the proposed borough failed the 500-resident requirement. *Id.* The Commonwealth Court affirmed, holding that because the application had not been approved by the trial court and the borough committee had furthermore voted against it, “Ashcombe had no vested right to incorporate as a borough based on the ground that they filed their petition to incorporate prior to the adoption of Act 181.” *Id.* at 608.

In the instant case, the Petitioners’ Application for Incorporation had not been approved by this Court, nor had it reached the stage of the presentation before a borough

committee at the time of effective date of Act 43.<sup>2</sup> Petitioners can only attempt to claim that there is a vested right to incorporate on the basis that the Application was filed prior to the effective date of the new statutory changes, which is the same basis that was struck down by the Commonwealth Court in *Ashcombe*. Therefore, in accordance with *Ashcombe*, this Court holds that Treasure Lake has no vested right to incorporate as a borough.<sup>3</sup>

The Commonwealth Court has held: “[w]here no vested right or contractual obligation is involved, an act or a regulation is not impermissibly construed retroactively when applied to a condition existing on its effective date, even though the condition results from events which occurred prior to that date.” *R & P Servs. Inc.*, 541 A.2d at 434 (citing *Creighan v. City of Pittsburgh*, 132 A.2d 867 (Pa. 1957)). Because Treasure Lake has no vested right to incorporate, the Court holds that an imposition of Act 43 upon Petitioners’ Application would

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<sup>2</sup> The General Assembly narrowed the application of Act 181 in *Ashcombe* to only petitions filed after March 25, 1992, for all counties except fifth class counties. *In re Ashcombe*, 646 A.2d at 608 n.1 (Friedman, J. concurring). The legislature has not included any similar language or deadlines in Act 43; therefore, this Court holds that it was the intent to include all current/pending applications, as of the effective date of the Act, to be subject to the statutory changes in Act 43. As of the effective date, July 16, 2012, Petitioners’ Application was pending.

<sup>3</sup> Petitioners argue that Act 43 is inapplicable to the Application in accordance with *In re Incorporation of Borough of Pocono Raceway*, 646 A.2d 6 (Pa. Commw. Ct. 1994). In *Pocono*, the Petition for incorporation was filed on October 5, 1992, the committee approved the petition on November 18, 1993, but the trial court dismissed the petition on December 20, 1993. *Id.* at 8. The Commonwealth Court agreed with the trial court that Act 181 (500 resident requirement) was not applicable to the application. *Id.* at 9, 12. Act 181 specifically stated “the minimum resident requirement applies to applications and petitions presented on or after March 25, 1992, except in counties of the fifth class, where the act shall apply to applications and petitions presented on or after the effective date of the act [December 18, 1992].” *Id.* at 9 n.2 (emphasis added).

Both *Ashcombe* and *Pocono* filed applications to incorporate after March 25, 1992 (April 6, 1992 and October 5, 1992, respectively); thus, both applications would appear to be subject to Act 181. However, the application in *Pocono* was filed in Monroe County, Pennsylvania, which, according to census data, would have been a fifth class county in 1992. *Compare* U.S. DEP’T OF COMMERCE, BUREAU OF THE CENSUS, 1990 CP-1-40, GENERAL POPULATION CHARACTERISTICS: PENNSYLVANIA (1990) (Monroe County, Pennsylvania: Total Population: 95,709); and U.S. DEP’T OF COMMERCE, BUREAU OF THE CENSUS, PHC-1-40, PENNSYLVANIA: 2000: SUMMARY POPULATION AND HOUSING CHARACTERISTICS, Issued November 2002 (2000) (Monroe County, Pennsylvania: Total Population: 138,687), with CNTY COMM’RS ASS’N OF PENNSYLVANIA, COUNTIES BY CLASS (2012) available at <http://www.pacounties.org/PAsCounties/Pages/CountiesByClass.aspx> (Fifth Class County Population: 90,000 to 144,999).

Because Monroe County was a fifth class county in 1992, the application in *Pocono* was not subject to Act 181; it was filed prior to the effective date, December 18, 1992. *In re Pocono*, 646 A.2d at 8. The application in *Ashcombe* was filed in Cumberland County, which, as noted, was a fourth class county in 1992; thus the application was subject to Act 181 and 500 residents in the proposed borough were required. *In re Ashcombe*, 646 A.2d at 607 n.3.

not be an impermissible retroactive operation, and that the Application is therefore subject to any statutory changes as found in the amended Pennsylvania Borough Code, 53 P.S. § 45101 et seq.

*b. Section 202(a) Residency Requirement*

Since the Application is subject to Act 43, the next issues before the Court are: 1) what, if any, are the new statutory requirements of the amended section 202(a), and 2) does the Application, as it stands, comply with any new requirements.

Section 202(a) of The Borough Code, as of July 16, 2012, states:

The application for incorporation shall be by a petition signed by a majority of the freeholders residing within the limits of the proposed borough and by the freeholders of a majority of the territory within the limits of the proposed borough, when all parts of the proposed borough are in the same township. . . . The signatures must be secured within three months immediately preceding the presentation thereof to the court. The petition shall be subscribed by and sworn to by at least one of the signers. The number of signers required to sign the petition shall be ascertained as of the date the petition was presented to court. **For purposes of this subsection, the residence of free-holders shall be established by evidence of domicile in a permanent structure.**

53 P.S. § 45202(a) (emphasis added). The concluding sentence was added by Act 43, requiring “evidence of domicile in a permanent structure” to establish the residency of freeholders. *See H.B. 1702.*

Sandy Township argues that Act 43 now requires freeholders to be ‘domiciled’ in a permanent structure within the proposed borough. As a result, Sandy Township contends that the Application fails the new requirement because the current record cannot discern how many domiciled freeholders actually reside in the proposed borough, nor whether a majority of those domiciled have signed the petition.

Petitioners argue that Act 43 does not require ‘domicile’ but only ‘resident freeholders’, who are determined by “evidence of domicile in a permanent structure.” 53 P.S.

§ 45202(a) (emphasis added). Further, Petitioners aver that Act 43 was enacted in accordance with the Commonwealth Court's holding in *In Re: Incorporation of the Borough of Treasure Lake*, and that the Application meets the requirements of establishing the residence freeholders by evidence of domicile. *See In Re Treasure Lake*, 999 A.2d at 644. This Court agrees.

The Court notes that “[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions.” 1 Pa. C.S. § 1921(a) (West 2012); *See DeLellis v. Borough of Verona*, 660 A.2d 25, 28 (Pa. 1995). The Supreme Court of Pennsylvania has held:

Where statutory words or phrases at issue are undefined by the statute, as in the instant case, this Court is required to construe the words according to their plain meaning and common usage.

...

In turn, when a statutory word or phrase is ambiguous, this Court must look beyond the statutory language and attempt to ascertain the intention of the General Assembly by reference to various statutory construction factors. . .

*DeLellis*, 660 A.2d at 28 (internal citations omitted). Some of the factors a court can refer to are: the occasion and necessity for the statute, the circumstances under which it was enacted, contemporaneous legislative history, and legislative and administrative interpretations of the statute. 1 Pa. C.S. § 1921(c)(1)-(2),(7)-(8).

The statutory language at issue here is: “the residence of free-holders shall be established by evidence of domicile in a permanent structure.” 53 P.S. § 45202(a). Sandy Township argues that this language equates to a domicile requirement. However, the Commonwealth Court has held that the terms ‘residence’ and ‘domicile’ are not interchangeable. *Springfield Twp. v. Kim*, 792 A.2d 717, 723 (Pa. Commw. 2002). The court stated:

In Pennsylvania, the distinction between domicile and residence is that residence is a physical fact, while domicile is a matter of intention. For example, a person may have many residences but he may only have one domicile. The domicile of a person is the place where he has voluntarily fixed his habitation *with a present intention* to make it either his permanent home or his home for the indefinite future.

*Id.* at 723 (internal citations omitted) (emphasis in original). The court further held that ‘domicile’ could not be used to define ‘permanent residence’ in a zoning ordinance that prohibited the use of recreational vehicles as permanent residences within a recreational vehicle park. *Id.* at 720, 723 (“We, therefore, cannot accept the trial court’s usage of ‘domicile’ to define ‘permanent residence’; the definition of ‘permanent residence’ does not require **evidence** of intent.” (emphasis in original)).

This Court holds that *resident* freeholders cannot be interchanged with or construed as *domiciled* freeholders, as these terms by their plain meaning are separate and distinct in Pennsylvania. If the General Assembly had intended to change the signatures requirement in section 202(a) from resident freeholders to domiciled freeholders, it could have easily done so in Act 43. However, the statute was not changed from residency to domicile. Currently, the application requires the signatures of “a majority of the freeholders residing within the limits of the proposed borough,” not those *domiciled* within the proposed borough. 53 P.S. § 45202(a) (emphasis added). Further, the added language still reaffirms the legislators’ intent of a residency requirement: “the residence of freeholders shall be established by evidence of domicile.” *Id.* (emphasis added). The Court must construe the statute to give effect to all of the statute’s provisions, and the repeated requirement of ‘residency’ and not ‘domicile’ cannot be ignored.

In finding that the signatures requirement in section 202(a) has not been changed to *domiciled* freeholders, the Court does, however, find ambiguity regarding the meaning of the

statutory phrase: “evidence of domicile in a permanent structure.” The evidence of domicile that the courts are supposed to consider in determining the residence of a freeholder was not defined by the statute. Therefore, the Court will look to the intent of the General Assembly.

Act 43 was the product of the Pennsylvania Local Government Commission, in collaboration with the Pennsylvania State Association of Boroughs, to modernize The Borough Code. *See Pennsylvania Local Gov’t Comm’n, Borough Code Recodification*, (Sept. 25, 2012), [http://www.lgc.state.pa.us/whats\\_new\\_borough\\_code.shtml](http://www.lgc.state.pa.us/whats_new_borough_code.shtml). Following its review, the Commission published an executive summary and section-by-section commentary explaining the amended sections. *See id.* This Court finds the Commission’s commentary persuasive but not controlling. *See Commonwealth Dep’t of Transp. v. Gehris*, 339 A.2d 639, 641 (Pa. Commw. Ct. 1975) (“This Court gives considerable weight to the comments of the Commission which drafted the Code, especially where legislative intent is not otherwise clearly expressed.” (citing *Apple Storage Co. v. Sch. Dist. of Philadelphia*, 284 A.2d 812 (1971)), *rev. ’d* 369 A.2d 1271, 1275 (1977) (holding “the note of the Joint State Government Commission, while it is entitled to respect, it cannot be controlling.”)).

The Commission’s commentary to section 202(a) explains:

A ‘freehold’ is an estate for life. Statutory clarification of ‘freeholder residing’ was added in accordance with the Commonwealth Court’s decision in *In re Incorporation of the Borough of Treasure Lake*, 99 A.2d 644 (Pa. Cmwlth. 2010) (freeholder status gives owner the right to exclude others and to exercise control; deed restrictions and restrictive covenants can prevent interest holders from establishing residency; court looked at whether there is evidence of paying real estate taxes for a residence; whether there is sewer service; and whether there is a prohibition on permanent structures or homes).

PENNSYLVANIA LOCAL GOV’T COMM’N, PART II: SECTION-BY-SECTION COMMENTARY, BOROUGH CODE REVISION, HB 1702, 2011-02 Reg. Sess., PN 3331 (2012) available at

[http://www.lgc.state.pa.us/pdfs/borough\\_code\\_recodification\\_section\\_commentary.pdf](http://www.lgc.state.pa.us/pdfs/borough_code_recodification_section_commentary.pdf).

According to the Commission commentary, the residency requirement of section 202 was modified in accordance with the Commonwealth Court's holding in this case. It is important to note that the Commonwealth Court held that Petitioner's Application fulfilled the requirement of obtaining the signatures of the majority of freeholders residing in the proposed borough. *See In Re: Treasure Lake*, 999 A.2d at 651-52.

Although the Commission states in the commentary that the amendments to section 202 would clarify the meaning of resident freeholder, this hope has failed to transpire. Domicile requires a higher standard than residency; a person's intent of a permanent home must be established for domicile and no such intent is required of residency. It makes sense that residency can be used as proof of the higher standard of domicile. *See Southwest Regional Tax Bureau v. Kania*, 49 A.3d 529, 534 (Pa. Commw. Ct. 2012) ("Domicile and residence are not interchangeable terms, but one must establish a new residence in order to prove a change in domicile."). The reciprocal, however, does not work, as shown by a lack of presence in its application. To establish residency by evidence of domicile is to require a higher standard of proof than is burdened upon a showing of residency.

Because it is presumed that the General Assembly does not intend an absurd or unreasonable result, 1 Pa.C.S. § 1922(1), this Court finds that to establish the residence of a freeholder in section 202(a), evidence of domicile does not require proof of a person's intent to make the residence his permanent home. The Court construes the meaning of 'evidence of domicile' in accordance with the Commonwealth Court's holding in this case, which includes: a permanent structure which can accommodate human occupancy, the right to exclude others and exercise control, the paying of real estate taxes for the residence, and sewer service to the

residence. *See In Re Treasure Lake*, 999 A.2d at 644. The Commonwealth upheld this Court's ruling that Petitioner's Application met the residency requirement using the above mentioned factors, and therefore, no further discussion is needed.

### **III. Conclusion**

This Court finds that Petitioner's Application is subject to section 202(a) of the Pennsylvania Borough Code as amended by Act 43, effective July 16, 2012. The Court further finds that Petitioners have obtained the signatures of a majority of the freeholders residing within the limits of the proposed borough in accordance with the newly amended section 202(a), and thus Exceptants' Motion to Dismiss is denied.

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

IN RE: INCORPORATION OF THE :  
BOROUGH OF TREASURE LAKE :  
TREASURE LAKE PROPERTY : NO: 2008-1814-CD  
OWNERS ASSOCIATION, INC., :  
RICHARD REHERMANN and :  
WILLIAM REZNOR, :  
Petitioners :  
Petitioners

**ORDER**

AND NOW, this 26 day of September 2012, in consideration of Exceptants' Motion to Dismiss Application for Incorporation, arguments heard before this Court, and briefs submitted thereafter, it is the ORDER of this Court that the Motion shall be and is hereby DENIED. Petitioners' Motion for Leave to File an Affidavit Relative to Amendments to the Borough Code, filed September 14, 2012, shall be and is hereby DENIED.

BY THE COURT,

  
\_\_\_\_\_  
FREDRIC J. AMMERMAN,  
PRESIDENT JUDGE

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

IN RE: INCORPORATION OF THE BOROUGH \* NO. 08-1814-CD  
OF TREASURE LAKE \*

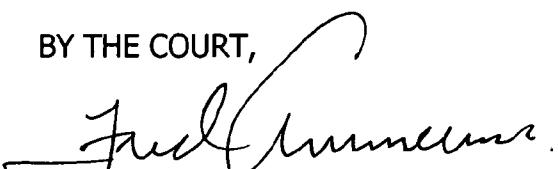
TREASURE LAKE PROPERTY OWNERS \*  
ASSOCIATION, INC., RICHARD REHERMANN \*  
and WILLIAM REZNOR, \*  
Petitioners \*

**ORDER**

NOW, this 17<sup>th</sup> day of October, 2012, it is the ORDER of this Court that a status conference in the above-captioned case be and is hereby scheduled for the **28<sup>th</sup> day of November, 2012 at 1:30 p.m. in Chambers**, Clearfield County Courthouse, Clearfield, Pennsylvania.

One hour has been reserved for this matter.

BY THE COURT,

  
FREDRIC J. AMMERMAN

President Judge

**FILED**  
010-25301  
S OCT 18 2012

William A. Shaw GK  
Prothonotary/Clerk of Courts  
ICC Atty's: Yeager  
Young  
Kreft

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

IN RE: INCORPORATION OF THE BOROUGH \* NO. 08-1814-CD  
OF TREASURE LAKE \*

TREASURE LAKE PROPERTY OWNERS \*  
ASSOCIATION, INC., RICHARD REHERMANN \*  
and WILLIAM REZNOR, \*  
Petitioners \*

FILED<sup>80</sup>

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William A. Shaw  
Prothonotary/Clerk of Courts

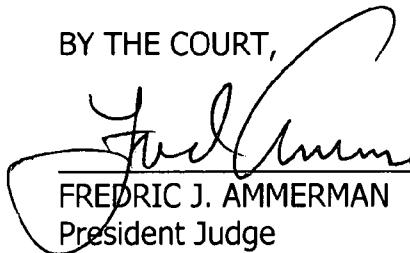
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**ORDER**

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NOW, this 21 day of November, 2012, it is the ORDER of this Court that the Borough Advisory Committee has completed its duties; the members of the Committee are now at liberty to discuss the matter and issues in public and with the news media.

BY THE COURT,

  
FREDRIC J. AMMERMAN

President Judge

## Minority Report of the Treasure Lake Advisory Committee

We, the undersigned, representing the Committee Minority, respectfully disagree with the conclusion of the Committee Majority and submit the following statement addressing points of disagreement and in support of the desirability of certifying the question of the proposed borough incorporation for a referendum vote of the residents of the proposed borough.

On September 25, 2008, the Board of Directors of the Treasure Lake Property Owners Association filed a petition for incorporation as a borough with the Clearfield County Court of Common Pleas containing 1,251 signatures, representing 59 percent of Treasure Lake resident freeholders with ownership of over 73 percent of the total acreage of Treasure Lake, substantially exceeding the minimum code requirements of majority in each of these categories. The validity of the petition was confirmed by the Court on September 29, 2009, later upheld by the Commonwealth Court of Appeals, and denied appeal by the Pennsylvania Supreme Court.

The Borough Code establishes an extremely high threshold, both in terms of procedure and numbers, for such a petition to succeed. Withstanding the scrutiny of procedure by the Courts and surpassing the requirement of majority by a substantial margin, the petition carries a strong message of overwhelming support to bring the question to the ballot. It clearly suggests that a significant majority of Treasure Lake residents are dissatisfied with the municipal governance of Sandy Township and wish to establish a more responsive form of government to address their particular needs and goals. The significance of this mandate is never addressed in the written opinion of the Committee Majority.

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Also of great concern is the Committee Majority's relative disregard of the inherent inequity for Treasure Lake residents and property owners in paying municipal taxes for limited services. This should not be characterized as "double taxation" as referenced in the majority opinion, but rather as "paying twice for the same services" (primarily road construction and maintenance). Treasure Lake taxpayers are assessed for a service they cannot receive, and then they pay for it again in the form of property owner assessments.

A study by the Joint State Government Commission, commissioned by the General Assembly of the Commonwealth of Pennsylvania reached the same conclusion in its report submitted December, 2011:

- Common Interest Ownership Communities (CIOC's) (of which Private Residential Communities (PRD's) such as Treasure Lake are a subset), provide some of the same services that the municipalities in which these communities are located provide to individuals who do not live in CIOC's.
- As a result, the residents of CIOC's often pay twice for the same services, once in the form of assessments paid to their community association and again in the form of municipal taxes.
- The primary source of funding for municipal road construction and improvements is the Commonwealth's Liquid Fuels Funds (contributed to by state tax payers including residents of CIOC's). In the case of CIOC's, unless the municipality agrees to take dedication of CIOC's roads, the maintenance on roadways within that community is usually paid for by HOA fees collected from each property owner in the community.
- Under the Township Code, municipalities may accept dedication of roads, streets, or alleys located within townships as public roads, but there is no requirement to do so. Further, municipalities have incentives not to take dedication of roads.

- A recommendation of this study is to require municipalities to accept dedication of all roads that are built to Penn Dot specifications.

That the legislature of Pennsylvania recognizes this inequity is evidenced by the fact that from 2009 through 2011 more than 60 bills and resolutions have been introduced in the state House and Senate to address this problem.

Although a newly-created borough would be restricted under current law, as is Sandy Township, from maintaining private roads, taxpayers would not be paying for a phantom service. New options would thus be available to the new borough to either lower taxes or expand existing services.

Another concern, not given weight by the Committee Majority, is that borough incorporation gives Treasure Lake a voice (which the Committee Minority believes both appropriate and deserved) in any discussions regionally (with Sandy Township, with the City of DuBois, and beyond) for cooperation, shared services, and coordinated planning. The Pennsylvania Municipal Planning Code not only encourages such cooperation and implementation of comprehensive planning, but through its broader definition of regionalism, it also presents a case counter to the Committee Majority's conclusion that a Treasure Lake borough would not comply with Pennsylvania's Fair Share Doctrine.

The Code states that a comprehensive plan among municipalities "may accommodate all categories of uses within the area of the plan, provided, however, that all uses need not be provided in every municipality, but shall be planned and provided for within a reasonable geographic area of the plan." In other words, municipalities should not be required to be self-sustaining; they may supply one or more economic, social, educational, or health care segments to meet the legitimate needs of all categories of residents of the broader regional community.

As well as a voice in regional planning, Treasure Lake residents have the right, currently denied, to a legitimate voice in local government. Since the voters

in Treasure Lake are a significant minority of the voters in Sandy Township as a whole, they cannot elect representatives (Township Supervisors) that are responsive to their particular needs and concerns. Borough incorporation would create a smaller, more responsive local government for Treasure Lake residents with the direct election of representatives to that governmental structure.

The conclusion of the Committee Majority that creation of a borough government would lead to duplication, inefficiency, and higher taxes for Treasure Lake property owners, is not supported by fact or logic. The expert witnesses, Mr. Gerald Cross for Sandy Township and Dr. Michael Weir for Treasure Lake, agree that the estimated revenue for the new borough of approximately \$1.3 million (which agrees with the figures of the Township auditor) produces operational surpluses (see exhibit A). Dr. Weir estimates that the combined surpluses of the new borough and the Treasure Lake Property Association (TLPOA) would initially be \$649,000 (exclusive of start-up costs (see exhibit B based upon Table 18, page 28 of the Pennsylvania Economy League report). That certainly suggests that either taxes or assessments or both could be reduced. Alternately, it also suggests that the combined services of both could be enhanced.

Similarly, Mr. Cross introduces a table in the PEL report (table 5-9 on page 5-10) that presents a summary of estimated revenues and expenses of the proposed borough showing a \$47,000 surplus in the first year of operation (assuming a \$200,000 non-recurring start-up expenditure) and over \$1,000,000 surplus for the first five years of operation. This projection reinforces the conclusion that tax revenue is not only sufficient, but actually excessive. Both Dr. Weir and Mr. Cross seem to agree that taxes could be lowered for Treasure Lake property owners.

It is the opinion the Committee Majority that the residents of Treasure Lake would experience a significant decline in the scope and quality of municipal services, particularly police protection. This conclusion would be warranted if the

assumption is that Treasure Lake would rely on the Pennsylvania State Police solely to provide such protection. It is the opinion of the Committee Minority that the formation of a borough police force, repeatedly stated as a significant reason for support of the borough initiative by many of the 1,215 residents signing the petition, is the preferred course and would significantly enhance police protection currently supplied by Sandy Township. Both Mr. Cross and Dr. Weir provide for this contingency in their pro-forma budgets for the new borough, Mr. Cross estimates \$556,000 for police protection while Dr. Weir estimates \$656,000. The average of the two estimates corresponds with Sandy Township Supervisor and retired Chief of Police Brady LaBorde's estimate of \$600,000. This seems to be a fair estimate, not disputed, that is well within the means of the estimated revenue stream for the new borough. In this instance, services would not be duplicated, but expanded, and the value received for tax dollar expended, greatly enhanced.

Of importance is the fact that the Treasure Lake Property Owners Association already maintains a full-time, around the clock, Security Department and bears a cost similar to the estimates above. If the new Borough creates a police force, that would obviate the need for a security department. Both would not be maintained.

The Committee Majority argues that the Borough of Treasure Lake would rely on and derive benefit from Sandy Township's public infrastructure and resources. The Committee Minority counters that the same is true for all area communities that are interlinked by road systems and that share municipal, state, and federal resources. The concept of regionalization encompasses municipal boundaries.

The Committee Minority observes that many of the points listed under Findings of Fact in the report endorsed by the Committee Majority are, in fact, not

facts but unsubstantiated opinion. The following examples are cited (corresponding to the numerical listings in the Committee Majority report):

29. Regarding the apportionment of assets between Sandy Township and the new borough, "clearly, Sandy Township would not have adequate assets because of the transfer of resources to Treasure Lake". This opinion is not supported by findings of fact. What is clear is that a transfer of resources would reduce start-up costs for the new borough.

30. "The Committee Majority finds it likely that the resulting municipalities will have inadequate resources and will consequently have to either reduce services, increase taxes, or some combination of both." For the new borough, this opinion is not supported by findings of fact.

41. . . . "Why would it make good sense on any level to divide law enforcement between Sandy Township and the new Treasure Lake borough and then 'regionalize' either or both police forces?" The answer is that "regionalization" is a far broader concept than solely between these two municipal entities. Either or both could benefit from regionalization with nearby communities. The important point here is that Treasure Lake, as a borough, would have an independent voice in such negotiations.

48. "The Committee Majority finds that it is unwise and inequitable for the proposed borough . . . to rely upon the goodwill of its neighboring communities and the Commonwealth of Pennsylvania for its law enforcement and fire protections needs." The Committee Minority supports the formation of police force for the borough as a means of enhancing security as currently structured. The fire department would be reconstituted and funded as a borough department. As such, similar written and unwritten mutual aid agreements with nearby communities would continue as presently constructed and understood.

58. . . . “Staff reductions in the Township police force, road crew, and administration would be inevitable. These reductions would jeopardize public safety, welfare, and the success of the Township.” This opinion is not supported by findings of fact.

64. “Petitioners’ expert Dr. Weir and Mr. Cross on behalf of the Township estimated that incorporation of Treasure Lake would reduce Sandy Township’s revenues by \$1.3 million. The impact of incorporation would be significantly more dire if they had used Mr. Catalano’s calculation of a \$1.49 million reduction.” Mr. Catalano’s calculation included “pass through” taxes for fire protection and library services. It is assumed that the new borough would continue to collect its pro-rata portion of these taxes for benefit of the fire department and library in which case Mr. Catalano’s calculations are quite comparable to the calculations of Dr. Weir and Mr. Cross (see exhibit A).

76. . . . “The Committee Majority believes that the new borough would spend \$100,000 in its first three months on attorney and consultant fees alone.” This opinion is not supported by findings of fact.

77. “The Committee Majority finds this \$205,500 (Mr. Cross’ estimate of start-up costs for the new borough) to be unrealistically low. . . .” This opinion is not supported by findings of fact.

79. . . . “Dr. Weir suggested that the Township fund its general budget with monies from its municipal authority. . . .” Dr. Weir qualified this to state that only reasonable fees for service could be transferred from the Authority to operation.

95. “The Committee Majority finds that the residents of both entities will likely see significant tax increases.” For the new borough, this opinion (repeated in number 96) is not supported by findings of fact.

98. The Committee Minority acknowledges the need for a more detailed presentation for the operation of the proposed borough. It does not agree with the

Committee Majority's conclusion, however, that "this lack of planning and organization will interrupt the high level of public service to which the residents of Treasure Lake have become accustomed. Public safety, welfare, and convenience will be jeopardized."

103. "The Committee Majority finds that the proposed borough will not comply with Pennsylvania's 'Fair Share Doctrine'...." This opinion is arguable. The Pennsylvania Municipal Planning Code states that municipalities "may accommodate all categories of uses within the area of a comprehensive plan, provided, however, that all uses need not be provided by every municipality".

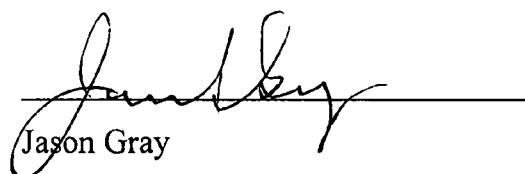
109. . . . "The new borough will be confronted with the necessity of raising taxes to provide even essential services." This opinion is not supported by findings of fact.

## Recommendations

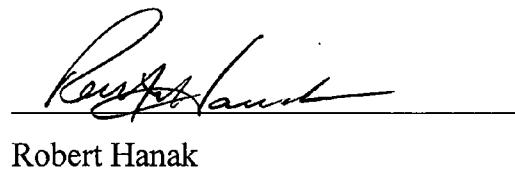
1. The Committee Minority recommends the certification of the question of proposed borough incorporation for a referendum vote of the residents of the proposed borough.
2. The Committee Minority agrees with the Committee Majority in recommending an immediate end to continuing litigation.
3. The Committee Minority recommends that if Treasure Lake is successful in its efforts to incorporate as a borough, the Board of Directors of the Treasure Lake Owners Association consider the removal of gates for entrance to the community. Restriction of public access would be limited solely to uses of the lakes and beaches and could be enforced by patrol of TLPOA personnel.
4. The Committee Minority recommends that the Board of Directors of the TLPOA develop in greater detail the plan for structure, organization, and operation of the new borough.

5. The Committee Minority recommends that the Clearfield County Planning Commission lead a concerted regional effort to lobby the Pennsylvania State Legislature to enact legislation to remedy the inequity experienced by CIOC's throughout the state in paying twice for the same services through taxes and assessments.
6. The Committee Minority recommends that Sandy Township engage in discussions with the City of DuBois leading to municipal consolidation as an option to control expenditures for the reasons stated in finding of fact number 40 of the Committee Majority report.

Members of the Committee Minority:



\_\_\_\_\_  
Jason Gray



\_\_\_\_\_  
Robert Hanak

Date November 19, 2012

<b>CURRENT AND PROPOSED PER CAPITA REVENUES AND EXPENDITURES</b>					
	<b>Population</b>	<b>current municipal</b>	<b>Sandy Twp</b>	<b>Treasure Lk</b>	<b>Sandy Twp</b>
		per capita	per capita	w/o TL	per capita
<b>Revenues</b>					
Taxes	3,034,000	265	265	1,731,850	244
Other	530,050	46	46	486,180	69
<b>Total</b>	<b>3,564,050</b>	<b>311</b>	<b>311</b>	<b>2,218,030</b>	<b>313</b>
<b>Expenditures</b>	<b>3,636,000</b>	<b>317</b>	<b>317</b>	<b>3,564,840</b>	<b>503</b>
<b>Surplus (Deficit)</b>	<b>(71,950)</b>	<b>(6)</b>	<b>(6)</b>	<b>(1,346,810)</b>	<b>(190)</b>
<b>Expenditure difference</b>					
Sandy w and w/o TL				71,160	
<b>% difference</b>					<b>1.96%</b>

## CURRENT AND PROPOSED PER CAPITA REVENUES AND EXPENDITURES

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

IN RE: : NO: 2008-1814-CD  
INCORPORATION OF THE :  
BOROUGH OF TREASURE LAKE :  
TREASURE LAKE PROPERTY OWNERS :  
ASSOCIATION, INC., RICHARD :  
REHERMAN and WILLIAM REZNOR, :  
Petitioners, :  
: TYPE OF CASE:  
: Petition to Incorporate Borough  
: TYPE OF PLEADING:  
: Advisory Committee Report

FILED BY:  
Advisory Committee

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08-38521 Atty P. Smith  
NOV 21 2008  
William A. Shaw  
Prothonotary/Clerk of Courts  
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# Report of the Treasure Lake Advisory Committee

## THE CASE

These proceedings come before the Court upon petition by a group of residents of Treasure Lake. They seek to incorporate the Treasure Lake portion of Sandy Township as a borough. The case has been pending for four years and has been heavily litigated.

By Order dated September 24, 2012, pursuant to 53 P.S. §45303.2(a), the Court appointed Peter F. Smith, the undersigned, to serve as chairperson of the Borough Advisory Committee. The Court appointed Brady LaBorde and Mark Sullivan to serve on the Committee as recommended by Sandy Township. The order also appointed Jason S. Gray, Jr. and Robert M. Hanak, Esquire, to serve as the remaining two-committee members upon the recommendation of Treasure Lake.

The governing statute requires the Committee to file its report and recommendations within 60 days. The Court's September 24, 2012 Order concludes by directing the Committee to file its report and any recommendation no later than November 21, 2012.

The Committee conducted three hearings to gather evidence and public opinion. The hearings were held in the auditorium of the DuBois Middle School in DuBois, Pennsylvania. The hearings began at 6:00 p.m. and concluded at approximately 9:00 p.m. on Monday, September 24<sup>th</sup>, Tuesday, September 25<sup>th</sup> and Thursday, October 4<sup>th</sup>.

Counsel for the Petitioners and Respondent were each allotted approximately three hours to present their evidence. These presentations were made on September 24<sup>th</sup> and 25<sup>th</sup> with a final witness testifying briefly at the beginning of proceedings on October 4<sup>th</sup>.

The October 4<sup>th</sup> proceeding was dedicated to public comment. Twenty-five people either spoke or submitted written comments. The Chairperson read the written submissions. The comments were all thoughtful and germane. The Chairman found direct input from the public very helpful.

Jodi Brennan also attended the hearings. She is the Director the Clearfield County Planning Commission. Ms. Brennan was appointed as an advisor to the Committee by a Case Manager Order dated August 21, 2012, as permitted by 53 P.S. 45202.1(a).

Prior to the hearing on October 4<sup>th</sup>, Ms. Brennan advised the Chairperson that she had prepared written comments representing her advice to the Committee. The Chairperson reviewed these comments. They were found relevant and worthy of the Committee's serious consideration. Consequently, Mr. Smith asked Ms. Brennan to read her comments into the record and to the public during the October 4<sup>th</sup> proceeding. This was done in the interest of full and fair disclosure to the public, counsel and the parties. They were directly informed of the tenor and substance of Ms. Brennan's advice to the Committee.

Counsel for the parties did not receive a copy of Ms. Brennan's comments in advance, nor were they notified in advance. The Chairperson believed that the public interest in prompt and full disclosure outweighed any delay in the proceedings. Additionally, counsel for the parties can subsequently take Ms. Brennan's deposition or call her as a witness when this matter comes before the Court for hearing pursuant to Id. §45202.2.

All three hearings were open to the public. They were well attended. A Clearfield County court reporter transcribed testimony offered by counsel and Ms. Brennan's comments. A transcript has not been ordered pending request either by the Court or counsel for the parties.

The Committee convened during the evenings of Monday, October 8<sup>th</sup> and Wednesday, October 17<sup>th</sup> to deliberate. We met again Tuesday, November 13, 2012 to discuss a draft of this report. Only the Committee members and Ms. Brennan, attended and participated. The Findings of Fact and Recommendations below are the result of the hearings and deliberations.

This document is not a legal brief. A few references to the governing statue follow. No cases are cited. The statute directs the Borough Advisory Committee to give the Court an advisory report. This document evaluates the evidence and makes factual conclusions, and on that basis recommendations are made.

## THE VIEW

The Chairperson is not a resident of Sandy Township or Treasure Lake. Counsel for the parties suggested that a tour of the Treasure Lake property and the balance of Sandy Township would be helpful. Attorney Yeager, who represents Treasure Lake, and Attorney Kruk who represents Sandy Township, met Mr. Smith on Monday, September 24, 2012. They spent approximately three hours together.

Each attorney was given an opportunity to show Mr. Smith what he felt was representative and important about his respective client's section of Sandy Township. The attorneys also had an opportunity to offer their comments.

## SUMMARY

The governing statute directs the advisory committee to, "Render expert advice and findings of fact relating to the desirability of an incorporation..." Id. at §45202.1(b). The statute does not define "desirability," but it does enumerate 5 factors which the Committee may consider. This list is not exclusive, and the Court directed the Committee to consider a number of exceptions advanced by Sandy Township which the Court sustained by Order dated September 29, 2009.

The Borough Code does not establish an evidentiary standard by which the Committee is to evaluate the evidence it receives and make its findings. However, the following section of the Code directs the Court to apply a preponderance of evidence test at the hearing which is to follow submission of Committee's report. Id. §45202.2(b). Therefore, the Committee members applied the preponderance test in reaching its recommendation.

After hearing and deliberation, the Committee Majority has concluded that the Petitioners did not establish the desirability of incorporating Treasure Lake as a borough by a preponderance of the evidence. Indeed the Committee Majority finds after considering this matter for many weeks that the weight of evidence against the incorporation of Treasure Lake as a borough is clear and convincing.

The remaining two members of the Committee disagree with the majority conclusion.

Sandy Township, as currently constituted, is a successful and prospering municipal entity. It provides above average services to all of its residents, including those in the proposed borough of Treasure Lake.

The tax burden carried by the citizens of Sandy Township is below the maximum authorized for townships by Pennsylvania statute. If the petition were granted and Treasure Lake established as an independent borough, the Committee Majority believes that the residents of Sandy Township would immediately see significant tax increases. Arguably, expenditures could be cut to offset the reduction in tax revenue. However, the Committee Majority finds that the residents of each area would also experience a significant and undesirable decline in the scope, quality and availability of municipal services, including but not limited to, the most essential services of police and fire protection.

Higher taxes are bad for growth. Tax rates influence where people decide to invest in homes and businesses. A conclusion to be drawn from the experts' testimony at hearing is that Sandy Township's current success and future success are directly linked to its attractive rates of local tax.

This conclusion has direct application to the housing market in Treasure Lake. Local rates are a key factor that informed buyers evaluate when they consider where to purchase a home.

Sandy Township as currently constituted provides housing, employment, retail establishments, churches, entertainment and other social opportunities to the entire spectrum of residents. On the other hand, the opportunities provided by Treasure Lake while extremely attractive are limited to residential and recreational uses. Availability is further limited to the more economically fortunate members of Sandy Township who can afford to purchase and reside in Treasure Lake.

Significant economic distance already exists between Treasure Lake, Sandy Township and Clearfield County residents. Mean household income in Treasure Lake is \$78,800 as opposed to \$58,700 in Sandy Township and \$45,200 throughout Clearfield County. (Mr. Castongway's figures).

The testimony and map of Treasure Lake show that the proposed borough will have approximately 3,000 acres of undeveloped land. In principle, parts or all of this undeveloped acreage could be zoned and used for low income or multi-unit housing, non-residential and

non-recreational purposes. However, this would require a two-thirds vote by the owners of lots in Treasure Lake.

The Committee Majority believes the grant of such approval by the Treasure Lake lot owners so unlikely as to make this argument illusory. The well-kept homes on nicely landscaped lots in Treasure Lake are beautiful. The winding roads of the Treasure Lake subdivision which lead to those homes are charming. The homes are built around attractive golf courses and lakes. These recreational facilities are enhanced by clubhouses, a restaurant, marina and other amenities. Many Treasure Lake residents enjoy an additional sense of security from the limited access and security-controlled gate in and out of their subdivision.

Who would vote to change this? Why should Treasure Lake's owners permit other uses? The surrounding municipalities provide them with all the employment, goods, services, entertainment and other things that everyone needs and wants, but no one wants to live next to.

Treasure Lake lot owners are currently assessed \$830 per year. Petitioners argue that it is inequitable for them to pay both this annual assessment -- which amounts to less than \$70 per month -- and Sandy Township taxes. The Committee Majority disagrees.

The single biggest complaint advanced by the proponents of Treasure Lake Borough against their current status as residents of Sandy Township is fairness. The residents of Treasure Lake believe that they are being taxed twice. They pay taxes to Sandy Township and an assessment to the Treasure Lake Property Owners Association (hereinafter "TLPOA"), but they feel that they do not receive full and fair benefit of those tax dollars principally because the Township does not maintain the roads inside Treasure Lake. To this extent, the Petitioners argue that they are "subsidizing" the balance of Sandy Township and those residents who do not live inside Treasure Lake.

This argument is incorrect.

First, the Treasure Lake property owners' decision to purchase homes and reside inside Treasure Lake was voluntary and informed. Far from inequitable, the Committee Majority finds that the Treasure Lake lot owners are getting a bargain. For an additional \$70 per month, they live in a private gated community that is among the nicest in western

Pennsylvania. They also live in one of the most successful townships in western Pennsylvania and receive that benefit.

Treasure Lake's expert witness Dr. Weir asserted that its residents are "paying twice." Treasure Lake residents may be paying two sets of bills, but those bills are for two different obligations. The first is their tax obligation as residents of Sandy Township. The second bill is their assessment as residents and members of their private, gated community. The public at large shares the responsibility and benefit of the tax dollars. Only Treasure Lake property owners enjoy the benefits of Treasure Lake.

Some proponents of incorporation called this "double taxation." It is not. Local real estate and school taxes are indeed taxes. The property owner's annual assessment is nothing more than a bill due under a private agreement payable by one private party to another private party.

Local taxes fund the local budget and advance the public good. The property owners' assessment funds the budget of their private organization for purposes that benefit the Treasure Lake property owners exclusively.

Road maintenance is their largest and most visible financial grievance. But even Treasure Lake's expert witness Dr. Weir agreed that the Township is prohibited by law from maintaining private roads.

If this is truly a problem and \$70 per month is too much, then a simpler and less radical solution exists: Remove the gates, dedicate the roads to the township and let the township take over the roads.

Surely, this solution has occurred to those governing and representing the TLPOA at some point during the 44 years of its existence. That the solution has not been implemented indicates that exclusion of the general public and other factors are more important.

The right to an independent and self-governing political voice is among the strongest arguments advanced by the petitioners. "No taxation without representation" resonates in the American breast. The Petitioners see themselves as a political unit distinct from Sandy Township. They seek the right to pursue their individual interests and govern themselves. They believe that this will ensure that their tax dollars are spent only on their municipality.

The principles behind this argument are unassailable. However, the facts and reasoning advanced in its support are flawed.

The Committee Majority finds that the best interests and future success of Sandy Township and Treasure Lake are linked. If the Petition were granted, the Borough of Treasure Lake would continue to rely upon and derive benefit from Sandy Township's public infrastructure and the entire spectrum of social and economic resources which Sandy Township's infrastructure enables.

"One man, one vote" is just as compelling and more fundamental to our democracy. The residents of Treasure Lake have the right to vote in all Sandy Township's municipal elections. They already have a fair and equal political voice. A consequence of the right to vote and citizenship is the obligation to work within the framework of our law and to live with the consequences of our democratic decisions. The residents of Treasure Lake have an equal vote in the selection of Sandy Township's government officials. Those officials in turn allocate Sandy Township's resources. Treasure Lake residents already have a full, fair and equal political voice.

A competing demand for a voice has been raised by the residents of Sandy Township. If the Petitioners are successful, the question of Treasure Lake's incorporation as a borough will be decided by a referendum of voters in the proposed borough. The Borough Code does not give the voting citizens of the balance of Sandy Township the right to vote in this referendum. Several people who offered public comment found this mechanism unfair. The Chair sees their point. However, Sandy Township and its residents do have and are exercising their right to oppose the Petition to Incorporate. The legislature chose not to give them a vote but did give them the right to a full hearing before the Borough Advisory Committee, the right to address the Committee at those hearings and the right to be heard by the Court at the proceeding which follows submission of the Committee report.

The Committee Majority finds that the incorporation of Treasure Lake as a borough would be unfair, not just to the other residents of Sandy Township, but also to adjoining municipalities. Treasure Lake's inhabitants get direct and immediate benefit from their tax dollars every time they exit the Lake to travel anywhere else, shop, work, worship, take their kids to school, go to the doctor ... and so forth. They use and depend on its resources daily. They should help pay for them.

Many of these activities occur in the City of DuBois. Sandy Township residents do not pay local taxes to the City of DuBois, but they do offer open and free reciprocity to the taxpayers of DuBois when they leave the city to travel, shop, work and enjoy the other resources of Sandy Township.

This is a critical fault in the Petitioner's position. Treasure Lake does not offer free and open reciprocity and will not if it becomes a borough. The plan is to keep the gates up, the roads private and the general public out. While that is a permissible exercise of private property rights, it would be an unconstitutional and socially undesirable exercise of power by a municipal corporation.

Therefore, the Committee Majority finds that the incorporation of Treasure Lake as a borough is undesirable and recommends against it. In so holding, the Committee Majority makes the following Findings of Fact:

## FINDINGS OF FACT

1. Treasure Lake is a privately owned and gated community located in Sandy Township, Clearfield County, Pennsylvania.

2. The Website maintained by the proponents of the Treasure Lake Borough petition states that the roads and other amenities will remain privately owned by the TLPOA if the petition to incorporate as a borough is granted. Slide 11 of Petitioners' "Borough Petition Reference Notebook" states that removal of the gates and public dedication of roads is, "Not viable or recommended." Dr. Weir, the Petitioners' municipal expert, corroborates this on page 27 of his December 15, 2011 report.

3. The conclusion to be drawn from the foregoing information and the testimony is that the real estate and other facilities comprising Treasure Lake will remain a privately owned, gated community if the petition is granted, notwithstanding its incorporation as a public municipal entity.

4. Treasure Lake was established in 1968. Subdivision and land use in Treasure Lake are governed by a Declaration of Restrictions dated May 28, 1968 and recorded in Clearfield County Miscellaneous Book 146, page 476. Excluded from those restrictions are the golf courses, lakes, campgrounds and timeshare buildings. Lots may only be developed

for single-family dwellings. Residential use is further restricted by setbacks, building and material specifications and other regulations designed to foster and preserve an attractive, upscale residential neighborhood.

5. Treasure Lake contains 8,044 acres. Approximately 3,000 acres are undeveloped. Inspection of the map of Treasure Lake shows that this undeveloped acreage encircles the developed area of Treasure Lake. Thus, the undeveloped acreage provides a natural barrier to the rest of Sandy Township and insulates it from the non-residential and non-recreational uses which the Treasure Lake development seeks to exclude.

6. Treasure Lake contains 2,044 lots improved with single-family residences.

7. The 2010 census states that Sandy Township had 10,625 residents, 3,861 of which lived in Treasure Lake. Consequently, 36% of Sandy Township's 2010 residents resided in Treasure Lake and the remaining 64% lived outside of Treasure Lake.

8. Sandy Township has 4,241 households. One thousand four hundred ninety five of those households are located in Treasure Lake. The relative proportions are consistent with the foregoing statistics. Thirty-five percent of Sandy Township's households are in Treasure Lake.

9. Total assessed value of real estate in Sandy Township for local tax purposes is \$124,000,000. Fifty million five hundred thousand dollars of that value is in Treasure Lake. That represents 41% of Sandy Township's total assessed tax values.

10. Three thousand acres of Treasure Lake's total area has been non-taxable since 2002. These 3,000 acres are the private property of the Treasure Lake Property Owner's Association. The removal of this acreage from Sandy Township's tax basis resulted in a \$252,000 reduction in annual tax revenue. This reduction directly benefits the residents of Treasure Lake to the detriment of Sandy Township's other residents.

11. Sandy Township comprises 52.8 square miles. Treasure Lake comprises approximately 34% of that area.

12. Sandy Township has 70 miles of township roads outside of Treasure Lake.

13. Treasure Lake contains approximately 90 miles of privately owned roads. They are maintained by the TLPOA.

14. A fire station is also located in Treasure Lake. The building and lot are owned by TLPOA, which leases them to Sandy Township.

15. Five entrances to Treasure Lake exist. However, only two are used. The principle entrance is gated and staffed by TLPOA's private security 24-hours per day. An automated gate regulates the other entrance.

16. The Treasure Lake property is not open to the general public. Access is granted only to Treasure Lake property owners, their guests and those seeking to use the golf courses and other amenities which are open to the public.

17. All those seeking admittance who do not have a Treasure Lake sticker on their vehicles must stop at the gate for clearance by TLPOA security.

18. TLPOA security also regulates traffic on Treasure Lake's private roads.

19. With the exception of traffic control, the Sandy Township Police, assisted by the Pennsylvania State Police, provide law enforcement in Treasure Lake.

20. A number of years ago, the chief of Sandy Township Police required that its police officers make at least one tour through Treasure Lake per shift. This policy is still in effect.

21. Since land use in Treasure Lake is restricted to residential occupancy, except for those who work for the TLPOA's security, golf courses and other amenities, Treasure Lake is prohibited from providing employment opportunities to its residents by its own by-laws.

22. A small strip mall is located a short distance beyond the main gate. Treasure Lake property owners pick up their mail in a portion of this mall.

23. The mall building and the portion of Treasure Lake open to private commercial use is wholly inadequate to provide for the reasonable retail, medical, professional, spiritual, cultural, social and other needs of the residents of Treasure Lake. Consequently, they must depend on stores, offices, schools, churches, hospitals, etc. outside of the Treasure Lake property for virtually all of their employment, shopping, health care, educational and other needs.

24. Treasure Lake is identified as a separate census unit by the U.S. Government, and residents vote at the Treasure Lake fire station.

25. These facts better define a neighborhood, precinct, ward or subdivision than a borough.

26. The Committee Majority does not find that separate status for census and voting are necessarily equivalent to a separate and self-sustaining municipal unit such as a borough.

27. Police and fire protection are of paramount importance to any community.

28. The governing statute directs that in the event that a new borough is created, Sandy Township and the new borough of Treasure Lake are to divide assets. Id. §45202.3. This division would include police and fire vehicles and related equipment.

29. However, the evidence at hearing did not establish that either of the resulting municipalities would have adequate resources to maintain the current level of services or to address their future needs. Clearly, Sandy Township would not have adequate assets because of the transfer of resources to Treasure Lake.

30. The Committee majority finds it likely that the resulting municipalities will have inadequate resources and will consequently have to either reduce services, increases taxes or some combination of both.

31. Committee member Brady LaBorde is a retired Chief of the Sandy Township Police.

32. Mr. LaBorde advises the Committee that at least six full-time police officers are necessary for any community to provide 7-days per week, 24-hours per day police coverage. At current rates, this will require the municipal unit to incur at least \$600,000 of payroll and other employee expenses. That amount does not include police cruisers, weapons and other equipment.

33. Several witnesses and members of the public suggested that Treasure Lake's private security assisted as necessary by the Pennsylvania State Police would suffice for all traffic and other law enforcement needs. The Committee Majority disagrees. The number of Pennsylvania State Troopers is at a recent low. Closing State Police barracks is also under consideration. This will create serious gaps in personnel. Just as importantly, Treasure Lake's private security officers do not possess police power.

34. The suggestion that the limited powers of private security assisted by Pennsylvania State Police will suffice for Treasure Lake's law enforcement conflicts with statements from a number of witnesses and public commentators. These individuals wanted enhanced law enforcement and increased police presence in Treasure Lake.

35. The Committee Majority did not hear evidence that a crime problem exists in Treasure Lake. The Majority finds that the current arrangement is effective.

36. Terry A. Cline testified on behalf of Treasure Lake. He is in charge of Treasure Lake security. On cross, Mr. Cline conceded that the Pennsylvania State Police prefer that municipalities have their own police forces. He also agreed that a local police force does a better job.

37. David Singer testified on behalf of Treasure Lake. He currently chairs Treasure Lake's safety commission. Mr. Singer has an extensive background in law enforcement.

38. Mr. Singer offered his opinion that Treasure Lake could continue to maintain its current level of police service if it became a borough. However, he offered no detailed budget or staffing analysis to support his opinion.

39. Like many witnesses as discussed below, Mr. Singer suggested that better and less expensive law enforcement could be achieved if this public function were "regionalized."

40. The Committee Majority understands the concept of "regionalization" to mean two or more municipalities combining to provide various public services jointly, such as law enforcement, zoning, fire protection, etc. The proponents hope that these combinations will create economies of scale and other benefits.

41. The Committee Majority does not believe that argument is applicable. Why would it make good sense on any level to divide law enforcement between Sandy Township and the new Treasure Lake Borough and then "regionalize" either or both police forces?

42. Treasure Lake does not have a system of fire hydrants. All water used to extinguish fires must be pumped from the lakes or other sources and transported to the scene of the fire.

43. Neither the Treasure Lake nor the City of DuBois fire companies owns the necessary tanker trucks.

44. Sandy Township has five fire tankers. If the borough petition were granted, these would be divided with the new borough. However, the number may still be insufficient.

45. Committee member Mark Sullivan has many years experience with Sandy Township fire companies. He observed that Treasure Lake has difficulty attracting sufficient volunteer fire fighters. Additionally, many of the volunteers work outside of and at a distance from Treasure Lake. These individuals are not immediately available to respond to emergencies.

46. John Kelcey, Chief of the DuBois Fire Department testified on behalf of Treasure Lake. He discussed the mutual aid understanding with Sandy Township. He stated that the understanding is verbal.

47. He testified that the DuBois Fire Companies have in the past and will in the future assist both Sandy Township and Treasure Lake with fires and other emergencies. He stated that the fire companies from various municipalities frequently borrow equipment and manpower.

48. The Committee Majority finds that it is unwise and inequitable for the proposed borough to skimp on these vital services and rely upon the goodwill of its neighboring communities and the Commonwealth of Pennsylvania for its law enforcement and fire protection needs.

49. Richard Castongway testified on behalf of Sandy Township. He is the Sandy Township Manager.

50. In regard to emergency services, Mr. Castongway testified that Sandy Township has its own emergency management center. This center compliments, rather than duplicates, Clearfield County's EMS center in Clearfield.

51. Sandy Township's strong and well-equipped police force and volunteer fire companies, combined with a local EMS center, exert a direct positive impact on public safety and insurance rates for all residents of Sandy Township, including Treasure Lake.

52. Mr. Castongway testified that Sandy Township's annual budget has ranged from \$3.4 to \$3.5 million dollars. Most of that revenue is provided by the township real estate and earned income taxes.

53. Mr. Castongway testified that Sandy Township's revenues would be reduced by more than \$1.3 million dollars if Treasure Lake becomes a borough.

54. Treasure Lake's expert witness collaborated with Mr. Castongway's estimate.

55. However, the Committee Majority accepts the opinion and analysis offered by Michael J. Catalano, CPA, CVA of Catalano, Case, Catalano & Fannin. Mr. Catalano's December 8, 2011 report on page 15 calculates the loss of tax revenues to Sandy Township to be \$1,498,788.00. The Committee Majority accepts Mr. Catalano's calculation as definitive because it is based upon audited financial statements which he and his firm prepared for Sandy Township in 2009 and 2010. Mr. Catalano expressed an unqualified opinion that those audited financial statements were a fair and accurate presentation of Sandy Township's financial condition. (See page 1 of the Catalano report.) The Committee Majority further recognizes Mr. Catalano's many years of successful practice as a Certified Public Accountant and as an auditor of municipalities.

56. Pennsylvania limits the maximum tax rate which townships can charge to 14 mills. Boroughs are authorized to charge up to 30 mills. Townships can increase their tax rate to 19 mills for 1 year with court approval.

57. Mr. Castongway testified that Sandy Township's residents currently pay an attractive 12.5 mills in annual real estate taxes. However, if Treasure Lake were incorporated as a borough, the tax burden of the remaining residents of Sandy Township would have to be increased to 33.69 mills to maintain the current level services.

58. The alternative would be a significant reduction in services provided by the township. Staff reductions in the township police force, road crew and administration would be inevitable. These reductions would jeopardize public safety, welfare and the success of the township.

59. Road maintenance is a significant expense for Sandy Township and for the residents of Treasure Lake. Many Treasure Lake residents complain because they do not receive public tax dollars to maintain their private roads inside Treasure Lake.

60. That statement while true is not persuasive. Public money cannot be spent to maintain the private roads inside Treasure Lake. If this is a significant grievance, a more focused and better solution is available: Remove the gates, transfer the Treasure Lake roads to Sandy Township and open them to the public. In addition Treasure Lake residents directly benefit from Sandy Township's road system every time they travel to and from their properties in Treasure Lake.

61. Safe, efficient, modern and effective infrastructure including but not limited to a road system, benefits all members of a community even if individual members of the community never use specific items of the infrastructure, or only use certain items occasionally, or only benefit from them indirectly.

62. As pointed out by Jerry Cross of the Pennsylvania Economic Legal, who testified on behalf of the Township, "Taxes are mandated to be uniform. Services are so not mandated."

63. Petitioners' expert Dr. Weir and Mr. Cross on behalf of the township estimated that incorporation of Treasure Lake would reduce Sandy Township's revenues by \$1.3 million. The impact of incorporation would be significantly more dire if they had used Mr. Catalano's calculation of a \$1.49 million reduction.

64. Mr. Castongway estimated that the millage paid by the remaining residents of Sandy Township would have to be increased to 33.68 mills in order to maintain the current level of services. This would mean a 200% increase in the burden of local taxes and would exceed the maximum millage which a township can charge by almost 20 mills.

65. Jerry Cross estimated that Sandy Township taxes would require an increase to 29 mills in order to replace the loss of revenue from Treasure Lake.

66. Several witnesses noted that with Court permission, townships can increase their maximum tax rate to 19 mills. However, this increase must be done annually. It is a temporary, not a permanent solution.

67. The Petitioner's expert Dr Weir suggested that the township could convert to a third class city or adopt a Home Rule Charter. These changes would enable the township to lawfully increase its tax rates.

68. Dr. Weir also suggested that the remaining township could share services -- regionalize. He noted the trend toward consolidation of services among municipalities.

69. As explained in Finding 41, the Committee Majority finds these recommendations undesirable. Why divide a successful township that is providing services comparable to a borough at a significantly reduced tax rate? The suggestion is further weakened when one considers that, in Dr. Weir's view the resulting municipalities will likely have to regionalize in order to provide adequate essential and non-essential services.

70. Counsels for both parties focused much of their energies on the impact which the incorporation of Treasure Lake Borough would have on what remained of Sandy Township. Regrettably less effort was made to describe the new borough, how it would function, and indeed, if it could function as successfully as it had when it was a part of Sandy Township.

As the proponent of incorporation this was the Petitioner's responsibility.

71. Neither parties' expert spent much effort analyzing the proposed borough's budget. Mr. Cross' discussion on behalf of the township is actually longer of that of Dr. Weir's. (Cross Report 4 -14 to 4 -17; Weir Report pages 15 & 16).

72. The Committee Majority finds that calculation of the proposed borough's tax revenue is straightforward and reliable because it is based in large part on established assessed real estate values and the income of current residents.

73. On the other hand, the Committee Majority finds that the presentations of the proposed borough's expenditures are inadequate and unsatisfactory. Neither expert provides sufficient explanation of how they arrived at the various categories of expenditures and more importantly the amounts to be spent. The estimated budgets balance, but the reports do not offer sufficient assurance to the Committee Majority that the estimates of expenditures are realistic and accurate.

74. Dr. Weir briefly addressed the new borough of Treasure Lake's ability to succeed. He said that \$1.3 million in taxes "should be enough." He added that the new borough could also use money currently charged as private assessments. Dr. Weir did acknowledge on cross-examination that taxes could go up for the residents of the new borough.

75. Mr. Cross' report on page 4 -15 estimates that \$205,500 will be required as start-up costs for the new borough. Dr. Weir allowed only \$50,000 for start-up costs on page 16 of his report. Neither experts' report nor their testimony provided any detail to explain or support their estimates. The Committee Majority believes that the new borough would spend \$100,000 in its first three months on attorney and consultant fees alone.

76. The Committee Majority finds this \$205,500 to be unrealistically low. The Majority will not imperil a successful municipality on the basis of scant financial analysis.

77. Dr. Weir also said on cross-examination that Sandy Township currently provides a higher, more "borough like" level of services. This description also appears at the bottom of page 25 in his report. The Committee Majority takes this as a compliment of the township's current level of services. One can infer from this compliment that Sandy Township is being well managed and well governed.

78. As another alternative to the financial predicament that incorporation of Treasure Lake would create for Sandy Township, Dr. Weir suggested that the township fund its general budget with monies from its municipal authority. Sandy Township's counsel questioned the legality of this suggestion.

79. The Committee Majority has serious concerns about the long-term wisdom of this suggestion. Municipal authorities need to build significant capital reserves in order to pay for periodic maintenance, upgrade and replacement. Waterlines, sewer lines, treatment plants, reservoirs and wells are extremely expensive, and their cost is ever growing. The expedient of robbing Peter to pay Paul never succeeds. If any further argument would be necessary, consider what a similar stratagem to fund the federal budget has done to the Social Security system?

80. These reduction in public safety and general welfare would also have a direct impact on the residents of the newly created Treasure Lake borough. Their welfare and prosperity is directly linked to that of Sandy Township even if they do not remain part of the same municipal unit. The residents of Treasure Lake must travel over Sandy Township roads each and every time they leave their property. They rely upon many businesses and organizations in Sandy Township to supply them with employment, goods, services and the other things that sustain them and the high property values in Treasure Lake. If Sandy Township declines, it will take Treasure Lake with it.

81. By way of note, Treasure Lake's water and sewer services are privately owned. This component did not appear to be a matter of concern for either party.

82. Petitioners offered the testimony of Dan Johnston. He is a Certified Public Accountant and currently serves as the Chief Financial Officer of Treasure Lake. Mr. Johnston has also served on the Property Owner's board. He testified that the TLPOA's finances have improved considerably during recent years. However, the TLPOA continues

to suffer from a collection problem of its annual assessments. He said that \$3.4 million of assessments went uncollected in 2011. That number ballooned in 2012 to \$4.4 million.

83. Petitioners complain of a double and therefore unfair burden of township taxes and their annual assessments by the TLPOA. As stated above, the Committee Majority does not find the total amount to be either unduly high or unfair. The Committee Majority also sees a more efficient and more equitable solution: Enforce assessment collections.

84. The residents and owners of property in Treasure Lake are solely responsible for the financial future of their private residential development. This is true whether or not the Petition to Incorporate is granted.

85. Both Mr. Johnston and Dr. Weir acknowledged that collections have been a perennial problem for Treasure Lake. The largest portion of the problem is attributed to 10 or 11 speculators who own a great many of the undeveloped lots. This may explain the assessment problem, but it does not advance their case to incorporate as a borough.

86. The Committee Majority finds that Petitioners' allegations of unfairness are more properly directed to their fellow property owners inside Treasure Lake who do not pay their assessments. Since Treasure Lake is a privately owned and managed residential development, this problem is also the "property" of the private owners.

87. Creation of a new borough will not solve the collection problem, but it will cause both a tax increase and a reduction of services to Sandy Township.

88. Petitioners assert that Sandy Township could survive successfully post-incorporation if it "right-sized."

89. However, many of any municipal corporation's cost are fixed. Sandy Township will have the same number roads to maintain post incorporation. Sandy Township will be confronted with the same weather conditions and traffic burdens. Its municipal authority will have the same number of customers. Mr. Cross estimated that the township could save approximately \$600,000 by right-sizing. That is \$800,000 short of the revenue gap calculated by Mr. Catalano.

90. Mr. Cross made an astute observation in regard to regionalization. He said that regionalization of services will not work unless the tax base is also regionalized. This

case illustrates the friction caused by different perceptions of how and where public benefits are conferred and who pays for them.

91. These weaknesses in the Petitioners' position were well described by one of the public commentators. He observed that incorporation of Treasure Lake would, "Create another small and inefficient municipality competing for scarce tax dollars."

92. The Committee Majority readily acknowledges that Treasure Lake is populated by many wonderful, energetic and talented people. They have done a creditable job managing their development over the years. With extra work and expenditures, they should be able to establish a new borough. The combination of local tax revenue and benefits conferred by the property owners' assessments may provide sufficient funding. If those sources do not, then as a borough, Treasure Lake can increase the tax burden imposed on its residents to 30 mills -- more than double what they now pay.

93. However, these observations beg the ultimate issue: Is the creation of a new borough desirable?

94. The Committee Majority finds that it is not.

95. The Committee Majority finds that the residents of both entities will likely see significant tax increases.

96. The Committee Majority finds that the residents of the new borough will likely see a more significant increase in their tax burden. The residents of Treasure Lake are accustomed to a high standard of services. They are likely to demand this level in the future. The smaller borough will lose the economies of scale and other efficiencies that Sandy Township enjoys as a larger entity. Treasure Lake will also lack tax revenue from retail, other commercial and industrial taxpayers that Sandy Township receives. Commercial residents are typically self-sustaining. Commercial entities require less public support than individual residents who require human services.

97. In regard to Subsection (1) of the Borough Advisory Statute, Id. §45202(b)(1), the Committee Majority finds that Petitioner has failed to establish by a preponderance of the evidence the proposed borough's ability to obtain or provide adequate for reasonable community support services. The testimony and documentary evidence are noteworthy for a virtual lack of evidence regarding any community service or administrative organization other than police and fire protection. For example, no discussion of a zoning board or code

was made. No building codes or code enforcement officers were mentioned. No plans for an administrative building and staff had been made. Equipment needs were not specified. In short, the Petitioners did not provide the Committee with a clear understanding of what the resulting borough would look like and how it would function.

98. This lack of planning and organization will interrupt the high level of public service to which the residents of Treasure Lake have become accustomed. Public safety, welfare and convenience will be jeopardized.

99. The geographical boundaries of the proposed borough would be identical with the boundaries of Treasure Lake as currently defined. The Committee Majority is troubled that no provision for public spaces within the confines of the private residential development are planned. Presently none exist. Therefore, the Committee Majority concludes that the result would not be a public entity at all, but rather a private entity availing itself of public status to perpetuate its private ends to the detriment of its municipal neighbors.

100. Subsection (2) of the Borough Advisory Statute asks the Committee to consider whether the proposed borough constitutes a "Harmonious whole with common interests... and represents a distinct community with features different from those of the existing township." Id. §45201.1(b)(2).

101. Treasure Lake is certainly visible as a distinct unit on the map. It has been for 44 years. Incorporation of Treasure Lake as a borough will not affect Sandy Township in regard to its geography or movement via its roads. Through transit has always been prohibited by Treasure Lake's limited access and gates.

However, the Committee Majority does not find that Treasure Lake constitutes a "whole." Few communities apart from cities provide everything their residents need. However, Treasure Lake provides only residential and limited recreational opportunities. Treasure Lake residents depend on Sandy Township and its neighboring communities for everything else. To this extent, Treasure Lake's residents have been, are and should be a part of Sandy Township. Their needs are the same as those of Sandy Township's other residents. If there were differences, there would be more in Treasure Lake than just private homes, two golf courses, two lakes and their amenities.

The Committee Majority finds nothing that warrants a division of Sandy Township into two municipalities.

102. The Committee Majority finds that the proposed borough has only very limited existing commercial activity and has no industrial development, nor does Treasure Lake contain any public service or non-profit organizations such as schools, churches, or hospitals. These uses are also prohibited by its restrictive covenants. The Committee Majority further finds that the proposed borough has little realistic potential for future commercial or industrial development. Id. §45202(1)(b)(3).

103. Therefore, the Committee Majority finds that the proposed borough will not comply with Pennsylvania's "Fair Share Doctrine." Treasure Lake's restrictive covenants limit its development to single family residences with a few recreational and vacation facilities in the form of golf courses, lakes, campsites and condominiums. This private zoning is exclusionary to the extent that all other uses are impermissible.

104. The Committee Majority does not find that "The proposed borough would provide for land use regulations to meet the legitimate needs of all categories of residents..." Id. §45020(1)(b)(4). Some may suggest that Treasure Lake does not need public land use regulation. Its land use is adequately addressed by private covenants.

105. The Committee Majority does not believe that the substitution of rules established by private contracts are equivalent to publicly enacted and enforced laws. More importantly, the Majority finds that land use in Treasure Lake is above all restricted to those desiring and able to afford a house there.

106. Treasure Lake does have approximately 3,000 acres of undeveloped land. Ms. Brennan has pointed out that only 1,300 acres actually have potential for development. However, two-thirds of the property owners in Treasure Lake must first agree to the development. As stated in the Summary of this report, development is highly unlikely. These 3,000 acres encircle the residential area and provide a forested form of insulation and buffer against all the activities and land uses which Treasure Lake's restrictive covenants exclude.

107. A Committee member pointed out that approximately 20 owners rent their properties to tenants who receive Title Eight vouchers which subsidize their rent. That number is not a significant portion of the 1,495 households in Treasure Lake.

108. Mr. Castongway testified that mean household income for Treasure Lake is \$78,800 per year. That of the township is \$58,700 per year. The mean household income of Clearfield County as a whole is \$45,200. Incorporation of a new borough would only tend to increase these economic distances. The Committee Majority finds that incorporation of the proposed borough would produce the negative results described in the Statute at subsection (b)(4). Id 45202.1(b)(4).

109. As discussed in many of the Findings above, the Committee Majority finds that incorporation of the proposed borough would have definite and significant negative impacts on Sandy Township. The new borough will be confronted with the necessity of raising taxes to provide even essential services.

110. The Petitioner's Notebook and website state that gated, limited access regulated by security personnel will continue after incorporation of the new borough. The Committee Majority shares Sandy Township's concern that such limited access to what would be incorporated as a public entity is unconstitutional. Americans cherish their freedom to come and go without unreasonable hindrance, question and clearance by private security or public law enforcement. Constitutionality aside, gated checkpoints are inimicable to a free and open society and therefore undesirable from the public perspective.

## RECOMMENDATIONS

1. The Committee Majority recommends that the Petition to Incorporate Treasure Lake as a borough be denied because its consequences on every level of legitimate examination would be undesirable.

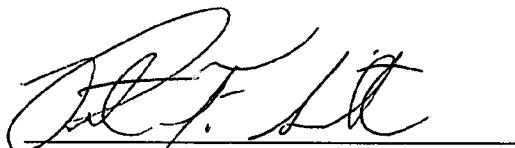
2. The Committee Majority recommends an immediate end to this litigation. This controversy has consumed precious municipal and private energy and funds. One commentator said the each party has spent more than \$200,000 in counsel fees. This money could be much better spent, or better still, not spent at all and returned the citizens through lower taxes and/or assessments.

3. The Committee Majority recommends that the residents of Treasure Lake refocus their resources. Vigorous pursuit of lot owners who do not pay their assessment is one solution. An open discussion of whether or not to dedicate all or a portion of the roads

in Treasure Lake to Sandy Township should also be considered if road maintenance is truly a driving grievance behind this litigation.

4. A Committee member observed that Treasure Lake residents vote in higher numbers than the balance of voter in Sandy Township. The Committee Majority recommends that the individual residents of Treasure Lake and their Property Owner's Association identify and elect public officials who best represent their collective interests within the existing framework of Sandy Township.

Respectfully submitted,

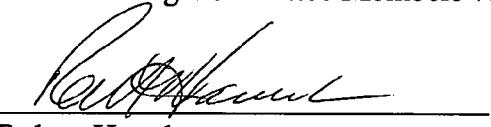
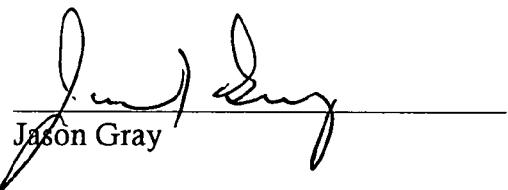
  
Peter F. Smith, Chairman

Date: 11/13/2012

The Committee Members voting in favor of the foregoing report are:

  
Peter F. Smith  
Brady LaBorde  
Mark Sullivan

The following Committee Members voted against the foregoing report:

  
Robert Hanak  
Jason Gray

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

IN RE: : NO: 2008-1814-CD  
INCORPORATION OF THE :  
BOROUGH OF TREASURE LAKE :  
: TREASURE LAKE PROPERTY OWNERS :  
ASSOCIATION, INC., RICHARD :  
REHERMAN and WILLIAM REZNOR, :  
Petitioners, :  
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NOV 21 2012  
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William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF SERVICE**

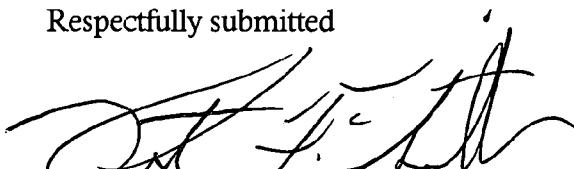
I, Peter F. Smith, Chairperson of the Borough Advisory Committee, certify that I sent true, correct and certified copies of the **REPORT OF THE TREASURE LAKE ADVISORY COMMITTEE** and the **MINORITY REPORT OF THE TREASURELAKE ADVISORY COMMITTEE** to Attorney Michael P. Yeager, counsel for the Petitioners and Attorney Gregory M. Kruk, counsel for the Respondents by U.S. First Class Mail, Postage Prepaid at the following address on November 21, 2012:

Michael P. Yeager, Attorney  
110 North Second Street  
P. O. Box 752  
Clearfield, PA 16830

Gregory M. Kruk, Attorney  
Ferraro, Kruk & Ferraro, LLP  
690 Main Street  
Brockway, PA 15824

Courtesy copies were also faxed to each Attorney's office: To Mr. Yeager at (814) 765-9503 and Mr. Kruk at (814) 265-8740.

Respectfully submitted

  
Peter F. Smith, Chairman  
P.O. Box 130, 30 South Second St.  
Clearfield, PA 16830  
(814) 765-5595 - telephone  
(814) 765-6662 - fax

Dated: November 21, 2012

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

IN RE: : NO: 2008-1814-CD  
INCORPORATION OF THE :  
BOROUGH OF TREASURE LAKE :  
TREASURE LAKE PROPERTY OWNERS :  
ASSOCIATION, INC., RICHARD :  
REHERMAN and WILLIAM REZNOR, :  
Petitioners, :  
S NOV 27 2012

FILED

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No CC

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CERTIFICATE OF SERVICE

William A. Shaw  
Prothonotary/Clerk of Courts

I, Peter F. Smith, Chairman of the Borough Advisory Committee, certify that I sent true, correct and certified copy of the **ORDER dated November 21, 2012** to Attorney Michael P. Yeager, counsel for the Petitioners and Attorney Gregory M. Kruk, counsel for the Respondents by U.S. First Class Mail, Postage Prepaid at the following address on November 21, 2012:

Michael P. Yeager, Attorney  
110 North Second Street  
P. O. Box 752  
Clearfield, PA 16830

Gregory M. Kruk, Attorney  
Ferraro, Kruk & Ferraro, LLP  
690 Main Street  
Brockway, PA 15824

Robert M. Hanak, Esquire  
Hanak, Guido & Taladay  
P.O. Box 487  
DuBois, PA 15801

Mark Sullivan  
P.O. Box 1112  
DuBois, PA 15801

Brady LaBorde  
45 Piney Lane  
DuBois, PA 15801

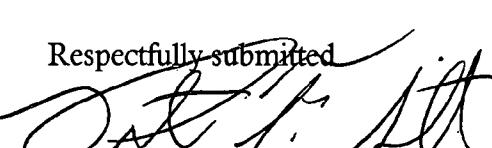
Jason Gray, Jr.  
P.O. Box 712  
DuBois, PA 15801

Jodi Brennan, Director  
Clearfield Co Planning Committee  
212 East Locust Street  
Clearfield, PA 16830

I also certify that I sent true and correct copy of the **ORDER dated November 21, 2012** to the Treasure Lake Advisory Committee U.S. First Class Mail, Postage Prepaid at the following address on November 21, 2012:

Dated: November 26, 2012

Respectfully submitted

  
Peter F. Smith, Chairman  
P.O. Box 130, 30 South Second St.  
Clearfield, PA 16830  
(814) 765-5595 - telephone  
(814) 765-6662 - fax

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

IN RE: INCORPORATION OF THE BOROUGH \* NO. 08-1814-CD  
OF TREASURE LAKE \*

TREASURE LAKE PROPERTY OWNERS \*  
ASSOCIATION, INC., RICHARD REHERMANN \*  
and WILLIAM REZNOR, \*  
Petitioners \*

**ORDER**

NOW, this 21<sup>st</sup> day of November, 2012, it is the ORDER of this Court that the Borough Advisory Committee has completed its duties; the members of the Committee are now at liberty to discuss the matter and issues in public and with the news media.

BY THE COURT,

/S/ Fredric J Ammerman

**FREDRIC J. AMMERMAN**  
President Judge

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

NOV 21 2012

Attest.

*W. E. Ammerman*  
Prothonotary/  
Clerk of Courts

CA

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

IN RE: INCORPORATION OF THE BOROUGH \* NO. 08-1814-CD  
OF TREASURE LAKE \*

TREASURE LAKE PROPERTY OWNERS \*  
ASSOCIATION, INC., RICHARD REHERMANN \*  
and WILLIAM REZNOR, \*  
Petitioners \*

**ORDER**

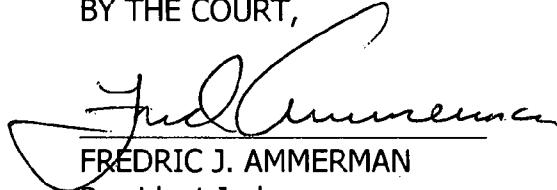
**FILED**  
DEC 11 2012  
11:45 AM  
William A. Shaw  
Prothonotary/Clerk of Courts  
Court to Att'y's Office  
Kruik

NOW, this 10<sup>th</sup> day of December, 2012, it is the ORDER of this Court as follows:

1. The Court notes that during the status conference Attorneys for the Petitioners Treasure Lake Property Owners Association, Inc. indicated the intention of continuing the litigation in this case notwithstanding the majority report of the Borough Advisory Committee strongly recommending against the incorporation of Treasure Lake as a borough;
2. The provisions of the Incorporation Statute, 53 P.S. § 45202.2, specifically requires that "[a]fter receiving the findings-of-fact and the advice of the [Borough Advisory] committee, the court shall set a date for a hearing on the proposed incorporation and shall hear the parties interested, which shall include, but not be limited to, the holders of any ownership interest in real property within the limits of the proposed borough, and their witnesses."
3. The parties have indicated they wish to obtain a transcript of the proceedings before the Borough Advisory Committee, which the court reporter has indicated will be completed in approximately 90 days.
4. Accordingly, a pre-trial conference is scheduled for **April 10, 2013 at 1:30 p.m. in Chambers**; and

5. A two day non-jury hearing is scheduled for **May 16 and 17, 2013**  
commencing at 9:00 a.m. each day in Courtroom No. 1, Clearfield County  
Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

IN RE: )

INCORPORATION OF THE BOROUGH )  
OF TREASURE LAKE PROPERTY )  
OWNERS ASSOCIATION, INC., )  
RICHARD REHERMANN and )  
WILLIAM REZNOR, )

Plaintiff, )

) No. 08-1814-CD

**PRAECLPSE FOR ENTRY  
OF APPEARANCE ON BEHALF  
OF PETITIONERS**

Counsel of Record for Petitioners:

James H. Roberts  
PA I.D. No. 21453  
Kathryn L. Clark  
PA. I.D. No. 80201

Eckert Seamans Cherin & Mellott, LLC  
U.S. Steel Tower  
600 Grant Street, 44<sup>th</sup> Floor  
Pittsburgh, PA 15219  
Phone: 412.566.6000  
Fax: 412.566.6099

5  
FILED 2CC Atty  
011.27 cm Roberts by  
FEB 27 2013 Atty Yeager  
William A. Shaw  
Prothonotary/Clerk of Courts  
Copy to CJA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

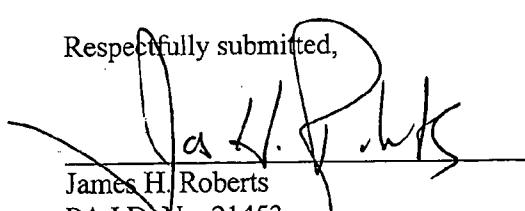
IN RE: )  
 )  
INCORPORATION OF THE BOROUGH )  
OF TREASURE LAKE PROPERTY ) No. 08-1814-CD  
OWNERS ASSOCIATION, INC., )  
RICHARD REHERMANN and )  
WILLIAM REZNOR, )  
 )  
Plaintiff, )  
 )  
)

PRAECIPE FOR ENTRY OF APPEARANCES

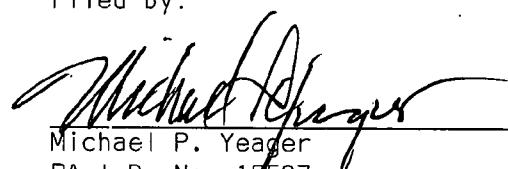
TO THE PROTHONOTARY:

Kindly enter the appearance of James H. Roberts, Kathryn L. Clark and Eckert Seamans  
Cherin & Mellott, LLC on behalf of Petitioners.

Respectfully submitted,

  
James H. Roberts  
PA I.D. No. 21453  
Eckert Seamans Cherin & Mellott, LLC  
U.S. Steel Tower, 600 Grant Street, 44<sup>th</sup> Fl  
Pittsburgh, PA 15219  
Phone: (412) 566-6000

Filed by:

  
Michael P. Yeager  
PA I.D. No. 17587  
P.O. Box 752  
110 North Second Street  
Clearfield, PA 16830  
(814) 765-9611

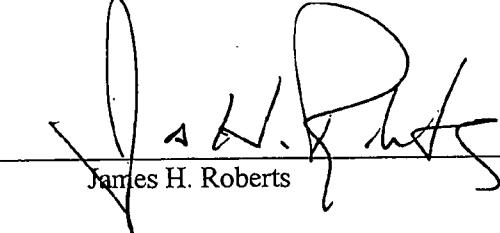
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing  
**PRAECIPE FOR ENTRY OF APPEARANCE ON BEHALF OF PETITIONERS** has been  
served this \_\_\_\_ day of February, 2013, via U.S. First Class Mail, postage prepaid, as follows:

Gregory M. Kruk, Esquire  
Ferraro, Kruk & Ferraro, LLP  
690 Main Street  
Brockway, PA 15824  
*Counsel for Township of Sandy*

Michael P. Yeager, Esquire  
110 N. 2<sup>nd</sup> Street  
P.O. Box 752  
Clearfield, PA 16830-2253

Alan P. Young  
Young & Haros, LLC  
802 Main Street  
Stroudsburg, PA 18360-1602

  
James H. Roberts

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

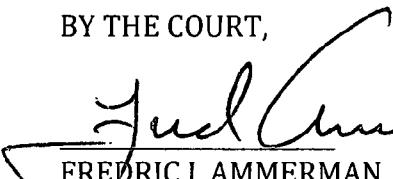
IN RE: INCORPORATION OF THE BOROUGH \* NO. 08-1814-CD  
OF TREASURE LAKE \*

TREASURE LAKE PROPERTY OWNERS \*  
ASSOCIATION, INC., RICHARD REHERMANN \*  
and WILLIAM REZNOR, \*  
Petitioners \*

**ORDER**

NOW, this 12<sup>th</sup> day of April, 2013, following pre-trial conference among the parties and the Court; it is the ORDER of this Court that counsel for Treasure Lake shall provide counsel for Sandy Township with a true and correct copy of the expert report(s) which will be used at time of trial by no later than April 26, 2013. Likewise, counsel for Sandy Township shall provide to counsel for Treasure Lake by no later than May 8, 2013 a true and correct copy of the expert report(s) to be used at time of trial.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

FILED  
04/18/2013  
S APR 15 2013  
William A. Shaw  
Prothonotary/Clerk of Courts

ICC Atts:

M. Yeager  
G. Krul  
P. Smith  
66

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

FILED  
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MAY 03 2013 Aty  
William A. Shaw Kruk  
Prothonotary/Clerk of Courts

In re: Incorporation of the Borough of  
Treasure Lake

Treasure Lake Property Owners  
Association, Inc., Richard Rehmann  
and William Reznor

Petitioners

No. 2008-1814-CD

TYPE OF CASE: CIVIL

TYPE OF PLEADING –  
Praecipe

Filed on behalf of Exceptants

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

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

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

In re: Incorporation of the Borough of :  
Treasure Lake :  
Treasure Lake Property Owners : No. 2008-1814-CD  
Association, Inc., Richard Rehermann :  
and William Reznor :  
Petitioners :

**PRAECIPE**

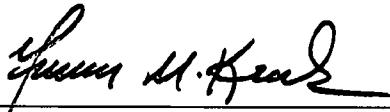
TO WILLIAM SHAW, PROTHONOTARY OF SAID COURT:

Please file of record the disc I am providing to you, which contains documents set forth on the attached "suggested document list."

This is per the Stipulation entered into by the parties at the Committee Hearing as set forth on page 8 and 9 of the transcript of the Committee Hearing, attached, wherein it is stated as follows "the first Stipulation: all documents listed on the suggested document list are admitted as evidence without objection as part of the record in this case."

FERRARO, KRUK & FERRARO, LLP

By:



Attorney for Exceptants

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

**IN RE: INCORPORATION OF THE  
BOROUGH OF TREASURE LAKE** : **No. 2008 – 1814 - C.D.**  
:  
:  
**TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION, INC.,  
RICHARD REHERMANN and  
WILLIAM REZNOR,  
Petitioners** : **Type of Case: Civil  
Borough Incorporation**  
:  
:

**SUGGESTED DOCUMENTS**

Petitioners, Treasure Lake Property Owners Association, Inc. ("TLPOA"), et al., by and through their Counsel, Michael Yeager, Esq. and Alan P. Young, Esq., and Respondents/Objectors, Sandy Township ("S Twp"), et al., by and through their Counsel, Gregory Kruk, Esq. and Scott T. Wyland, Esq., hereby suggest that the Borough Advisory Committee review and consider the admission of the following documents.

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

**1. Miscellaneous maps**

- (a) TL Petition map
- (b) TL undeveloped land map
- (c) S Twp DuBois & TL map
- (d) S Twp without TL map
- (e) S Twp zoning map
- (f) Surrounding area zoning maps
- (g) S Twp map showing City of DuBois, TL PRD, State Game Lands, State Forests and City property in Township.

MAY 24 2012

Attest.

*William J. Ober*  
Prothonotary/  
Clerk of Courts

**2. Relevant provisions of the Borough Code – 53 P.S. § 45201 - § 45219**

**3. TLPOA/TL deeds: (Deeds from Recreation Land Corporation to TLPOA of the following)**

- (a) Roads
- (b) Lakes
- (c) Parks

- (d) Development purchase deed
- (e) TL examples of Deeds for:

- i. Single family lots
- ii. Time Shares
- iii. Campground lots
- iv. UDI interests

4. Covenants and Declarations for all sections of the existing Treasure Lake planned community

5. Articles of Incorporation for the TLPOA

6. Bylaws of the TLPOA

7. TLPOA Security Regulations currently in effect

8. Pleadings/Transcripts/Opinions

- (a) Petition for Incorporation with Exhibits
- (b) Exceptions filed by various parties opposed to the incorporation of TL as a Borough
- (c) Stipulations
- (d) Hearing transcripts
- (e) Opinions

- (i) Clearfield County (J. Ammerman) on the Exceptions
- (ii) Commonwealth Court on the issue of "Freeholders"
- (iii) Exception 4 (Private Borough)

9. Expert Reports

- (a) S Twp - PA Economy League "Independent Analysis of the Fiscal Impact of The Formation of a New Borough in Sandy Township 2011"
- (b) S Twp - Catalano, Case, Catalano & Fanin "Report on Treasure Lake Matter"
- (c) S Twp - Richard Custonguay "Fiscal Impact Analysis"
- (d) TL - Michael Weir Local Government Solutions, LLC "The Potential Impact of The Incorporation of the Borough of Treasure Lake"
- (e) S Twp - Rebuttal PA Economy League "Executive Summary "
- (f) TL - Rebuttal Michael Weir LGS LLC "Sandy Township Can Survive Without \$1.4 Millions In Treasure Lake Dollars"

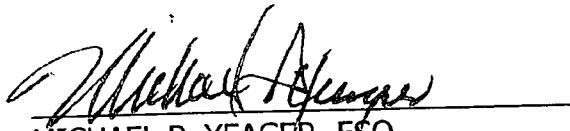
10. S Twp Budgets 2009 to 2011

11. TLPOA Budgets 2009 to 2011

12. S Twp Audits including balance sheets 2009 to 2011
13. TLPOA Audits including balance sheets 2009-11
14. S Twp Comprehensive Plan (disk) incorporating any intermunicipal planning agreements
15. TLPOA Strategic Plan/infrastructure reserve study
16. S Twp Criminal Activity Summary for TL years 2010 and 2011
17. S Twp Union Police Contract ending December 31, 2013
18. S Twp AFSCME Contract ending December 31, 2014

This list may not necessarily constitute a complete listing; and may be supplemented upon agreement of the parties, Borough Advisory Committee, and/or Judge.

Respectfully submitted:



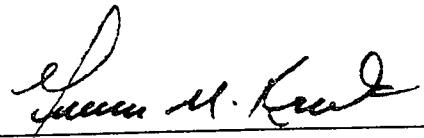
MICHAEL P. YEAGER, ESQ.  
Attorney I.D. No. 15587  
P.O. Box 752  
110 North Second Street  
Clearfield, PA 16830  
(814) 765-9611  
*Counsel for Petitioners*



---

ALAN PRICE YOUNG, ESQ.  
Attorney I.D. No. 27649  
GREGORY D. MALASKA, ESQ.  
Attorney I.D. No. 85524  
Young & Haros, LLC  
802 Main Street  
Stroudsburg, PA 18360-1602  
(570) 424-9800

*Co-counsel for Petitioners*



GREGORY M. KRUK, ESQ.  
FERRARO, KRUK & FERRARO, LLP  
690 Main Street  
Brockway, PA 15824  
(814) 268-2202  
*Counsel for Respondents/Objectors*

1 requested and expressed that you give me your name, phone number  
2 and address to P.O. Box 130 in Clearfield so that I can get you  
3 on a list.

4 There will also be a sign-in sheet that evening. And  
5 if we get through the individuals who register in advance to  
6 comment, I am going to open the floor to anyone else who chooses  
7 to offer their thoughts on any of these issues.

8 Tonight's proceeding will run three hours. I'm  
9 taking up a little bit of Mr. Yeager's time, so I told him that  
10 we'll add that at the end. We might run a little over three  
11 hours this evening. There's a lot of material to go through.  
12 Three hours sounds like a lot of time, but it really isn't when  
13 you're trying to present a case like this. So I plan one  
14 intermission somewhere towards the middle of about 10 minutes,  
15 and then we'll get started again promptly.

16 Mr. Yeager has prepared copies of the written  
17 materials that will be offered into evidence this evening.  
18 They're on the table there at the foot of the stage. There is  
19 also a CD-ROM with other evidentiary material on it. And there's  
20 a few counterparts of the mic, so.

21 The final point that I need to cover before we start  
22 the testimony, the lawyers have presented a number of  
23 stipulations in this case, and I'm about to read those into the  
24 record. They are designed to streamline these proceedings and  
25 relieve both lawyers of the burden of proving these things. It

1 will just expedite things.

2                   The first stipulation: All documents listed on the  
3 suggested document list are admitted as evidence without  
4 objection as part of the record in this case.

5                   2. The individuals who drafted the expert reports  
6 listed as Item 9 on the suggested document list are qualified as  
7 experts in the matters discussed in their reports.

8                   3. Witnesses testifying at the hearing scheduled for  
9 September 24 and the hearing scheduled for September 25 may give  
10 opinions without objection, but the weight given to the  
11 witnesses' testimony is a matter for the committee to determine.

12                  And finally, No. 4. Witnesses can testify from notes  
13 provided the attorneys for the other parties are given copies of  
14 the notes prior to the witnesses' testimony.

15                  We now have an opportunity to listen to two very  
16 capable, well-prepared attorneys do their job. So at this point  
17 I will turn it over to you, Mr. Yeager. Present your case.

18                  ATTORNEY YEAGER: Thank you, Mr. Smith. David.

19                  DAVID S. KING,

20                  having first been duly sworn, was examined and testified as  
21 follows:

22                  DIRECT EXAMINATION

23                  BY ATTORNEY YEAGER:

24                  Q        David, although I'm sure you're reasonably well known  
25 by most of the people in the room, can you tell us who you are.

09/09/13  
IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

IN RE: )  
 )  
INCORPORATION OF THE BOROUGH OF )  
TREASURE LAKE PROPERTY OWNERS ) NO. 08-1814-CD  
ASSOCIATION, INC., RICHARD )  
REHERMANN and WILLIAM REZNOR )

TRANSCRIPT OF PROCEEDINGS  
PUBLIC HEARING  
Day 1 of 3  
at DuBois Area Middle School Auditorium,  
DuBois, Pennsylvania  
on Monday, September 24, 2012

ADVISORY COMMITTEE: PETER F. SMITH, ESQUIRE, CHAIRMAN  
ROBERT M. HANAK, ESQUIRE  
JASON S. GRAY, JR.  
BRADY LABORDE  
MARK SULLIVAN  
JODI BRENNAN

A P P E A R A N C E S :

FOR THE PETITIONER:

MICHAEL P. YEAGER, ESQUIRE

ALAN P. YOUNG, ESQUIRE

FOR THE RESPONDENT:

GREGORY M. KRUK, ESQUIRE

SCOTT T. WYLAND, ESQUIRE

FILED  
09/09/2013  
MAY 09 2013  
cm

William A. Shaw  
Prothonotary/Clerk of Courts

Reported by: Cathy Warrick Provost, RMR  
Official Court Reporter

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

Original

IN RE: )  
 )  
INCORPORATION OF THE BOROUGH OF )  
TREASURE LAKE PROPERTY OWNERS ) NO. 08-1814-CD  
ASSOCIATION, INC., RICHARD )  
REHERMANN and WILLIAM REZNOR )

TRANSCRIPT OF PROCEEDINGS  
PUBLIC HEARING

Day 2 of 3  
at DuBois Area Middle School Auditorium,  
DuBois, Pennsylvania  
on Tuesday, September 25, 2012

ADVISORY COMMITTEE: PETER F. SMITH, ESQUIRE, CHAIRMAN  
ROBERT M. HANAK, ESQUIRE  
JASON S. GRAY, JR.  
BRADY LABORDE  
MARK SULLIVAN  
JODI BRENNAN

A P P E A R A N C E S:

FOR THE PETITIONER:

MICHAEL P. YEAGER, ESQUIRE

ALAN P. YOUNG, ESQUIRE

FOR THE RESPONDENT:

GREGORY M. KRUK, ESQUIRE

SCOTT T. WYLAND, ESQUIRE

FILED

o 9:16 am  
MAY 09 2012

William A. Shaw  
Prothonotary/Clerk of Courts

Reported by: Cathy Warrick Provost, RMR

Official Court Reporter

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

ORIGINAL

IN RE: )  
INCORPORATION OF THE BOROUGH OF )  
TREASURE LAKE PROPERTY OWNERS ) NO. 08-1814-CD  
ASSOCIATION, INC., RICHARD )  
REHERMANN and WILLIAM REZNOR )

TRANSCRIPT OF PROCEEDINGS  
PUBLIC HEARING  
Day 3 of 3  
at DuBois Area Middle School Auditorium,  
DuBois, Pennsylvania  
on Monday, October 4, 2012

ADVISORY COMMITTEE: PETER F. SMITH, ESQUIRE, CHAIRMAN  
ROBERT M. HANAK, ESQUIRE  
JASON S. GRAY, JR.  
BRADY LABORDE  
MARK SULLIVAN  
JODI BRENNAN

A P P E A R A N C E S:

FOR THE PETITIONER:

MICHAEL P. YEAGER, ESQUIRE

FOR THE RESPONDENT:

GREGORY M. KRUK, ESQUIRE

FILED No cc

09/16cm

S MAY 09 2013

William A. Shaw  
Prothonotary/Clerk of Courts

Reported by: Cathy Warrick Provost, RMR

Official Court Reporter

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

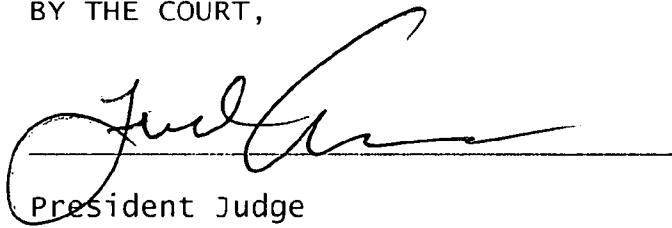
IN RE: INCORPORATION OF THE :  
BOROUGH OF TREASURE LAKE :

TREASURE LAKE PROPERTY OWNERS : No. 08-1814-CD  
ASSOCIATION, INC., RICHARD  
REHERMANN and WILLIAM REZNOR :

O R D E R

AND NOW, this 17th day of May, 2013, following completion of all evidentiary proceedings in regard to the Petition of Treasure Lake to become a borough, it is the ORDER of this Court that counsel for both parties have no more than sixty (60) days from this date to submit proposed findings of fact, conclusions of law and legal memorandum to the Court. Either party shall then have no more than an additional fifteen (15) days in which to submit any reply should they deem the same to be necessary.

BY THE COURT,



President Judge

FILED  
01 9:21AM  
S MAY 21 2013

William A. Shaw  
Prothonotary/Clerk of Courts

SCC Atty Yeager  
(to serve interested  
parties of  
Treasure Lake)

ICC Atty:  
Kruk  
Ferraro  
Wylan  
6K

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

IN RE:  
INCORPORATION OF THE  
BOROUGH OF TREASURE LAKE

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC., RICHARD  
REHERMANN and WILLIAM REZNOR,  
Petitioners

\*  
\*  
\*  
\*  
\* No. 2008-1814-CD

**FILED**

10/21/14 am m. Yeager  
§ SEP 19 2013 A Young

William A. Shaw J. Roberts  
Prothonotary/Clerk of Courts

G. Krulik / R. Ferraro  
S. Wyland  
Law Library  
m. kestell

**OPINION OF THE COURT**

**I. HISTORY OF THE CASE**

This matter is before the Court on the Petition to Incorporate the Borough of Treasure Lake pursuant to Article II of the Borough Code, 53 P.S. §§ 45201-45235. The boundaries of the proposed borough of Treasure Lake would be coterminous with the boundaries of the present Treasure Lake, a private, gated Planned Residential District located within Sandy Township in Clearfield County.

On or about June 23, 2008, the Board of Directors of the Association authorized the filing of the Petition to Incorporate the Treasure Lake PRD as a borough. After obtaining the requisite number of signatures, the Petition was filed on September 25, 2008. After the filing of the Petition, Sandy Township filed a total of 20 Exceptions raising various issues including both threshold jurisdictional issues as well as substantive arguments. By Order of September 29, 2009, this Court denied Sandy Township's Exceptions numbered 3(a), 3(f), 8, 9, 11 and 17. Sandy withdrew Exceptions 2 and 3(b) through 3(e), as well as agreed that Exceptions 1 and 20 were informational only. Sandy Township sought and received permission for interlocutory appeal on the

jurisdictional issue of whether Petitioners had obtained the signatures of a majority of the resident freeholders residing within Treasure Lake as required by section 202(a) of the Borough Code. The Commonwealth Court on June 30, 2010 affirmed this Court's Order confirming jurisdiction, and the case was remanded for further proceedings. By Order of May 9, 2012, this Court, after listening to arguments on the Township's Exception number 4, wherein the Township claimed the Petitioners were attempting to incorporate an unconstitutional "private borough", denied this Exception as nowhere in the Incorporation Petition was there any reference or request concerning a "private borough". Additionally, it was previously determined that Sandy had no standing to pursue the issue raised in the last sentence of Exception 4. Sandy did not argue or brief the issue therein raised. On July 16, 2012, the Township filed a Motion to Dismiss the Petition to Incorporate based on the recent amendment of the Borough Code. This Motion was denied by this Court's Opinion and Order of September 26, 2012. On September 24, 2012, this Court issued an Order establishing a Borough Advisory Committee pursuant to the Borough Code, 53 P.S. § 45303.2(a), and required the Committee to issue its recommendations by November 21, 2012. The Advisory Committee was to consider the issues raised in Sandy Exceptions 5, 6, 7, 10, 12, 13, 14, 15, 16, 18 and 19, as well as the general desirability of the incorporation.<sup>1</sup>

The Borough Advisory Committee held a total of three public meetings, being on September 24, September 25 and October 4, 2012. The Advisory Committee issued its Final (Majority) Report on November 21, 2012 recommending against the incorporation of

---

<sup>1</sup> The Court's Order of September 29, 2009 erroneously indicated that Exception 12 was denied.

the Borough of Treasure Lake. A Minority Report supporting incorporation was also issued. Pursuant to the Borough Code, 53 P.S. § 45202.2, this Court held its own hearings on May 16 and 17, 2013, at which time additional evidence was presented and testimony from the public was permitted.

### **STATEMENT OF THE FACTS**

#### **A. Sandy Township and Treasure Lake**

Sandy Township is a second-class township with a population of 10,652. It is approximately 52.8 square miles in size, surrounds the City of DuBois, and is bisected by Interstate 80. The Township is bordered by Huston and Union Townships to the east, Brady Township to the south, Winslow and Washington Townships (Jefferson County) to the west, and Snyder and Horton Townships (Elk County) to the north. Due to its location around the City of DuBois and its zoning scheme, the Township has semi-urban, suburban, and rural features. Most of the area's population and commercial activity are in or very near the confluence of DuBois and the Treasure Lake PRD areas of the Township, while significant areas of the Township outside of Treasure Lake PRD and DuBois are sparsely populated and rural in character.

Sandy Township enacted its first zoning ordinance in 1964 ("Zoning Ordinance"), and continues to have township-wide zoning. From the outset, the Zoning Ordinance provided for a variety of districts and associated uses, including: Residential-Urban District, Residential Agriculture District, Residential District – High Density, Residential District – Slope, Commercial District, Commercial Neighborhood District, Commercial Transient Interchange Service District, Commercial Highway District, Industrial District,

Mobile Home District, Conservation and Recreation District, and Planned Residential District ("PRD"). The Industrial, Commercial, Institutional, High Density Residential and Residential-Urban districts in the Township are centered around the east, west and south sides of the City of DuBois and the highway corridors leading out of the City of DuBois. The northern part of the Township, north of 1-80, is largely zoned Conservation, Residential – Agricultural, and PRD.

Treasure Lake PRD is a private, gated, residential community of approximately 3,861 residents within Sandy Township. It is approximately 12.6 square miles in size.

#### **B. Specifics of the Treasure Lake Planned Residential Development**

Treasure Lake PRD is coterminous with Sandy Township's PRD zoning district. It is primarily a single-family residential community, with twenty-five sections of single-family detached dwellings and two sections of townhouses. Almost all of the property within the Treasure Lake PRD is subject to the rules and regulations of the Treasure Lake Property Owners Association ("TLPOA").

The TLPOA: (1) provides security and safety services in Treasure Lake by a private security force; (2) maintains, repairs, and regulates the location, specifications and use of all roadways; (3) operates and maintains all recreational amenities including the parks, beaches and golf courses; (4) regulates land uses and structures through its Property Control Committee, including enforcement of restrictive covenants; (5) contracts for garbage and refuse collection for all properties within the PRD; (6) authorizes and controls the terms upon which public utilities provide services such as electricity, water, and sanitary sewer within the PRD; and (7) establishes, collects and enforces property assessments against each property within the PRD for the provision

of these services. The TLPOA does not provide storm water management, floodplain management, recycling services, or police and fire services.

Treasure Lake PRD surrounds Treasure Lake, Bimini Lake and Little Flipper Lake. It includes over 2,000 single family residences, with an additional 5,000 undeveloped single family lots. Within Treasure Lake, the only other land uses are temporary campsites, four restaurants with liquor licenses, a church, a small commercial area that includes a local post office, a small branch of the DuBois YMCA, a small convenience store, a gas station and beauty shop. This "strip mall" area is located inside the main Treasure Lake gate. There are also two golf courses, and recreational amenities such as beaches, a marina, tennis courts, camping and RV sites, rental cabins, picnic areas, playgrounds and baseball, football and soccer fields. None of the property within the PRD is developed with: multi-family housing; low-income housing; a hotel, motel or similar temporary lodging; a mobile home park; professional offices; industrial development including warehousing; truck terminals or heavy manufacturing; a library, a school, a museum or other education-related building; hospital or other medical services building; adult-oriented business; mining or mineral development; landfill; commercial garage; large scale retail; a completely open to the public recreational facility; or a municipal or public building of any kind.

Approximately twenty TLPOA property owners rent their property to tenants whose rent is subsidized through Title Eight vouchers, but this is a minute portion of the households in the PRD. As noted above, Treasure Lake PRD does have a small strip mall located a short distance inside the main gated entrance. This strip mall area and the portion of Treasure Lake PRD that are open to private commercial use do not adequately

provide for residents' retail, medical, professional, spiritual, cultural, social, and other needs. As detailed, *infra*, due to covenants and restrictions, there are also no opportunities for employment within the PRD except for TLPOA security employees and those who work at amenities. For that reason, residents depend on stores, schools, churches, hospitals, and employment in Sandy Township and the general DuBois area.

### **C. Development In Treasure Lake**

The Treasure Lake PRD originated as the subdivision "Clear Run Farms Lake Rene" in 1961. The original developers, John E. DuBois and Treasure Lake, Inc., placed deed restrictions on all lots in the subdivision through "Stipulations and Conditions for Clear Run Farms Lake Rene," recorded in 1962, and a "Declaration of Restrictions," recorded in 1968. Testimony of former Township solicitor, Robert Hanak, Esquire, established that the original developers used the deed restrictions to ensure that certain acreage remained available to them for future development.

Among other things, Treasure Lake PRD's Restrictions establish the many private features of the community and restrict the use of lots to single family, detached dwellings. The restrictions run with the land and create reciprocal rights among the respective lot owners. In the late 1960s and 1970s, Treasure Lake, Inc. obtained final subdivision and land development plan approval for the property within Treasure Lake from the Sandy Township Board of Supervisors and laid out the property as a PRD. In the late 1970s and early 1980s, two sections of townhouse development (Silverwoods Townhouses and Wolf Run Manor Townhouses) and an area for temporary campsites (Cayman Landing) were developed within the Treasure Lake PRD. Each is subject to recorded restrictions as well. The townhouse areas may only be developed and used as

single family townhomes and use of the townhomes and associated amenities is reserved to owners, owners' social guests, licensees, and invitees. All of the townhouse owners are TLPOA members and their property is subject to the TLPOA's rules and regulations. The camping area is divided into two sections—one limited in use to a recreational vehicle park and the other as temporary camping sites. None of the lots may be used as a permanent residence. Mobile homes and signs and billboards are prohibited.

In 1996, ownership of the PRD was turned over to the Treasure Lake Property Owners Association. Most of the developer's assets were sold to the TLPOA in this bulk sale, and all of the undeveloped land that the developers were protecting for their own benefit became TLPOA private property. Of the 8,044 acres within Treasure Lake PRD, approximately 3,000 are currently undeveloped and owned by TLPOA. These undeveloped acres surround the developed area of the PRD, acting as a forested buffer. The land guards against the non-residential and non-recreational uses that Treasure Lake PRD wants to keep out and which its restrictive covenants exclude. These 3,000 acres have been non-taxable since 2002. Their removal from Sandy Township's tax base reduced annual tax revenue to the township by \$252,000. This directly benefits Treasure Lake PRD residents to the detriment of the remaining Sandy Township taxpayers.

Not all of these 3,000 acres, however, are available for development. The testimony of Sandy Township's Manager, Richard Castonguay, established that 2,000 of the acres are subject to developmental limitations due to accessibility, terrain, slope, wetlands, and containing of environmentally sensitive areas. Director of the Clearfield

County Planning Commission, Ms. Jodi Brennan, corroborated the limited developmental potential and noted that only 1,300 total acres could potentially be developed. Mr. Hanak acknowledged that much of the undeveloped area is not accessible, particularly due to the lack of roadways. Beyond its limited improvement potential, this land has now become a TLPOA amenity. It keeps out unwanted and unpopular land uses and activities. Development of this area would require a majority vote of the TLPOA Board members. Despite its poor financial condition, the TLPOA Board has not yet offered to sell any of the land.

#### **D. Limited Access to Treasure Lake PRD**

Residents can access the Treasure Lake PRD by the south end of Bay Road, or Coral Reef Road. Both entrances are gated. Coral Reef Road, the main gate, has a gated guard station, staffed twenty-four (24) hours per day by TLPOA private security guards who stop and question people trying to enter without a TLPOA-approved sticker on their vehicles. There is an automated gate at the Bay Road, the back entrance, that can be opened only with a key card distributed to TLPOA members.

The evidence presented before the Advisory Committee and the Court indicates that Treasure Lake PRD is not "open to the public" to the extent that Petitioners would have the Court believe. Rather, access is generally prohibited to members of the general public. TLPOA security forces man the main gated entrance, stopping and questioning people who attempt to enter without the appropriate identifying sticker on their vehicles. A non-resident can access the PRD only via this guarded gate because the other functioning entrance to the community requires a residential key card to operate an automated gate. There would be no reason to have the guarded gate or the access

stickers if the PRD were truly open to the public at all times. The Treasure Lake bylaws also state unequivocally that the amenities in Treasure Lake PRD are private amenities, thus giving Treasure Lake residents (who pay for the privacy) both an expectation and enforceable contract right to exclude the public.

Petitioners in their brief argue that the Advisory Committee erred in finding that the PRD is not open to the public because certain limited amenities are available for some public use, including golf courses, drinking establishments, some ball fields for the school district, and a Memorial Day concert. In making these observations, Petitioners establish only that some amenities may be opened to the public on a limited basis at the TLPOA's will, not that members of the general public have truly unfettered access to the PRD and its amenities.

Mr. Castonguay testified that in his personal experience, he had been turned away by security in his private vehicle and when he had come to dine at a residence within the PRD; the resident was required to telephone TLPOA security to grant permission for him to enter. He further pointed out that unless someone is going to golf or to one of the drinking establishments, a resident must call down to the gate to give permission for entry. In his capacity as Township manager, Mr. Castonguay was also aware that the Township Police Department receives calls from Treasure Lake to address a trespass offense when someone drives into the PRD without a permit or permission. Members of the public informed the Court that they pay for access to be limited and expect it to be enforced. During early hearings in this case where Sandy Township was challenging jurisdiction, evidence was offered concerning the methods used by the Borough Incorporation Committee to solicit signatures of resident

freeholders for the petition supporting the incorporation. Printed information handed out to potential signatories, as well as information on the Borough Incorporation Committee's web site, assured residents that upon incorporation the security gates would remain and that Treasure Lake would continue to be a private, gated community. All of this conflicts with Mr. Hanak's testimony that Treasure Lake is for all intents and purposes open to the public.

In sum, it seems that generally where Treasure Lake has opened an area or amenity to public use, it has done so only to access additional revenue, or in some instances as a public service for recreational purposes, and then in both instances only on a limited basis. Mr. Hanak conceded that some of the reduction in the stringencies of the PRD's privacy requirements occurred as a result of "a hunger on the part of the POA for some additional outside revenue." He also acknowledged that the only reason the public has been able to enter based on the liquor licenses is that affording general public access was a required feature of the particular type of license that the establishment(s) within the PRD obtained.

#### **E. The Treasure Lake Property Owners Association and Assessment**

##### **Fees**

Treasure Lake PRD residents pay an assessment fee of \$830 per year, amounting to less than \$70 per month, or \$19 per capita, to the TLPOA for the privilege of residing in a private, gated community with exclusive amenities. Residents also pay local taxes to Sandy Township. Rising assessments and payment of the township tax are the primary impetus for the present Petition to Incorporate because Petitioners assert that they are being "double-taxed." The TLPOA, however, successfully collects the assessment from

only fifty (50%) percent of those required to pay it. In 2011, approximately \$3.4 million of the assessment was not collected, while \$4.4 million went uncollected in 2012.

## **F. The Proposed Borough Opportunities, Land Uses, and Inadequate Planning**

Petitioners seek to incorporate the proposed borough with geographic boundaries identical to the current borders of the Treasure Lake PRD. There are several important elements to the proposed borough that warrant consideration.

First, Petitioners intend to maintain all of the private features of the PRD in the proposed borough. The land, real estate, facilities, roads, and amenities within the proposed borough will remain privately owned, notwithstanding that the proposed borough purports to be a public entity. Movement via Treasure Lake's private roads will remain unchanged and through transit will remain limited to residents (with the exceptions as noted) due to the proposed borough's access restrictions and gates. Notwithstanding the issue of whether or not Treasure Lake is open to the public, the gates will remain and the TLPOA will continue to be responsible for the cost of maintenance of the approximately 90 miles of private roads located within the proposed borough.

The Petition fails to include any plan to provide for any public land uses and makes no allowance for any public space within the proposed borough. Furthermore, it does not designate any property as a site for a proposed municipal building; one of Petitioners' experts suggested that the TLPOA and the proposed borough could operate simultaneously within the current TLPOA building.

Second, the proposed borough will continue to lack amenities and opportunities that are typical of a self-contained municipality because it provides only residential and recreational opportunities. The proposed borough has limited commercial activity and no industrial development. Although it has smaller non-profit organizations like the Lions Club and the Sportsman Club, Treasure Lake PRD has no major public service or non-profit organizations, like schools and hospitals. Because there is also little available acreage of realistic potential for future commercial or industrial development or for development of presently excluded uses, proposed borough residents will still have to rely on Sandy Township to provide the missing pieces, such as employment opportunities, libraries, and retail shopping facilities. Sandy Township constitutes a "harmonious whole," a community of diverse land use and common citizen interests in municipal service requirements. Treasure Lake residents are part of that whole and their needs are the same as the other Township residents.

Third, Petitioners have not adequately described the operation and financial circumstances of the proposed borough, how it could function as successfully as the Treasure Lake PRD had as part of Sandy Township, or how it will comply with all that is required of a borough. Experts have only speculated about the proposed borough's budget. Dr. Weir, for example, estimated that \$1.3 million in taxes "should be enough" and that the proposed borough could also use money currently being charged as part of the private TLPOA assessment. He allowed only \$50,000 for start-up costs in the proposed borough.

Petitioners' expert, Deborah Grass, testified before the Court and submitted an expert report, attempting to provide more information about the proposed budget. The Grass

Report, however, was based on flawed methodologies and contained various mistakes and inaccuracies. The Court assigns little weight to the testimony by Ms. Grass and her report. Her per capita analysis was clearly inappropriate. Her comparison of Sandy Township to other mostly very rural Clearfield County townships just did not work. The only other Clearfield County township that one could reasonably compare to Sandy is Lawrence Township. The report, as noted, was also based on incorrect background data, particularly in regard to issues involving police requirements and coverage.

The Report by the Pennsylvania Economy League ("PEL Report") estimated that the proposed borough would require expenditures of \$1,455,677 including \$205,000 in necessary startup costs in its first year. The Committee considered the estimates by all experts to be unrealistically low and was "unwilling to imperil a successful municipality on the basis of scant financial analysis."

#### **G. The Economic Disparity Between Treasure Lake PRD and Sandy Township Residents**

The evidence submitted to date also illustrates that economic distance exists between Sandy Township and Treasure Lake PRD residents. The mean household income in Treasure Lake is \$78,800. The mean in Sandy Township is \$58,700 and \$45,200 throughout Clearfield County. The Advisory Committee concluded that incorporating the proposed borough would tend to increase these economic distances.

#### **H. Financial Impact of the Proposed Borough**

All of the experts in this case have generally concluded that the proposed incorporation will negatively affect Sandy Township's finances. The financial effects of splitting this unified and effective Township into two separate municipalities will be immediate and expensive to Sandy Township. Sandy Township's annual budget has

ranged from \$3.4 million to \$3.5 million, with real estate and earned income taxes accounting for most of that revenue. Incorporation of the proposed borough will reduce Sandy Township's revenues by over \$1.3 million annually, according to Treasure Lake's expert Dr. Weir, the PEL Report, and in the opinion of Mr. Castonguay. Catalano, Case, Catalano and Fannin, Certified Public Accountants, projected a \$1.49 million annual reduction. The Advisory Committee relied on the Catalano estimate. This Court finds the reports of Mr. Cross, Mr. Catalano and the testimony of Mr. Castonguay to be persuasive. On the other hand, the testimony before the Advisory Committee and the report of Petitioners' expert Dr. Weir is not found to be persuasive and is afforded little weight.

Upon the proposed incorporation, Sandy Township would experience a 50.1 percent reduction in its earned income tax base. In his Fiscal Impact Analysis "Castonguay Fiscal Report," based on the 2010 financials, Mr. Castonguay estimated that the earned income tax revenue would drop from \$1,151,363 to \$574,450 within the first year. Sandy Township would also incur a 46.3 percent reduction in its real estate transfer tax revenue due to the proposed incorporation. Mr. Castonguay estimated that this revenue would decrease from \$162,605 to \$89,080.

The Township would further see a 44.5 percent reduction in its general purpose real estate tax revenue. Mr. Castonguay estimated that general purpose real estate tax revenue would be reduced from \$1,307,899 to \$725,460. The Township's Annual General Fund Deficits would increase from \$837,578 in 2012 to \$988,201 in 2016 and its cumulative operating General Fund deficit from 2012 through 2016 would reach \$4,577,637.

In sum, the Township's real estate transfer tax revenue, local service tax revenue and other revenue sources all would decrease significantly with a very negative effect on Sandy Township. Cumulatively, the PEL found that Sandy Township could realistically expect a drop of forty (40%) percent in total revenues. The loss of forty (40%) percent of the general fund revenue in one year's time would be fiscally devastating to Sandy Township, according to Mr. Castonguay.

Sandy Township residents currently pay an attractive general purpose millage rate of 12.5 mills annually. This is below the maximum of 14 mills that townships may charge under Pennsylvania law. This rate is closely tied to the Township's growth. Townships may, with court approval, increase their tax rate to 19 mills for one year, but must seek approval annually.

Based on the drastic loss of tax revenue due to the proposed incorporation, the evidence established that Sandy Township would need to increase taxes beyond the statutorily prescribed maximum of 14 mills to maintain the current level of municipal services. Mr. Castonguay estimated that the rate would have to be increased to 33.68 mills and Gerald Cross of the PEL estimated 29 mills. Because Sandy Township would need to increase taxes significantly beyond the legal limit to maintain its current level of governmental services, its residents will suffer forced reduction in services along with increased tax rates to the legal maximum. Petitioners' experts assert that Sandy Township can make up some of the lost revenue to its general fund by using, *inter alia*, interfund transfers of funds derived from its municipal authority. As explained below, however, this solution is untenable and unlawful. Furthermore, only about 2,000 of Sandy Township's 10,652 residents and taxpayers are water and sewer utility ratepayers.

Upon incorporation Treasure Lake will also incur costs associated with the inherent inefficiencies of doubling local government functions. The Advisory Committee found that the proposed borough would itself be forced to raise taxes to provide for even essential services. Boroughs are authorized by statute to charge a tax rate up to 30 mills. So, if the proposed borough must increase the tax burden imposed on its residents, it may charge more than double what those residents now pay. Treasure Lake residents are accustomed to expect a high level of services and are likely to demand this in the future. The smaller proposed borough will lose the economies of scale and other benefits that are attendant with Sandy Township remaining a single large entity. The proposed borough would also be unable to derive any significant revenue from retail or other commercial or industrial taxpayers that Sandy Township presently receives.

The proposed borough would have to spend \$1.4 million dollars in its first year alone to achieve the same level of service Treasure Lake residents now enjoy. It would immediately need to likely spend over \$500,000 per year merely for police service. It will need to impose taxes on its residents at levels not calculated by the Petitioners. These taxes will be imposed in addition to the TLPOA fees, eroding or eliminating any benefit sought by the Petitioners in the first instance.

### **I. Impact of the Proposed Borough on Governmental Services**

Finally, incorporation of the proposed borough will have a marked impact on the ability of both Sandy Township and the proposed borough to provide adequate governmental services to their residents. Sandy Township presently offers above-average levels of a wide variety of municipal services to its residents, including those living in Treasure Lake PRD at a relatively low tax rate. The scope, quality, and

availability of those services will decline if incorporation occurs. Both Sandy Township and Treasure Lake will be forced to further reduce municipal services, increase taxes, or some combination thereof. These issues in regard to police/security, fire safety and infrastructure maintenance and service will be discussed at length later in this Opinion in section L.

#### **J. The Court as the Gatekeeper**

Petitioners have the burden of proving, by a preponderance of the evidence, that the formation of a proposed borough is “desirable.” 53 P.S. § 45202.2(b). Where, as here, the Petitioners fail to satisfy that burden, the Court must deny the Petition. In determining the desirability of the formation of a borough, the Borough Code encourages consideration of a number of enumerated factors, but does not restrict the Court to weighing only those factors. 53 P.S. § 45202.1(b). Indeed, the Court should consider all relevant factors in making this important determination.

The Borough Code vests the Court with this crucial “gatekeeper” function because the outcome of the Petition will affect a significantly greater number of people and interests than the relatively small number of Treasure Lake PRD residents permitted to vote on the measure. This Court and the high standard of “desirability” are the only protection for these individuals who will be harmed by the proposed incorporation, but who otherwise lack a voice in the matter. Accordingly, the Borough Code entrusts this Court with the weighty obligation to discern a good idea from a bad or merely wishful one, lest a poorly designed socioeconomic experiment harms many citizens who have no vote.

A majority of the Borough Advisory Committee empaneled in this case pursuant to the Borough Code has issued findings of fact and recommendations that are vitally important given their prominent presence as part of the statutory scheme for formation of a borough. The Borough Code requires the Court to base its decision regarding desirability on the evidence in part submitted by the Committee. The Committee in this case most emphatically recommended against granting the Petition based on its detailed review of the merits of incorporation. It found no point or factor weighing in favor of incorporation and observed that the weight of the evidence against incorporation was "clear and convincing."

Petitioners have failed to proffer any facts or in any way undermine the Committee's findings and conclusions. One would have expected Petitioners to present strong facts at the hearings before this Court to demonstrate at least some doubt about the Committee's observations with respect to the elements that it examined. Petitioners failed to do so here and the Court must deny the Petition consistent with the Committee's recommendations.

This case presents a primary issue of fundamental fairness. The Petition seeks to impose upon a large number of people a fairly severe and sudden change in local government structure and finances. The number of people affected is large in comparison to those who urge the change. In addition to all of Sandy Township's 10,652 residents, the incorporation would also affect several thousand people who own lots in Treasure Lake PRD but do not reside there, or have homes that are not their primary residence. Accordingly, incorporation will directly and immediately affect upwards of

15,000 individuals. If the Court orders that the matter go to referendum, however, only a few thousand permanent residents of Treasure Lake PRD would be eligible to vote.

It is understandable that the TLPOA's current financial difficulties are troubling to a subset of Treasure Lake PRD residents. After all, the TLPOA's poor assessment revenue collection rate of less than 50% cannot support the level of services apparently desired by those TLPOA members who actually pay the assessment. Nevertheless, the incorporation solution being pursued here is not the correct remedy for whatever problems exist in Treasure Lake PRD.

Moreover, the complaints by those who knowingly and voluntarily bought property subject to assessments for private amenities do not readily warrant great sympathy. Evident in the public comments, however, is a level of frustration by those who bought lots or homes and who face a difficult choice of whether to pay higher assessments in return for a higher level of private benefits, such as well-paved roads and continuing access to purely private recreation opportunities that many consider a luxury. The inherent difficulty in matching assessment compliance rates with total revenue generated, taking into account potential effect on Treasure Lake real estate value, admittedly presents a management challenge to the TLPOA Board. That purely private assessment-setting exercise does not, however, in any way, justify throwing a successful township of 10,652 residents into immediate financial jeopardy.

As noted above, the Borough Code entrusts this Court with the obligation to act as a gatekeeper to discern whether this proposal is desirable. Given the issues of fundamental fairness presented here, the Court concludes that incorporation is not desirable, particularly in light of the Advisory Committee's emphatic conclusion that

there was clear and convincing evidence weighing against incorporation. While it may be tempting to simply throw the matter to a vote in a simplistic nod to the democratic process, and despite certain witness' invocations of the venerable right to vote, it is crucial to remember that the Borough Code does not allow such in the absence of *proof* that a borough is "desirable" in the first place, primarily because of the great risk that bad things will happen to so many more people than those who may vote—the very opposite of the democratic process.

Opponents of borough formation testified that TLPOA Board members act without their consent or approval and are imposing an unpopular agenda upon them in the absence of majority support. Much the same, those who cry for a borough vote ignore that such a vote disenfranchises part-time property owners and those living outside the gates. Those who cannot vote far outnumber those who might vote. The legislature might be criticized for many poorly designed statutes, but this mandatory "Court as Gatekeeper" procedure compels denial of the Petition here on the simple ground that it is bad idea that could hurt a great many people who have no say in the process.

#### **K. The Proposed Borough Would Severely Impair the Financial and Tax Status of Sandy Township and the Proposed Borough**

Of primary importance is the "financial or tax effect on the proposed borough and [the] existing township" due to the proposed incorporation. 53 P.S. § 45202.1(b)(5). In *In re Petition for the Incorporation of the Borough of Blandon*, the Superior Court demonstrated the importance of weighing and considering the remaining township's tax condition when it noted that the incorporation would deprive the township of almost one-fourth of its road taxes while relieving it of only ten percent of its roads. 126 A.2d

506, 507, (Pa. Super. 1956). The court reasoned that the obvious disadvantages to all of the people in the township over-balanced any advantages gained by the proposed incorporation. Id. at 508. Here, there similarly is no financial advantage of incorporation to the Township residents.

Sandy Township's experts have shown and the Advisory Committee agreed it was likely that a significant tax increase would be necessary in both surviving entities. Petitioners have advanced no theory as to why either decreased services or increased taxes, or both, makes incorporation desirable. One or both of the decreased services or increased taxes would necessarily occur if Treasure Lake incorporated, but the Petitioners have not explained why this weighs in favor of desirability. Indeed, a close examination of the financial impact strongly compels the conclusion that incorporation is not financially desirable.

The impact of incorporation would cut Sandy Township's tax revenues almost in half, while the Township retains very nearly the same level of obligations. To provide Sandy Township with the same level of services, taxes would have to be raised significantly, but maximum millage rates are capped by law. Even if Sandy Township were to raise taxes as high as permitted, which is not desired, Sandy Township would still have a large revenue shortfall and would be forced to cut its services deeply. Higher taxes and fewer services drives away residents and business, eliminating a key attraction of the entire area. This would further decrease tax revenue and make the situation worse.

The loss of revenue would also hamper Sandy Township's ability to incur debt by drastically reducing its borrowing capacity. Sandy Township's borrowing capacity is

prescribed by the Local Government Unit Debt Act (“Act”). 53 P.S. § 8001 *et seq.* The starting point of any municipal indebtedness is a determination of the borrowing base and the preparation of the certification of the borrowing base. The borrowing base is defined in Section 8002 of the Act as the annual arithmetic average of the total revenues for the three full fiscal years immediately preceding the incurring of non-electoral debt or lease rental debt. *See* 53 P.S. § 8002(c). Consequently, the reduction in revenue received by Sandy Township would directly result in a reduction of its borrowing base. The maximum non-electoral debt or lease rental debt limit is determined by multiplying the borrowing base by the limit applicable to the particular government unit. Accordingly, any reduction in the borrowing base because of reduced revenue necessarily results in a corresponding reduction in the debt limit applicable to Sandy Township, severely limiting its ability to borrow for essential capital projects.

Furthermore, there was expert opinion in this case that if the proposed borough incorporates, Sandy Township will be immediately eligible for distressed municipality status. Section 201(11) of the Municipalities Financial Recovery Act (“Act 47”) provides as a basis for a declaration of distressed status for municipalities forced to reduce municipal services and provides that declaration of distressed status is appropriate when a “municipality has experienced a decrease in a quantified level of municipal service from the preceding fiscal year which has resulted from the municipality reaching its legal limit in levying real estate taxes for general purposes.” 53 P.S. § 11701.201(11). Sandy Township and the proposed borough would suffer a decrease in a quantified level of municipal services and would incur that loss while being forced to increase its tax rate

to the statutory maximum. Accordingly, under this Act 47 criteria, Sandy Township would be a candidate for distressed status.

The Pennsylvania Economy League has developed a five stage framework of steps leading a municipality to financially distressed status under Act 47. These five stages are: (1) low taxes with prosperity; (2) gradually rising tax rates and increasing demand for services; (3) plateau of tax base with reductions in non-core services; (4) insufficient taxes or tax base with reductions in core services; and (5) loss of tax base and distress. Sandy Township is currently somewhere between stages two (2) and three (3) on that scale, but incorporation of the proposed borough will thrust the Township directly into step four (4) or five (5). Moving through the steps of this framework typically takes many years, but would not in the case of Sandy Township.

The solutions offered by Petitioners' experts for ways in which Sandy Township can otherwise recoup some of its lost revenue constitute unlawful or bad practices. For example, both Deborah Grass and Dr. Michael Weir suggested using interfund transfers of monies derived from the Township's municipal authority. It is unlawful for Sandy Township to recoup general fund losses through the use of sewer funds. Moreover, municipal authorities must accumulate significant capital reserves to pay for significant expenses associated with maintenance, necessary upgrades, and replacements to waterlines, sewer lines, and treatment plants. Finally, even if such transfers were legal, they would be inequitable. Only about 2,000 of Sandy Township's 10,652 residents and taxpayers are water and sewer utility customers. Therefore, not all taxpayers are utility ratepayers. Consequently, using the suggested interfund transfers to cover revenue lost from the general fund would result in an inequitable mismatch between the ratepayers

and those taxpayers receiving the benefit of the general fund revenues. Accordingly, any suggestion that such revenue could be used to cover the Township's lost revenue is afforded little weight by the Court.

These financial impacts on Sandy Township compel the conclusion that incorporation of the proposed borough is undesirable. There are no financial advantages for Sandy Township residents with respect to generating revenue after the proposed borough incorporates. Sandy Township residents would be at an immediate disadvantage with respect to available revenue because the loss of 40% of revenue is clearly a negative factor for the operation of a municipality and its service to its citizens. These observations with respect to Sandy Township's financial condition after incorporation necessitate the conclusion that creation of a new borough is not desirable.

Sandy Township is not alone, however, with respect to the potential for suffering financial and tax difficulties. The above-stated facts demonstrate that the proposed borough itself will incur costs associated with the inherent inefficiencies of duplicating local government functions and may be forced to raise taxes to provide for essential services. Importantly, however, the burden on proposed borough residents could be double what it currently is because boroughs are authorized to charge up to 30 mills in tax rate. If the proposed borough residents expect to receive the same level of services that they now receive as members of Sandy Township, they should expect to incur a substantial increased tax burden on top of any potential rise in TLPOA assessment fees.

**L. The Remaining Sandy Township will not have the Ability to Obtain or Provide Adequate Community Support Services**

Another relevant consideration is the "proposed borough's ability to obtain or provide adequate and reasonable community support services such as police protection,

fire protection and other appropriate community facility services." 53 P.S. § 45202.1(b)(1). Although not statutorily prescribed, the same consideration should be analyzed with respect to Sandy Township. The Advisory Committee Majority in this case focused heavily on the level of government services provided to Sandy Township residents. The Advisory Committee found that the quality, scope, and availability of services in the proposed borough and the remaining Sandy Township would decline.

Sandy Township presently offers above-average services to all of its residents. Even Petitioners' expert Ms. Deborah Grass conceded that Sandy Township offers greater levels of services than other Second Class Townships. Upon incorporation, both Sandy Township and Treasure Lake will be forced to reduce their services, increase taxes as explained above, or both. A brief review of three vital services illustrates this point.

*i. Police Protection*

The safety of Sandy Township residents will be jeopardized by the reduced police force and lost resources resulting from the proposed incorporation. Sandy Township presently maintains a police force staffed with ten full-time officers and armed with a state accreditation achieved by a limited number of other forces statewide. By virtue of its size, its officers are specially trained in a variety of areas including crimes against children. Petitioners' expert agreed that this specialized force benefits the residents in all of Sandy Township, including those residing in Treasure Lake PRD. The TLPOA maintains only a private security force within Treasure Lake PRD, which regulates traffic and staffs the gates. Sandy Township's force provides law enforcement services to Treasure Lake PRD residents.

This arrangement is economical and beneficial to the members of both communities. Yet, Petitioners desire, through incorporation, to require the reallocations of many police service assets and equipment pursuant to statute. Moreover, Petitioners' proposal and the attendant revenue loss in Sandy Township would force Sandy Township to reduce its force by up to half of its personnel. Although this would be detrimental to the level of staffing, it would also operate to the detriment of the police force with respect to specialization. Petitioners' experts maintain that five officers will provide adequate coverage due to the loss of population in Sandy Township. There are two problems with this. First, five officers is the bare minimum needed to ensure that there is one officer to fill each shift and has nothing to do with the quality and caliber of the police service. Second, the theory is based solely on per capita loss and expenditures. Per capita is not a proper methodology for determining adequate police coverage because many factors dictate and influence the necessary number of police personnel in a community. Busy summer holiday weekends at Treasure Lake will provide more demand than a single officer responsibly or safely can satisfy.

Not only will Sandy Township residents see police personnel reduced, but residents in the proposed borough will be insufficiently protected as well. Petitioners have not adequately presented a budget with respect to law enforcement in the proposed borough. Ms. Grass suggested allocating approximately \$384,000 for the hiring of three full-time officers and two part-time officers. This budget is woefully inadequate as it does not account for the start-up costs associated with a police force. Ms. Grass herself admitted to not including a startup budget because she assumed, quite unrealistically, that the cost would be insignificant.

Additionally, Petitioners are essentially advocating that the proposed borough's residents be satisfied with a smaller, less specialized force and less coverage than is currently available to them as part of Sandy Township. As Mr. Castonguay testified, it would be unrealistic for Treasure Lake residents to expect the same level of services from this reduced police force in the proposed borough. The residents of the proposed borough would have to pay more in taxes to get the same level of services that they currently receive from Sandy Township. Even Ms. Grass conceded that such a tax increase is possible.

Petitioners also have proposed no specifics as to how police coverage might operate in the proposed borough. Petitioners' experts suggest that the proposed borough could cover its police force through a combination of state police and private security. This will not work because of the recent low in the number of State Troopers, the closing of State Police barracks, and the fact that the TLPOA's private security officers lack any police power.

Another theory offered is the concept of regionalization whereby the proposed borough and Sandy Township would share coverage with a neighboring municipality to plug any gaps in coverage. Regionalization is illogical here because it involves splitting up two municipalities and their law enforcement resources, only to have them need one another again afterward when each has less resources. This is ill-advised in light of the fact that Treasure Lake residents presently receive the benefit of the larger, well-staffed, well-trained, and specialized Sandy Township police force.

There is no advantage to splitting this healthy township into two municipalities, both of which would have inadequate police coverage. As Mr. Cross testified, it would be

less efficient to have two forces as compared to the current efficient setup. Petitioners thus have failed to establish that either the proposed borough or the remaining portion of Sandy Township will be able to obtain or provide for adequate, reasonable police protection.

ii. *Fire Protection Services*

Fire protection services are just as important as law enforcement. Sandy Township has five volunteer companies that operate as a unified whole, one of which is located within Treasure Lake. Fire protection services in both Sandy Township and Treasure Lake will suffer if the proposed borough is incorporated.

In Sandy Township, the companies remaining after the proposed borough incorporates would be forced to operate with less revenue given the overall loss of revenue to the Township. Moreover, Sandy Township would lose some revenue derived from its special millage rate for fire and each company would have less of those funds allocated to it. These companies would accordingly have less money in their coffers for training and equipment upgrades.

In Treasure Lake, fighting fires within the proposed borough will be difficult because the Treasure Lake does not have a system of hydrants. Firefighting there relies on the use of tanker trucks, most of which are owned by the companies in Sandy Township, to carry water from the lakes to the scene of the fire. Neither Treasure Lake, nor DuBois has sufficient tankers to fight a fire on their own in Treasure Lake. The proposed borough would be responsible for purchasing its own equipment because it would not get any of the company-owned equipment under the reapportionment of

Township assets required by statute. The result would be significant startup expenses in the proposed borough.

Additionally the proposed borough will continue to have difficulty attracting sufficient volunteer firefighters and getting volunteers who work outside of the PRD to respond in a timely manner. Petitioners' experts simply suggested and assumed that the proposed borough and Sandy Township would maintain a mutual aid arrangement with respect to fire protection. There are several problems with this.

First, mutual aid arrangement normally allow only a very limited sharing of equipment. Sandy Township has no obligation to help if there is a fire in the proposed borough. Even if it chose to do so, it would be operating with less equipment and would have to hold in reserve most of its resources to protect its own fire safety interests.

Second, neither the City of DuBois nor Sandy Township have entered into written mutual aid agreements. Accordingly, Petitioners' experts are relying on solely verbal understandings with respect to mutual aid. Third, Sandy Township would effectively be subsidizing the proposed borough's fire services at the expense of its own taxpayers. It is unwise and inequitable for the proposed borough to rely on the goodwill of its neighbors for provision of adequate fire safety services.

Accordingly, Petitioners have failed to establish that the proposed borough will have the ability to obtain or provide for adequate, reasonable fire protection services.

*iii. Infrastructure Maintenance and Services*

Finally, it is always important for a municipality to possess a safe and efficient system of infrastructure. Maintaining roadways and bridges is a significant expense for both Sandy Township and the proposed borough. Despite the loss of revenue upon

incorporation of the proposed borough, Sandy Township would not be relieved of any of the seventy (70) miles of roadways and bridges that it must maintain. It would be maintaining the same number of roads and bridges with less money. This will result in layoffs to road crew personnel, inefficient clearing of the roads, and delays in fixing of potholes and drainage issues. In one of the earliest borough incorporation cases, *Application for Incorporation of Lehman Borough*, the court denied the petition and in doing so, noted the township's argument that it would have insufficient tax revenues to care for the roads and bridges in the remaining township territory. 4 Pa.C.C. 37, 1887 WL 5165 (Pa.Quar. Sess. 1887). Sandy Township faces the very same issue.

It should be noted here that Petitioners' argument that they receive no benefit from their tax dollars with respect to infrastructure is unconvincing. Treasure Lake PRD residents regularly travel on Sandy Township roads outside of Treasure Lake to go to and from their properties, to drive to and from work, and to go shopping or travel to any amenity outside of Treasure Lake. Moreover, Treasure Lake could, if it desired, begin availing itself of Sandy Township's services by removing its gates and dedicating its roads to the Township.

Petitioners clearly do not intend to do so. Rather, the TLPOA will have to continue maintaining ninety (90) miles of private roadway. Any road service in the proposed borough would have to be done by the TLPOA and funded with TLPOA assessments, as it is now. If the residents of the proposed borough demand improvements to their infrastructure, they will likely have to incur greater assessment fees; nothing will have changed. Therefore, both surviving entities will experience a struggle with respect to maintaining an appropriate level of infrastructure service.

In sum, even if Sandy Township increased its taxes to statutory maximum levels, there would still be a revenue shortfall leaving its residents with a reduced amount of municipal services. Once there is a reallocation of assets, neither Sandy Township nor the proposed borough would have adequate resources to maintain the current level of services that residents have come to expect and receive. It would be imprudent to take away the tools that allow the Township to offer above-average services to all citizens and to give them to a separate entity, whose residents currently benefit from the Township's services, resulting in a situation where both entities would struggle to provide an adequate level of services.

#### **M. The Proposed Borough does not Constitute a Harmonious Whole with Common Interests and Needs**

The Borough Code also encourages consideration of "whether the proposed borough constitutes a harmonious whole with common interests and needs that can best be served by a borough government." 53 P.S. § 45202.1(b)(2). With respect to the Advisory Committee's review of this factor, it was to consider whether the proposed borough "represents a distinct community with features different from those of the existing township." *Id.* Here, the Advisory Committee found that Sandy Township as it currently exists constitutes a harmonious whole, whereas Treasure Lake PRD, at best, is more like a ward or a district than an independent borough. The Advisory Committee found that Treasure Lake does not constitute a "harmonious whole with common interests and needs that can best be served by a borough government" and that the Township cannot be divided into two separate municipalities.

The Advisory Committee's assessment of this issue is correct. Sandy Township offers many services and amenities to all of its residents through its broad zoning,

including commercial and retail facilities, and employment opportunities. Conversely, Treasure Lake PRD is limited to residential land uses, recreational amenities, and one small strip mall. Treasure Lake PRD lacks virtually every feature that would tend to suggest that it is a self-contained, independent municipal entity. For example, it does not have a school, museum, or other education-related buildings, nor does it have a hospital or medical services building. It lacks large scale retail and wholly public recreational facilities. It is fine as a recreational community, but it is not a borough.

Pursuant to statute, Jodi Brennan, Director of the County Planning Commission was appointed as an advisor to the Committee. Ms. Brennan in her written comments stated her negative view of the petition to incorporate. Ms. Brennan recognized that the Petitioners seemed to treat the level of municipal services in the proposed borough as "an afterthought," and questioned whether forming another governmental unit was reasonable where residents could pay higher taxes for the same services. She acknowledged that the proposed borough did not constitute a harmonious whole, that development of other than single-family dwellings was unlikely and that zoning within the proposed borough would probably be exclusionary due to the restrictive covenants. She also noted that Sandy Township would incur a severe tax burden and the proposed borough would see increased costs. Finally, she expressed concern over whether there was truly majority support for the measure among the proposed borough's residents. Petitioners object to Ms. Brennan's report and statements being considered by the Advisory Committee. While this Court recognizes that Ms. Brennan was not placed under oath for purposes of providing information and was not subject to cross-examination, Petitioners could have thereafter deposed her or called her as a witness

during the subsequent hearings before the Court. They did not do so. The borough incorporation statute says the Director of the County Planning Commission is to act as an advisor to the Advisory Committee. Ms. Brennan did so, and the Court cannot fault the majority of the Advisory Committee for considering her written comments.

As the Advisory Committee recognized, Treasure Lake PRD has no features that suggest that it is its own independent entity with a citizenry with interests unique from those of others in Sandy Township. Treasure Lake PRD residents are part of the harmonious whole that is Sandy Township and their needs are the same as other Sandy Township residents. There is insufficient evidence to suggest that the proposed borough could exist as a self-sustaining community. Instead the evidence indicates that upon incorporation it would immediately be struggling to provide its residents with the identical services that they presently receive from Sandy Township. Therefore, Petitioners have failed to demonstrate that the proposed borough constitutes a harmonious whole.

**N. The Proposed Borough Lacks the Commercial, Residential, and Industrial Development that Sandy Township has and is Unable to Provide those Opportunities Going Forward**

A petition to incorporate must also be viewed with an eye toward “the existing and potential commercial, residential and industrial development of the proposed borough.” 53 P.S. § 45202.1(b)(3). Ever since enacting its first zoning ordinance in 1964, Sandy Township has offered a diverse range of zoning, including residential, commercial, and industrial areas. This broad zoning allows for Sandy Township’s continued success in attracting and retaining industry and business alongside its residential areas, which contributes to the continued growth of the area.

Treasure Lake PRD and the proposed borough offer only residential development and recreational amenities. As mentioned *supra*, Treasure Lake PRD lacks the many commercial and industrial uses that Sandy Township offers. Petitioners have not included any plans to develop such uses within the proposed borough and there is little to no realistic potential for future commercial or industrial development within the proposed borough. Treasure Lake PRD's restrictive covenants limiting development to single family residences and recreational facilities inhibit its ability to provide for additional types of uses.

Moreover, although the Treasure Lake PRD does has 3,000 acres of undeveloped land, only a maximum of 1,300 of the acres is suitable for development due to geographic and accessibility limitations. In principle, the remaining undeveloped land could be zoned and used for various purposes such as commercial or industrial development. This would, however, require a majority vote of the TLPOA Board Members. The TLPOA Board Members have no incentive to develop the land. The undeveloped property offers a forested buffer against undesirable activities and land uses that Treasure Lake PRD's restrictive covenants exclude. It is considered an amenity for TLPOA members. The lack of any incentive to develop the property is confirmed by the fact that despite economic difficulties underlying this case, the TLPOA has not elected to sell any of the land to derive additional revenue. The lack of existing or potential commercial, residential, and industrial development in the proposed borough counsels against the desirability of incorporation.

**O. The Proposed Treasure Lake Borough will not Provide for Land Use Regulations That Meet The Legitimate Needs for all Categories of Residents and will be Exclusionary and Result in Economic Segregation**

The Borough Code also lists as a consideration, "whether the proposed borough would provide for land use regulations to meet the legitimate needs for all categories of residents or whether the plan is exclusionary or would result in economic segregation."

53 P.S. § 45202.1(b)(4). Concerns regarding both of these considerations exist here.

The principle that the proposed borough must provide for all uses is embodied in

Pennsylvania's Fair Share doctrine. *See Surrick v. Zoning Hearing Bd. of Upper Providence Tp.*, 382 A.2d 105 (Pa. 1977); *In re Incorporation of the Borough of Chilton*, 646 A.2d 13 (Pa. Cmwlth. 1994). The inability to comply with the fair share principle compels the conclusion that incorporation is not desirable.

Here, due to the covenants and restrictions on the land in Treasure Lake, the proposed borough will be unable to comply with the fair share principle. It contains only residential land uses and recreational amenities. Moreover, its residential lots are limited to single family homes. This type of zoning is exclusionary and will not allow for the development of low-income housing, multi-family housing, hotels, mobile home parks, professional offices, and industrial development, or other unpopular uses. As discussed *supra*, in principle some of the undeveloped 3,000 acres within the PRD could be used to publicly develop these and potentially other unpopular uses. The TLPOA, however, owns that land and has demonstrated no incentive or inclination to develop it. While a borough has a legal obligation to provide for all uses, the TLPOA would be in conflict and would make compliance difficult if not impossible for the proposed borough. For that reason, the Advisory Committee was correct in observing that there was little

likelihood of developing these areas and that the proposed borough could not comply with the fair share doctrine.

Second, the proposed borough would accentuate and facilitate the growing economic distance that already exists between the residents of Treasure Lake PRD and the other Sandy Township residents. The Advisory Committee rightly concluded that the proposed borough's incorporation would serve to increase economic disparity. As previously indicated the mean household income in Treasure Lake is \$78,800 while the mean in Sandy Township is \$58,700 and could be expected to fall with the loss of Treasure Lake's income to something closer to the county average of \$45,200.

Most of the affluence in the area is already concentrated in the private, gated PRD, which some people are fortunate enough to afford. The restrictions and limitations on development within the proposed borough would keep out low-income housing and more affordable multi-family housing. Petitioners' proposal, including the effective walling off of the developed part of Treasure Lake with a buffer of undeveloped land, will only exacerbate this disparity.

**P. Petitioners have Provided Nothing more than Mere Speculation  
Regarding Planning and Budgeting in the Proposed Borough and its  
Ability to be Successful**

Petitioners assume, without proof or demonstration, that they can achieve cost savings by this incorporation. No specific evidence has been presented to prove the same. The proposed borough will lack many fundamental and essential public services, and will have to duplicate those services with its own tax revenues before it can begin to realize any reduction in total outlay per resident, if any such reduction is even possible.

Such an approach, without so much as even a pro-forma budget, put residents of both communities at grave risk of failure.

In order to meet its obligations as a full-fledged borough, Treasure Lake will need a public building, a zoning hearing board, a planning commission, a building code appeals board, fire protection services, a police department, a sewage enforcement officer, building and codes inspectors, administrative and billing staff, a public records officer and all the departmental bookkeeping, security, personnel services, document retention, storage and support each of those service's needs. The proposed borough would be required to design, prepare, enact and enforce a zoning ordinance, subdivision and land development ordinance, flood plain ordinance, stormwater management ordinance, animal control ordinance, and fire prevention and protection ordinance. It will need a means to incur public debt. By statute, the borough would need a solicitor and an engineer. It would need an auditor. It would need to bond those employees who handle money. The borough would be required to defend itself if sued, invest public funds only as permitted by law, and purchase and maintain insurance. The borough would have to comply with the Ethics Act, the Prevailing Wage Act and the Local Government Unit Debt Act. It would need to bid publicly funded projects and pay prevailing wages. It would need a public works department and equipment. It would need to store and destroy records in accordance with the law. All of these services are currently provided by Sandy Township.

How the borough can satisfy these mandatory legal requirements has not been the subject of any study or evaluation. The costs have not been identified, presented, or tested. Petitioners in this case have failed to provide a sufficiently clear description of

the operation and financial conditions of the proposed borough. Although some attempts by experts were made to produce estimated budgets, even the Advisory Committee recognized that they severely underestimated the costs associated with starting up a new borough. Without sufficiently specific and satisfactory financial or operations planning, the Court must deny the Petition. Flimsy and speculative financial analyses are inadequate to support a Petition to incorporate. In *In re Incorporation of the Borough of Chilton*, the Commonwealth Court focused on the fact that the plans for the proposed borough were only speculative with no assurance that they would be carried out as presented to the Committee. In *Chilton*, 646 A.2d at 18 – 19, the court found it relevant that the proposed plans for the borough were merely speculative and that the proposed borough was presently unable to provide the required number of elected officials and the fact that there was no guarantee that the borough's proposed plans would be carried out. *Id.* at 18.

The truth is that Treasure Lake residents now are facing an increase in TLPOA fees. That is driving this Petition. One could argue that Treasure Lake residents should have expected to fund the paving of their private roads. The property values inside the gates already take into account these fees and amenities, as they do in planned communities all over the nation. If any Treasure Lake residents think they will enjoy a net gain from incorporating, they are incorrect. This plan is built on speculation that total costs will decrease after incorporation. That has not been proven. What the Petitioners hope to save will be eaten up by the inherent inefficiencies of duplicating an entire local government unit. The plan lacks definition, is founded on incorrect assumptions, places many hardworking people at tremendous financial risk, will most

likely sink a viable Township and, ultimately, will most likely fail. The Petitioners have not proven by a preponderance of the evidence that the plan is desirable, and therefore, the statute requires that it be dismissed.

## **II. CONCLUSION**

Petitioners had every opportunity to establish that the proposed borough is "desirable." They have failed; and failed rather completely according to the Advisory Committee. No consideration weighs in favor of granting this Petition and all of the factors outlined above illustrate the undesirability of the proposal. As the Advisory Committee observed in its emphatic recommendation against incorporation, "the weight of evidence against the incorporation of Treasure Lake as a borough is clear and convincing." The Advisory Committee's recommendation was correct and Petitioners presented nothing at the May 2013 hearings to undermine or call into question the Advisory Committee's considered conclusions.

## **ORDER**

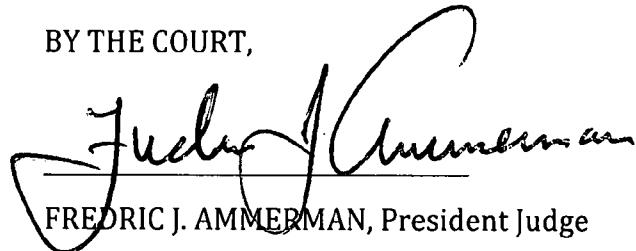
NOW, this 19<sup>th</sup> day of September, 2013, consistent with the foregoing Opinion of the Court; the Court FINDS and ORDERS as follows:

1. The Court notes that the decision in this case is based on the Borough Advisory Committee Majority Report, which this Court hereby approves and adopts; review of the testimony, exhibits and any reports of witnesses who testified before the Advisory Committee; the witnesses, along with the reports and

exhibits, who testified before the Court; as well as a complete review of the record in this case;

2. The following Exceptions of Sandy Township are hereby GRANTED: five, six, ten, twelve, thirteen, fourteen, fifteen, sixteen and eighteen. The following Exceptions of Sandy Township are DENIED: seven and nineteen.
3. The Court hereby determines that the desirability of the proposed incorporation is not supported by a preponderance of the evidence.
4. Accordingly, it is the ORDER of this Court that the Incorporation Petition for the Borough of Treasure Lake be and is hereby DISMISSED, with prejudice.

BY THE COURT,



A handwritten signature in black ink, appearing to read "Judge Frederic J. Ammerman". The signature is fluid and cursive, with "Judge" written above the main name.

FREDERIC J. AMMERMAN, President Judge

**FILED**

**SEP 19 2013**

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 9-19-13

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: Law Library & mikesell

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

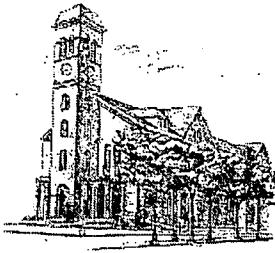
IN RE:  
INCORPORATION OF THE BOROUGH:  
OF TREASURE LAKE

TREASURE LAKE PROPERTY : No. 2008 - 1814 - CD  
OWNERS ASSOCIATION, INC., :  
RICHARD REHERMANN and WILLIAM :  
REZNOR,  
Petitioners :  
:

DISC

CLEARFIELD COUNTY  
No. 2008-1814-CD

**COPY**



Clearfield County Office of the Prothonotary and Clerk of Courts

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

**Jacki Kendrick**  
Deputy Prothonotary/Clerk of Courts

**Bonnie Hudson**  
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**David S. Ammerman**  
Solicitor

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Fredric J. Ammerman, President Judge  
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R. Edward Ferraro, Esq.  
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Brockway, PA 15824

**In Re: Incorporation of the  
Borough of Treasure Lake**

Treasure Lake Property Owners Association, Inc.,  
Richard Rehermann, and William Reznor

Court No. 2008-1814-CD; Commonwealth Court No. 2283 CD 2009

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Commonwealth Court of Pennsylvania on January 28, 2010.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

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

**No. 08-1814-CD**  
***In Re: Incorporation of the***  
***Borough of Treasure Lake***

***Treasure Lake Property Owners Association, Inc.,***  
***Richard Rehmann, and William Reznor***

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
01	09/25/08	Petition for Incorporation of the Borough of Treasure Lake	16
		Exhibits "A" through "E" filed in Conjunction with the Petition for Incorporation of the Borough of Treasure Lake (8 separate parts listed below)	
02	09/25/08	Exhibit A-1	Separate Cover (200 pgs.)
03	09/25/08	Exhibit A-2	Separate Cover (216 pgs.)
04	09/25/08	Exhibit A-3	Separate Cover (123 pgs.)
05	09/25/08	Exhibit A-4	Separate Cover (4 pgs.)
06	09/25/08	Exhibit B	Separate Cover (1 pg. with over-sized map)
07	09/25/08	Exhibit C	Separate Cover (89 pgs.)
08	09/25/08	Exhibit D	Separate Cover (3 pgs.)
09	09/25/08	Exhibit E	Separate Cover (3 pgs.)
10	09/25/08	Certificate of Service	01
11	09/26/08	Scheduling Order and Rule to Show Cause	03
12	10/20/08	Certificate of Service	02
13	10/21/08	Objections, filed by Carol A. Rusnak	63
14	10/22/08	Exceptions of the Township of Sandy, Richard A. Castonguay, Jr. Indiv., and Brady Laborde, Indiv., to the Petition for Incorporation of the Borough of Treasure Lake	10
15	10/22/08	Entry of Appearance	02
16	10/24/08	Exceptions of R.A. Castonguay, Jr., et al, Individuals, to the Petition for Incorporation of the Borough of Treasure Lake	16
17	10/24/08	Affidavit of Service	02
18	10/28/08	Entry of Appearance	02
19	10/28/08	Affidavit of Service	02
20	10/31/08	Exceptions, filed by Nancy J. Kunselman	02
21	10/31/08	Exceptions, filed by Patricia Mellors	01
22	11/05/08	Affidavit of Service, Request of the Township of Sandy et al for Production of Documents to the Treasure Lake Property Owners Association, Richard Rehmann, and William Reznor	07
23	11/05/08	Affidavit of Service, First Set of Interrogatories Directed to Treasure Lake Property Owners Association, Inc., Richard Rehmann, and William Reznor	16
24	11/06/08	Affidavit of Service, Re: service upon the public by publication	06
25	11/14/08	Order, Re: Hearing scheduled on November 26, 2008, be an "on the record" status conference	02
26	12/01/08	Order, Re: further status conference scheduled	01
27	01/16/09	Order, Re: Evidentiary hearing on Exceptions is scheduled	01

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

**No. 08-1814-CD**  
***In Re: Incorporation of the***  
***Borough of Treasure Lake***

***Treasure Lake Property Owners Association, Inc.,***  
***Richard Rehermann, and William Reznor***

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
28	02/17/09	Excerpt Transcript of Proceedings, Testimony of Matthew S. Begley, held before the Honorable Fredric J. Ammerman, P.J., on January 16, 2009	Separate Cover
29	04/01/09	Motion for a View	05
30	04/02/09	Order, Re: Motion for a View is Denied	01
31	05/06/09	Order, Re: briefs to be filed	01
32	05/27/09	Praeclipe to File Stipulations	01
33	05/27/09	Stipulations	23
34	06/16/09	Supplemental Stipulations	02
35	06/23/09	Transcript of Proceedings, Evidentiary Hearing on Exceptions held before the Honorable Fredric J. Ammerman, P.J., Tuesday, May 5, 2009	Separate Cover
36	07/06/09	Certificate of Service, Re: Brief of Exceptants on Jurisdiction, Proposed Findings of Fact, and Proposed Conclusions of Law	02
37	07/28/09	Stipulations Regarding Documents	184
38	07/28/09	Second Supplemental Stipulations	03
39	08/13/09	Motion to Strike	03
40	08/13/09	Affidavit of Service, Re: Motion to Strike filed on behalf of the Exceptants	02
41	08/14/09	Order, Re: hearing on Motion to Strike scheduled	01
42	08/24/09	Petitioners' Answer to Exceptants' Motion to Strike	05
43	09/22/09	Order, Re: Exceptant Sandy Township's Motion to Strike the Petitioner's Brief Exhibit is Granted in that Petitioner's Brief Exhibit will not be filed; discussion of the Exhibit will be stricken from Petitioner's Brief, pages 29, 30, and 31	01
44	09/28/09	Brief of Exceptants on Jurisdiction	24
45	09/28/09	Brief of Petitioners on Jurisdictional Issues	36
46	09/30/09	Opinion and Order	21
47	10/23/09	Application for Amendment of Interlocutory Order	05
48	10/27/09	Affidavit of Service, Re: Application for Amendment of Interlocutory Order	02
49	10/27/09	Order, Re: Order dated September 29, 2009, is amended	01
50	11/24/09	Petition for Permission to Appeal from Interlocutory Order	24
51	12/21/09	Order, Re: Petition for Permission to Appeal September 29, 2009, Order as amended on October 26, 2009. Permissions granted by the Court.	01

Date: 1/28/2010

Time: 10:21 AM

Page 1 of 4

**Clearfield County Court of Common Pleas**

User: BHUDSON

ROA Report

Case: 2008-01814-CD

Current Judge: Fredric Joseph Ammerman

In Re: Borough of Treasure Lake, et al

**Civil In Re-COUNT**

Date	Judge
1/25/2008	New Case Filed.
	Filing: Petition for Incorporation of the Borough of Treasure Paid by: Treasure Lake Property Owners Association, Inc. (subject) Receipt number: 1926038 Dated: 9/25/2008 Amount: \$95.00 (Check) For: Borough of Treasure Lake (subject) 2 Cert. to Atty.
	Exhibits "A" through "E" filed in Conjunction with the Petition for Incorporation of the Borough of Treasure Lake, filed by s/ Michael P. Yeager Esq. 2CC Atty.
	Exhibit A-2, filed by s/ Michael P. Yeager Esq. 2CC Atty.
	Exhibit A-3, filed by s/ Michael P. Yeager Esq. 2CC Atty.
	Exhibit A-4, filed by s/ Michael P. Yeager Esq. 2CC Atty.
	Exhibit B, filed by s/ Michael P. Yeager Esq. 2CC Atty.
	Exhibit C, filed by s/ Michael P. Yeager Esq. CC Atty.
	Exhibit D, filed by s/ Michael P. Yeager Esq. 2CC Atty.
	Exhibit E, filed by s/ Michael P. Yeager Esq. 2CC Atty.
	Certificate of Service, filed. That on September 25, 2008, copies of the Petition, Order and Exhibits in the above-captioned matter were hand delivered to: Sandy Township and Clearfield County, additionally, Notice of the filing of the Petition has been delivered to both the Courier Express as well as the Clearfield County Legal Journal with regard to publication, filed by s/ Michael P. Yeager Esq. No CC.
1/26/2008	Scheduling Order and Rule to Show Cause, NOW, this 26th day of Sept., 2008, it is Ordered that an argument on the Petition for Incorporation of the Borough of Treasure Lake is scheduled for the 26th day of Nov., 2008, at 9:00 a.m. in Courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 2cc Atty. Yeager
0/20/2008	Certificate of Service, filed. That on September 30, 2008, a copy of the Scheduling Order in the above-captioned matter was mailed to Gregory M. Kruk Esq., filed by s/ Michael P. Yeager Esq. No CC.
0/21/2008	Objections, filed by s/ Carol A. Rusnak. No CC
0/22/2008	Exceptions of the Township of Sandy, Richard A. Castonguay, Jr. Individually, and Brady Laborde, Individually, to the Petition for Incorporation of the Borough of Treasure Lake, filed by Atty. Kruk 5 Cert. to Atty.
	Entry of Appearance, filed by Atty. Kruk 3 Cert. to Atty.
0/24/2008	Exceptions of R. A. Castonguay, Jr., Et Al., Individuals, to the Petition For Incorporation of The Borough of Treasure Lake, filed by s/ Gregory M. Kruk, Esquire. 5 CC to Atty.
	Affidavit of Service filed, on the 22nd day of Oct., I mailed a copy of the Exceptions of the Township of Sandy, Richard A. Catonguay, Jr., Individually and Brady LaBord, individually, to the Petition for Incorporation of the Borough of Treasure Lake and Entry of Appearance by first class mail, to: Michael P. Yeager, Esquire, and Alan Price Young, Esquire. Filed by s/ Gregory M. Kruk, Esquire.
0/28/2008	Entry of Appearance, filed. Please enter our appearance as attorneys for R. Fredric Joseph Ammerman A. Castonguay Jr., et al in the above-captioned matter, filed by s/ Gregory M. Kruk Esq and s/ R. Edward Ferraro Esq. No CC. copy to C/A.

Date: 1/28/2010

Time: 10:21 AM

Page 2 of 4

**Clearfield County Court of Common Pleas**

User: BHUDSON

ROA Report

Case: 2008-01814-CD

Current Judge: Fredric Joseph Ammerman

In Re:Borough of Treasure Lake, et al

**Civil In Re-COUNT**

Date	Judge	
0/28/2008	Affidavit of Service filed. That on the 24th day of October 2008, mailed a copy of the Exceptions of R. A. Castonguay Jr., et al individuals, to the Petition for Incoorporation of the Borough of Treasure Lake by first class mail to Michael P. Yeager Esq. and Alan Price Young Esq., filed by s/ Gregory M. Kruk Esq. No CC.	Fredric Joseph Ammerman
0/31/2008	Exceptions, filed by s/Nancy J. Kunselman No CC	Fredric Joseph Ammerman
	Exceptions, filed by s/Patricia Mellors No CC	Fredric Joseph Ammerman
1/5/2008	Affidavit of Service, the Request of the Township of Sandy Et Al. For Production of Documents to the Treasure Lake Property Owners Association, Richard Rehermann and William Reznor, was served in person to Michael P. Yeager, Esquire on the 5th day of Nov., 2008, and by first class mail on the 5th day of Nov., 2008 to Alan Price Young, Esquire. filed by s/ Gregory M. Kruk, Esquire. No CC	Fredric Joseph Ammerman
	Affidavit of Service filed. The First Set of Interrogatories Directed to Treasure Lake Property Owners Association, Inc., Richard Rehermann and William Reznor was served by: In person on the 5th day of Nov., 2008 to Michael P. Yeager, Esquire; and By First Class Mail to Alan Price Young, Esquire. Filed by s/ Gregory M. Kruk, Esquire. no CC	Fredric Joseph Ammerman
1/6/2008	Affidavit of Service filed. Served upon the public by publication in The Courier-Express on September 26, 2008; October 3, 2008; October 10, 2008 and October 17, 2008 and by publication in Clearfield County Legal Journal weeks of October 3, 2008; October 10, 2008; October 17, 2008 and October 24, 2008, filed by s/ Michael P. Yeager Esq.	Fredric Joseph Ammerman
1/14/2008	Order, this 14th day of Nov., 2008, it is Ordered that the hearing scheduled on Nov. 26, 2008 be an "on the record" status conference. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Yeager, Kruk/Ferraro	Fredric Joseph Ammerman
2/1/2008	Order, this 26th day of Nov, 2008, further status conference is scheduled in Courtroom 1 at 9:00 a.m. on Jan. 16, 2009. The Exceptants pre-trial brief shall be due by Jan. 9, 2009. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Yeager, Kruk/Ferraro	Fredric Joseph Ammerman
/16/2009	Order, this 16th day of Jan., 2009, it is Ordered that Evidentiary hearing on Exceptions is scheduled for May 5, 2009 and May 6, 2009 at 9:00 a.m. both days, in Courtroom 1. By the Court, /s/ fredric J. Ammerman, Pres. Judge. 2CC Attys: Yeager, Kruk/Ferraro, Young	Fredric Joseph Ammerman
/17/2009	Excerpt Transcript of Proceedings, Testimony of Mathew S. Begley held before The Honorable Fredric J. Ammerman, Pres. Judge, on Jan. 16, 2009	Fredric Joseph Ammerman
/1/2009	Motion for a View, filed by s/Gregory M. Kruk, Esq. One CC Attorney Kruk	Fredric Joseph Ammerman
/2/2009	Order AND NOW, this 2nd day of April 2009, the Court being in receipt of and having reviewed the Motion for A View filed on behalf of the Township of Sandy and Richard A. Castonguay Jr; it is the ORDER of this Court that said Motion be and is hereby DENIED. The parties are to obtain and present photos of the sites they wish the Court to review at time of hearing on May 5 and 6, 2009. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 4CC Atty Kruk.	Fredric Joseph Ammerman

Date: 1/28/2010

Time: 10:21 AM

Page 3 of 4

**Clearfield County Court of Common Pleas**

User: BHUDSON

ROA Report

Case: 2008-01814-CD

Current Judge: Fredric Joseph Ammerman

In Re: Borough of Treasure Lake, et al

**Civil In Re-COUNT**

Date	Judge
5/6/2009	Order, NOW, this 5th day of May 2009, following the conclusion of taking of Fredric Joseph Ammerman testimony relative the exception filed on behalf of Sandy Township and other individuals concering the Petition for Incorporation of Treasure Lake, it is the ORDER of this Court that Sandy Township and the individuals filing execptions have no more than sixty (60) days from this date within which to supply the Court with appropriate brief. The Petitioner shall have no more than thirty (30) days thereafter in which to respond with their brief to the Court. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Atty: Yeager, Young, Ferraro and Kruk.
5/27/2009	Praeclipe to File Stipulations, filed by Atty. Kruk 2 Cert. to Atty. Stipulations, filed by s/ Atty. Kruk.
5/16/2009	Supplemental Stipulations, filed by s/ Michael P. Yeager, Esquire, Alan Price Young, Esquire, and Gregory M. Kruk, Esquire. 3CC Atty. Yeager
5/23/2009	Transcript of Proceedings, Evidentiary Hearing on Exceptions held before the Honorable Fredric J. Ammerman, P.J., Tuesday, May 5, 2009, filed.
5/6/2009	Certificate of Service, filed. That the Brief of Exceptants on Jurisdiction, Proposed Findings of Fact and Proposed Conclusions of Law were served by first class mail this 2nd day of July 2009 to Michael P. Yeager Esq., and Alan Price Young Esq., filed by s/Gregory M. Kruk Esq. No CC.
5/28/2009	Stipulations Regarding Documents, filed by s/Gregory M. Kruk, Esquire. Signed, Michael P. Yeager, Esquire; Alan Price Young, Esquire; and Gregory M. Kruk, Esquire. 2CC to Atty. Second Supplemental Stipulations, filed by s/ Gregory M. Kruk, Esquire. Signed, Michael P. Yeager, Esquire; Alan Price Young, Esquire; and Gregory M. Kruk, Esquire. 3CC to Atty.
5/13/2009	Motion to Strike, filed by Atty. Kruk no cert. copies. Affidavit of Service filed. On the 12th day of August, 2009, a copy of the Motion to Strike, filed on behalf of the Exceptants, was sent by First Class mail to: Michael P. Yeager, Esquire, and Alan Price Young, Esquire. Filed by s/ Gregory M. Kruk, Esquire. 1CC to Atty.
5/14/2009	Order, this 13th day of August 2009, the court being in receipt of and having reviewed the Motion to Strike, it is the ORDER of this Court that argument on said Motion be and is hereby scheduled for the 22nd day of September 2009 at 9:00 am in Courtroom No. 1. Thirty minutes has been reserved for this proceeding. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty: Yeager and Kruk.
5/24/2009	Petitioners' Answer to Exceptants' Motion to Strike, filed by s/ Michael P. Yeager, Esquire. 4CC to Atty.
5/22/2009	Order, this 22nd day of Sept., 2009, it is Ordered: 1. Exceptant Sandy Township's Motion to Strike the Petitioner's Brief Exhibit is hereby GRANTED in that Petitioner's Brief Exhibit will not be filed; and 2. Discussion of the Exhibit will be stricken from Petitioner's Brief, pages 29, 30, and 31. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty: Yeager/Young, Kruk/Ferraro
5/28/2009	Brief of Exceptants on Jurisdiction, filed by s/ Gregory M. Kruk, Esquire. no CC Fredric Joseph Ammerman

Date: 1/28/2010

Time: 10:21 AM

Page 4 of 4

**Clearfield County Court of Common Pleas**

User: BHUDSON

ROA Report

Case: 2008-01814-CD

Current Judge: Fredric Joseph Ammerman

In Re: Borough of Treasure Lake, et al

**Civil In Re-COUNT**

Date	Judge
1/28/2009	Brief of Petitioners on Jurisdictional Issues, filed by s/ Michael P. Yeager, Esquire. no CC Fredric Joseph Ammerman
1/30/2009	Opinion and Order, this 29th day of Sept., 2009, following hearing and upon consideration of the Jursidictional Issue of the Incorporation of the Borough of Treasure Lake and Exceptions filed thereto by the Township of Sandy, it is Ordered: 1. Exceptions 3(a), 3(f), 8, 9, 11, 12, and 17 are hereby DENIED. 2. Exceptions 4, 5, 6, 7, 10, 13, 14, 15, 16, 18, and 19 were not considered because the Court finds that these are proper for the Borough Advisory Committee to consider. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC to Atty: Yeager, Young, Kruk, Ferraro; 1CC D. Mikesell & Law Library (without memo).
0/23/2009	Application for Amendment of Interlocutory Order, filed s/ Gregory M. Kruk Esq. 3CC Atty Kruk Fredric Joseph Ammerman
0/27/2009	Affidavit of Service filed. On the 26th of Oct., 2009, a copy of the Application for Amendment of Interlocutory Order was served by first class mail to Michael P. Yeager, Esquire, and Alan Price Young, Esquire. filed by s/ Gregory M. Kruk, Esquire. 1CC to Atty. Order, this 26th of Oct., 2009, the previous Order dated Sept. 29, 2009 is amended by the addition of the following paragraphs: (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Kruk
1/24/2009	Petition For Permission to Appeal From Interlocutory Order, filed by s/ Gregory M. Kruk, Esquire, and Edward Ferraro, Esquire. No CC Fredric Joseph Ammerman
2/21/2009	Order, filed NOW, December 16, 2009 RE: Petition for Permission to Appeal Sept. 29, 2009, order as amended on October 26, 2009. Permissions Granted by the Court s/Keith B. Quigley, Sr. Judge.

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

**JAN 28 2010**

Attest.



William J. Ammerman  
Prothonotary/  
Clerk of Courts