

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

SANDY TOWNSHIP,
Plaintiff

vs.

CITY OF DUBOIS,
Defendant

:
: DOCKET NO. 2023 - 749

:
: CIVIL ACTION - LAW

:
: Type of Case: REQUEST FOR DECLARATORY
: JUDGMENT

:
: Type of Pleading: DEFENDANT'S
: PRELIMINARY OBJECTIONS TO
: PLAINTIFF'S COMPLAINT

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

:
: Counsel of Record for this Party:

:
: TONI M. CHERRY, ESQ.
: Supreme Court No.: 30205

:
: LEE GRACE VALIGORSKY, ESQ.
: Supreme Court No.: 324307

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Wendy Cherry
BRIAN K. SPENCER
PROTHONOTARY & CLERK OF COURTS

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SANDY TOWNSHIP,
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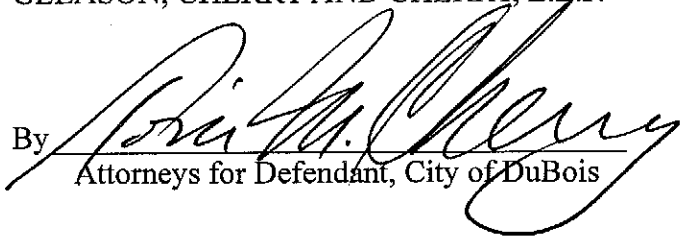
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NOTICE TO PLEAD

To The Within Plaintiff:

YOU ARE HEREBY NOTIFIED TO PLEAD
TO THE WITHIN PRELIMINARY
OBJECTIONS WITHIN TWENTY (20) DAYS
FROM THE DATE OF SERVICE HEREOF.

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

By 
Attorneys for Defendant, City of DuBois

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

SANDY TOWNSHIP, :
Plaintiff : DOCKET NO. 2023 – 749
 :
vs. : CIVIL ACTION - LAW
 :
CITY OF DUBOIS, :
Defendant :

DEFENDANT’S PRELIMINARY OBJECTIONS
TO PLAINTIFF’S COMPLAINT

Defendant, CITY OF DUBOIS, by its undersigned attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., preliminarily objects to Plaintiff’s Complaint pursuant to Pa. R.C.P. 1028(a) as follows:

COUNT I
PRELIMINARY OBJECTION PURSUANT TO Pa. R.C.P. 1028(a)(1)
FOR LACK OF SUBJECT MATTER JURISDICTION

1. The action set forth in the Complaint requests the Court of Common Pleas of Clearfield County, Pennsylvania, to exercise equity jurisdiction allegedly to stay the results of a referendum question that was certified on November 18, 2021.
2. That the referendum question to which Plaintiff’s Complaint refers was initiated, not by the Plaintiff and/or Defendant municipality, but, instead, by the electors of both municipalities on petitions prepared and circulated by individual residents of both municipalities and was approved by electors of both Plaintiff and Defendant municipalities in the General Election of November of

2021. A true and correct copy of the ballot question upon which the electors voted is attached hereto and made a part hereof as Exhibit "1".

3. Paragraph 26 of Plaintiff's Complaint asserts that the results of the consolidation referendum was certified on November 18, 2021, more than 18 months before Plaintiff filed the instant Complaint requesting the Court to act upon the referendum.

4. That once the electors approved the referendum question that they themselves prepared and placed upon the ballot, all matters concerning the consolidation of the Township of Sandy and the City of DuBois are governed by the provisions of the Municipal Consolidation or Merger Act, Act of 1994, Oct. 13, P. L. 596, No. 90, Section 1, *et seq.*, found at 53 Pa. C.S.A. §731, *et seq.*

5. Under the provisions of the aforementioned Act, all proceedings under the Municipal Consolidation or Merger Act are governed by statute and equity has no jurisdiction to intervene in this matter.

6. That on November 7, 2022, the Board of Supervisors of Sandy Township and the Members of the City Council unanimously approved a Consolidation Agreement as required by the Act. A true and correct copy of the Minutes of the DuBois/Sandy Joint Board Meeting held November 7, 2022, wherein the Consolidation Agreement was unanimously approved and a true and correct copy of the Consolidation Agreement itself is attached hereto and made a part hereof as Exhibit "2".

7. That the cases cited by Plaintiff as authority for the Court to assume equity jurisdiction in a referendum issue do not hold as Plaintiff has recited and do not authorize the Court to assume equity jurisdiction over a referendum matter that has been adopted by vote of the electors.

8. The only method of proceeding in a consolidation after a referendum has been approved by the electors is governed by the language of the Municipal Consolidation or Merger Act found at 53 Pa. C.S.A. §731, *et seq.*

9. Your Honorable Court has no jurisdiction over the subject matter of this action and no ability to exercise equity jurisdiction.

WHEREFORE, Defendant, CITY OF DUBOIS, respectfully requests that Plaintiff's Complaint be dismissed.

COUNT II
PRELIMINARY OBJECTIONS IN THE FORM OF A MOTION
TO STRIKE PURSUANT TO Pa. R.C.P. 1028(a)(2) FOR INCLUSION OF
SCANDALOUS AND IMPERTINENT MATTER

10. Defendant incorporates herein by reference the averments contained in Paragraphs 1 through 9 inclusive of COUNT I of these Preliminary Objections as if the same were set forth at length herein.

11. Plaintiff's Complaint improperly urges this Court to invoke equity jurisdiction in derogation of the clear statutory provisions of the Municipal Consolidation or Merger Act on the basis that there has been "fraud, theft, and other issues concerning the City's public accounts and finances". Specifically, Paragraphs 6, 7 and 14 accuse an employee of the City of DuBois of a crime with no proof that any crime has been committed and in violation of that individual's Fifth Amendment rights.

12. Paragraphs 41 through 53 inclusive and 54 through 62 inclusive allege wrongdoing on the part of various representatives of the City of DuBois with no proof that any such wrongdoing was ever committed.

13. That all of the assets, budgets, audits and every other aspect of both Plaintiff and Defendant municipalities were fully examined by the Pennsylvania Economy League commissioned to do a full study in preparation for their recommendations which were issued in March of 2021.

14. That the financial records of both municipalities have been subject to audits which are a matter of public record.

15. The allegations set forth in all of the above-mentioned paragraphs are irrelevant, immaterial and inappropriate to the conduct of the consolidation process as governed by statute and are only asserted by Plaintiff in an effort to prejudice the Court and to urge the Court to invoke equity jurisdiction when equity has no jurisdiction over the consolidation process as the procedure is governed solely by the Municipal Consolidation or Merger Act as aforesaid and, as a result, such pleadings are in violation of the pleading requirements of Pa. R.C.P. 1019 and, accordingly, are both scandalous and impertinent.

WHEREFORE, Defendant respectfully requests that all of the aforementioned paragraphs, 6, 7, 14 and Paragraphs 54 through 62 inclusive of Plaintiff's Complaint be stricken.

COUNT III
DEFENDANT'S PRELIMINARY OBJECTION TO PLAINTIFF'S
COMPLAINT UNDER THE PROVISIONS OF Pa. R.C.P. 1028(a)(5)
RAISING LACK OF CAPACITY TO SUE

16. Defendant incorporates herein by reference the averments set forth in Paragraphs 1 through 15 of COUNTS I and II of the foregoing Preliminary Objections as if the same were set forth at length herein.

17. That Plaintiff Township did not initiate the referendum question and, in fact, took official action to deny the request to place the referendum question on the ballot.

18. That the entire consolidation process was not initiated by two or more municipalities under the procedure enunciated in Section 733(a)(1) of the Municipal Consolidation or Merger Act but was, instead, brought about by the initiative of the electors.

19. That once there has been approval of the referendum, Section 741 of the Act confers jurisdiction upon the court of common pleas to implement the terms of a transitional plan and schedule adopted upon the petition of any person who is a resident of the municipality to be consolidated or to adopt or amend a transitional plan or schedule if the court finds that the failure to do so will result in the unreasonable perpetuation of the separate forms and classifications of government existing in the affected municipalities prior to the approval of the referendum. (A true and correct copy of the full text of Section 741 providing for court review is attached hereto and made a part hereof as Exhibit "3".)

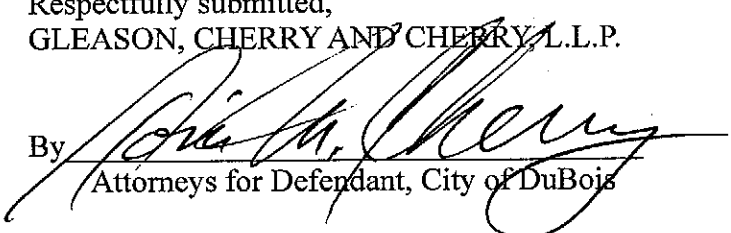
20. That the Township of Sandy cannot, through its supervisors, vote itself to be a representative of the individual electors who voted on the referendum as the statute only permits individual residents to bring a petition before the court and only for the purposes of moving the consolidation forward once the electors have approved the referendum.

21. That Plaintiff, SANDY TOWNSHIP, is without capacity to sue or to maintain this action and is barred from maintaining this action against Defendant under the Municipal Consolidation or Merger Act, 53 Pa. C.S.A. §731, *et seq.*

WHEREFORE, Defendant respectfully requests that Plaintiff's Complaint be dismissed because Plaintiff lacks standing to bring this action before the Court.

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

By


Attorneys for Defendant, City of DuBois



WRITE-IN

DuBois City/Sandy Township Consolidation Question

Shall the Township of Sandy and the City of DuBois consolidate to form a new Third Class City to be called the City of DuBois and governed by the Council-Manager form of government as provided in the Home Rule Charter and Optional Plans Law and including a seven-member Council, elected at large (one of whom shall be Mayor), an elected Treasurer, an elected Controller, and an appointed Manager?



YES



NO

EXHIBIT

tabbles

K 1 "

DuBois/Sandy Joint Board Meeting Minutes – November 7, 2022

City Council Chambers, City Building, 16 West Scribner Avenue, DuBois, Pennsylvania on Monday, November 7, 2022 @ 6 p.m. the DuBois/Sandy Joint Board convened. Board Members present were: Barry Abbott, Jim Aughenbaugh, Bill Beers, Diane Bernardo, Shane Dietz, Shannon Gabriel, Sam Mollica, Kevin Salandra, Mark Sullivan, and Edward Walsh. Also present: City Manager, John “Herm” Suplizio; Township Manager, Shawn Arbaugh; City Engineer/Public Works Director, Chris Nasuti; DuBois Redevelopment Authority Director/ Assistant Public Works Superintendent, Joe Mitchell; City of DuBois Public Works Superintendent, Scott Farrell; Police Chief, Blaine Clark; DuBois/Sandy Joint Board Solicitor, Chris Gabriel; and City Secretary, Bobbie Shaffer.

The meeting was called to order at 6 p.m. and the Pledge of Allegiance was led by Kevin Salandra.

Public Comments on Agenda Items Only

No Public Comments

Old Business

- Gabriel Fera Invoice No. 1127 - Services thru September 30, 2022; Amt. - \$11,881.00 – DuBois - \$5,940.50; Sandy - \$5,940.50

The motion was made Walsh and seconded by Beers that the DuBois/Sandy Joint Board approve paying the Gabriel Fera Invoice No. 1127 in the amount of \$11, 881.00 as presented. Roll call vote was as follows: Abbott, yea; Aughenbaugh, yea; Beers, yea; Bernardo, yea; Dietz, yea; Gabriel, yea; Mollica, yea; Sullivan, yea; Walsh, yea; Salandra, yea. Motion passed 10 – 0.

Approval of Minutes

October 17, 2022

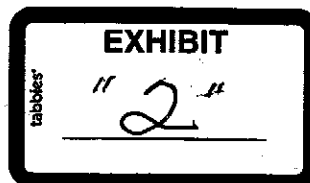
The motion was made by Gabriel and seconded by Aughenbaugh that the DuBois/Sandy Joint Board approve the minutes of October 17, 2022 as presented. Roll call vote was as follows: Abbott, yea; Aughenbaugh, yea; Beers, yea; Bernardo, yea; Dietz, yea; Gabriel, yea; Mollica, yea; Sullivan, yea; Walsh, yea; Salandra, yea. Motion passed 10 – 0.

New Business

Consolidation Agreement

CONSOLIDATION AGREEMENT

This Consolidation Agreement, dated as of November 7, 2022 (the “Consolidation Agreement”), is entered into by and between the Township of Sandy, Clearfield County,



Pennsylvania, a Second-Class Township of the Commonwealth of Pennsylvania (the "Township") and the City of DuBois, Clearfield County, Pennsylvania, a Third-Class City of the Commonwealth of Pennsylvania, governed under the Home Rule Charter and Optional Plans Law as an optional plan city, (the "Existing City," and together with the Township, collectively, "Municipalities").

BACKGROUND

WHEREAS, Section 733(a)(2) of Pennsylvania's Municipal Consolidation or Merger Act (the "Act"), authorizes the consolidation or merger of two or more contiguous municipalities into a single municipal government to be commenced by the initiative of electors of each municipality; and

WHEREAS, Consolidation of the Township and the Existing City into the "City of DuBois" (the "City") was initiated pursuant to Sections 733(a)(2), 735, and 736 of the Act and was approved by electors in a referendum in November 2021; and

WHEREAS, Pursuant to Section 733(c) of the Act, the voters also approved an optional plan to govern the City; and

WHEREAS, the result of the referendum was certified on November 18, 2021; and

WHEREAS, Section 737 of the Act sets forth the required elements to be included in an agreement as to the consolidation of the governing bodies and the approval of an optional plan to govern the consolidated municipality; and

WHEREAS, In January 2022, the Board of Supervisors of the Township and the Council of the Existing City (the "Governing Bodies") set out to examine the municipal consolidation of the Township and the Existing City and to develop a consolidation agreement in conformity with Sections 733, 735, and 737 of the Act.

WHEREAS, the Governing Bodies formed a "Joint Board" consisting of the elected officials of each Governing Body to develop the consolidation agreement; and

WHEREAS, the Joint Board engaged Consolidation Consultants (hereafter defined) to provide a financial review and legal technical support in the development of a consolidation agreement, paid for in part by funds from the Pennsylvania Department of Community and Economic Development Governor's Center for Local Government Services.

NOW THEREFORE, Pursuant to Section 737 of the Act, the Township and the Existing City agree as follows:

1. **Recitals.** The above set forth recitals are incorporated herein by reference and made a part hereof as though fully set forth herein.

2. **Parties.** The parties to this Consolidation Agreement are the Township and the Existing City.

3. **Professionals.** The professionals selected to assist with the consolidation process are Eckert Seamans Cherin & Mellott, LLC and Pennsylvania Economy League (collectively, the "Consolidation Consultants") and Christopher Gabriel, Esquire, from the firm Gabriel Fera, P.C. (the "Joint Board Solicitor").

4. **Territorial Boundaries.**

(a) Both Municipalities are located within Clearfield County, Pennsylvania, and are contiguous municipalities.

(b) The Municipalities will consolidate to form a new municipality which shall be called the "City of DuBois" and herein referred to as the "City."

(c) The territorial boundary of the City shall be the combined outer border of what is currently the Township and the Existing City. The boundary distinguishing the Township from the City shall no longer exist.

5. **Governance.**

(a) The City shall be governed by a Council-Manager form of government as provided in the Optional Third-Class City Charter Law (herein, the "Plan"). The Plan is attached hereto as Appendix A and is incorporated as part of this Consolidation Agreement.

(b) The governing body of the City shall be a Council composed of seven (7) members, elected at large, one of whom shall be the Mayor. There shall be an elected Treasurer, and an elected Controller. There shall be no other elected officials.

(c) The City Council may appoint a Manager, assistant Manager, and such other professionals as it deems necessary to function efficiently.

(d) The transitional plan and schedule applicable to the City's elected officers shall be as set forth in Section 19 of this Consolidation Agreement.

6. **Effective Date.** This Consolidation Agreement shall be effective as of the date that it is approved by the respective Governing Bodies (the "Effective Date"). The effective date of the municipal consolidation shall be upon the swearing-in of the elected officials of the City on January 5, 2026 (the "Consolidation Date"). The period between the Effective Date and the Consolidation Date shall be referred to herein as the "Transition Period." Upon the occurrence of the Consolidation Date, the City shall begin to function, and the governments of the Township and the Existing City shall be abolished.

7. **Municipal Classification.** The City shall be classified as a Third-Class City with an optional plan form of government under the Home Rule Charter and Optional Plans Law, when

required for any legal purpose or for any interaction with, but not limited to, any agency of the United States of America, the Commonwealth or any other governmental agency or entity.

8. **Organizational Structure.** The Municipalities have included a proposed departmental organization structure for the City in Appendix B which is incorporated as part of this Consolidation Agreement.

9. **Continuation of Ordinances.**

(a) Except as provided herein, all ordinances, resolutions, rules and regulations, including, but not limited to, planning, zoning, building, health, taxation, license, nuisance, traffic, parking, outdoor burning, etc., in effect in the Township and the Existing City on the day before the Consolidation Date shall continue in force and effect and shall continue to apply within the territorial limits of the Township and Existing City, respectively, until amended or repealed by Council as required by the Plan.

(b) Codification of all City ordinances must be completed within two years of the Consolidation Date, i.e., by December 31, 2027.

(c) To facilitate the development of a comprehensive and uniform Code of Ordinances for the City, the Municipalities agree that, during the Transition Period, they shall engage in a joint review of the Codes of Ordinances of the Municipalities, to resolve any conflicts between the respective Codes, and to make recommendations for a uniform Code of Ordinances for the City. The Municipalities may engage professional consultants or firms to undertake this process, and may seek grant or other funding for the work. The Municipalities agree to begin this process as soon as practical during the Transition Period.

(d) During the Transition Period, the Municipalities agree to identify the appropriate professionals, staff and other individuals within their respective governments to meet to identify

conflicting ordinances and recommend a resolution with respect to any conflict. The Municipalities agree to work together to resolve conflicts in their respective Ordinances during the Transition Period, with the intent that, as of the Consolidation Date, all such conflicts are resolved. In the event that the Municipalities have not resolved any conflict between the Codes of Ordinances of the Existing City and the Township on or before the Consolidation Date, then the following process shall apply for resolution of the conflict after the Consolidation Date and until the City codifies a uniform set of ordinances:

- (1) With respect to any ordinance that imposes a fine or a fee upon any person, if there is a conflict between the Township Ordinance and the Existing City Ordinance, the higher fine or fee shall prevail.
- (2) With respect to any ordinance that imposes any restriction on any activity or which imposes an affirmative duty to act on any person, if there is a conflict between a Township Ordinance and an Existing City Ordinance, then the least restrictive ordinance shall prevail.

(e) All zoning ordinances and rules of the Municipalities shall continue in full force and effect during the Transition Period and after the Consolidation Date. The Municipalities agree, however, that during the Transition Period they will explore comprehensive planning with respect to zoning, with the goal of developing a new zoning and land use comprehensive plan to be adopted by the City in connection with the Codification of Ordinances that is described in Section 9(b), above. The Municipalities may jointly engage such consultants and professionals as deemed necessary and appropriate, and to seek such grant and other funding as may be available to accomplish this objective.

10. **Assets, Liabilities, Property and Equipment.**

(a) All of the existing assets of the Township and the Existing City of any kind whatsoever, including, but not limited to, individually and collectively, any and all real and personal properties, and rights of any nature, tangible or intangible, in which the Township or the Existing City has an interest, shall become the assets of the City on the Consolidation Date.

(b) The Municipalities shall compose a complete and detailed inventory of all assets, liabilities, property and equipment by May, 2025.

(c) As of the Consolidation Date, the City will assume all of the outstanding indebtedness of the Township and the Existing City by way of assumption documentation and/or refinancing of the then-outstanding debt.

(d) The City will assume all other outstanding contractual obligations and liabilities included in any agreement or contract of the Township and the Existing City.

(e) The Municipalities agree to jointly engage appropriate professionals to assist with the process of the transfer and assumption of such assets, property, equipment, outstanding debt, contractual obligations and liabilities, and to seek such grant and other funding as may be available to accomplish this objective.

11. **Water and Sewer Utilities.** The Existing City owns and operates water and wastewater utilities for the benefit of its residents. Water and wastewater services in the Township are provided by the Sandy Township Municipal Authority (the "Sandy Township Authority"), a municipality authority created under the Pennsylvania Municipality Authorities Act of 1945, as amended. The Municipalities have agreed that, upon Consolidation, the City will provide water and wastewater service to all residents of the City upon uniform terms, conditions, and rates. The Municipalities agree that, during the Transition Period, they will undertake steps to enable the City to offer municipal water and wastewater services to residents, including, as feasible, preparation

for the abandonment of the Existing City's Certificate of Public Convenience from the Public Utility Commission, updating existing agreements regarding bulk service customers of the Existing City, and entering into such transactions with the Sandy Township Authority to ensure that the provision of water and wastewater utility services to residents is uninterrupted and uniform throughout the City. The Municipalities further agree to engage such professionals as necessary to review the steps required for this and to educate the Board about them, and to structure and effectuate transactions necessary to implement this Section, and to seek such grant and other funding as may be available to accomplish this objective.

12. **Taxes and Fees.**

(a) As required by Section 737(a)(5) of the Act, the City shall implement a legally consistent uniform tax system throughout the City which will provide the revenue necessary to fund required municipal services and debt service.

(b) All uncollected taxes and assessments levied or assessed, all fines and penalties imposed, and all other uncollected obligations owing to the Township and the Existing City which are uncollected on the Consolidation Date shall continue in full force and effect and shall be collected by and remunerated to the City.

(c) During the Transition Period, the Municipalities shall jointly engage a firm or consultant to study and recommend both the tax structure and the tax rates for the City. Upon the advice of such consultant, the two Municipal Managers and one elected official from each of the Township and the Existing City shall determine and provide a recommended tax structure and tax rates by February 1, 2025.

13. **Employment of Current Employees.**

(a) The Municipalities agree that all non-union employees of the Municipalities on the Consolidation Date shall become employees of City, subject to the usual terms and conditions of employment with the City. The Municipalities agree that on the Consolidation Date, the managers of the Existing City and the Township shall assume roles for the City as interim manager and interim assistant manager of the City, consistent with the Organizational Structure described in Exhibit B, hereto, for a period not to exceed two years beyond the Consolidation Date, to facilitate the consolidation process. The interim manager and interim assistant manager may be considered by the City for permanent appointments.

(b) The Municipalities agree that they each shall work with the collective bargaining units for all uniform and non-uniform employees to discharge any applicable bargaining obligations and to endeavor to negotiate extensions of existing collective bargaining agreements through the Consolidation Date.

(c) During the Transition Period, the Municipalities agree to work with all collective bargaining units and employees to identify and, if required, recognize collective bargaining units that will represent employees beginning on the Consolidation Date. Further, the Municipalities will endeavor to negotiate the terms of new collective bargaining agreements that will be presented to and accepted by the City on the Consolidation Date. The Municipalities agree that the Joint Board Solicitor will work with the Township manager and the Existing City manager to resolve the collective bargaining agreements and appropriate bargaining units and related issues for contracts with the City to be effective after the Consolidation Date.

(d) The Municipalities agree that they shall cooperate in the preparation of amended civil service rules and regulations for those employees covered by civil service and under which

the City retains authority over staffing levels. Further, the Municipalities shall work with the Joint Board Solicitor to recommend an agreed-to mechanism for transition through which police officers of both the Township and the Existing City shall have (i) continued employment with the City, as well as (ii) continued civil service status and protection.

14. **Administrative Services and Programs.** The Municipalities agree to coordinate and cooperate, through each Municipality's respective staff in each administrative discipline, department or area of expertise, including, but not limited to, information technology, payroll, and insurance and recommend a plan for consolidating these services and programs by June 1, 2024.

15. **Municipal Services to Residents.**

(a) All municipal services, including but not limited to, the fire department (as addressed in Section (b) below), police protection, public works maintenance and repair, recycling, leaf collection, etc., being offered to the residents of the Township and the Existing City on the day before the Consolidation Date shall continue to be provided in the same manner to the residents of the City on the effective date of the City and thereafter.

(b) The Municipalities Agree to coordinate fire response activities as soon as practical during the Transition Period, with the intention of having a City fire department on the Consolidation Date. During the Transition Period, the Municipalities agree to develop a system for coordination of box alarms and call systems that will coordinate fire and emergency response activities for all volunteer fire departments within the Municipalities. The Municipalities further agree to identify those volunteer fire companies that will continue to provide services to the City after the Consolidation Date to ensure adequate and efficient coverage to the City. The current intention is to have five fire stations. All such volunteer fire departments that the Municipalities agree shall participate in the City Fire Department after the Consolidation Date shall be offered by

the City to continue to provide fire protection services within the City. The Municipalities may jointly engage such consultants and professionals as deemed necessary and appropriate, and to seek such grant and other funding as may be available to accomplish this objective.

(c) The Municipalities agree to develop and establish a plan for the coordination of municipal services to residents of each Municipality. The Municipalities agree, during the Transition Period, to cooperate in the delivery of municipal services, and to coordinate in the provision of services to all residents without regard to territorial boundaries. To facilitate such cooperation, the Municipalities designate the Transition Committee and any appropriate subcommittees to establish a transition framework by examining tasks that can be done immediately and target complete integration of operations by December 31, 2025. Upon completion of the integration plan, such proposed plan should be presented to the Joint Board for review and comment.

(d) The Municipalities agree to integrate their respective police departments into a single, cohesive police force for the City. The Municipalities agree, during the Transition Period, to establish a transition framework by outlining the method in which the departments can achieve total integration by December 31, 2025. The Municipalities may jointly engage such consultants and professionals as deemed necessary and appropriate, and to seek such grant and other funding as may be available to accomplish this objective.

16. Transition Committee

(a) The Municipalities, through the Joint Board, have established a Transition Committee to assist the Governing Bodies in the implementation of this Consolidation Agreement through the Transition Period up to the Consolidation Date and, thereafter, and to assist Council

with the orderly and seamless transition to the new consolidated municipality. The Transition Committee shall terminate no later than six months after the Consolidation Date.

(b) The Transition Committee shall assist the transition process by: coordinating and reviewing the work of the various subcommittees, volunteers, and professionals to accomplish the objectives set forth in this Agreement and making recommendations to the Joint Board.

(c) The Transition Committee shall be responsible for arranging and advertising, in accordance with this Agreement and applicable law, the first meeting of the newly elected Council, which shall be held on January 5, 2026.

17. **Accounting, Budget, and Audit.**

(a) The Municipalities agree that, during the Transition Period, they shall undertake steps to align their respective accounting and budgeting systems to facilitate consolidation of all financial, accounting, and budgeting operations on or before the Consolidation Date.

(b) The Municipalities currently utilize distinct methodologies for accounting and budgeting with respect to certain expenditures and receipts. To align their respective accounting and budgeting systems, the Municipalities agree that during calendar year 2023, they shall jointly engage appropriate professional consultants to evaluate the respective accounting systems and to recommend steps to be taken by the Municipalities to align accounting procedures, and to seek such grant and other funding as may be available to accomplish this objective.

(c) The Municipalities further agree that, during calendar year 2024, they shall implement the recommendations for alignment of their accounting systems, and in calendar year 2025 shall maintain their respective books of account on this basis, and to seek such grant and other funding as may be available to accomplish this objective.

(d) The Municipalities further agree that they shall engage their respective municipal auditors to perform audits of the financial statements for calendar years 2023 and 2024 that are prepared on the basis of the accounting system to be implemented pursuant to subparagraph (c) of this section, and to seek such grant and other funding as may be available to accomplish this objective.

(e) The Municipalities further agree that, during calendar year 2025, they shall develop and prepare a joint budget for operations for calendar year 2026, which joint budget shall be approved by the Joint Board. Such joint budget shall only be required to meet the requirements of the Home Rule Charter and Optional Plans Law (Council-Manager Plan), Act of 1996, 53 Pa. C.S.A. § 3051, et seq. The joint budget shall be implemented and used by the City for operational expenses and any other contingencies, consistent with the applicable laws.

18. Elections.

(a) At the municipal primary and general election cycle in 2025, the registered voters of the Municipalities shall elect one (1) Mayor for a 4-year term, three (3) Council members for 2-year terms, and three (3) Council members for 4-year terms. The properly elected and certified Mayor and six (6) Council Members shall constitute a seven (7) member Council and shall assume all rights and responsibilities on the Consolidation Date. The length of term for City Council positions shall be determined by vote totals in the general election, with the highest vote getters serving the longer terms.

(b) At the municipal primary and general election cycle in 2025, the registered voters of the Municipalities shall elect the Treasurer for a 4-year term and a Comptroller for a 2-year term. The properly elected and certified Treasurer and Comptroller shall assume all rights and responsibilities on the Consolidation Date.

(c) The appropriate officials from each Municipality shall be responsible for coordinating with the County Board of Elections for the orderly administration of the elections set forth in this section in accordance with state and federal law.

19. **Limitation of Activities During Transition Period**

(a) The Municipalities agree that, upon execution of this Consolidation Agreement, neither Municipality shall incur any municipal debt the term of which extends beyond the Consolidation Date without the approval of the Joint Board.

(b) The Municipalities agree that, upon execution of this Consolidation Agreement, neither Municipality may enter into a contract having a term that extends beyond the Consolidation Date, and neither Municipality may cause or permit the renewal of any contract that would extend the term beyond the Consolidation date, without the approval of the Joint Board.

(c) The Municipalities agree that, upon execution of this Consolidation Agreement, each Municipality shall provide written notification to the other about any grants received, and the Municipalities shall cooperate in making joint grant applications where deemed appropriate by the Joint Board.

(d) The Municipalities agree that, upon execution of this Consolidation Agreement, , neither Municipality may create any new, full-time employment positions without the approval of the Joint Board, except that the Existing City may hire a full-time Recreation Director without the approval of the Joint Board. The Municipalities further agree that, after January 1, 2024, neither Municipality may hire any full-time employee in any position (including replacements for departing employees) without the approval of the Joint Board.

The motion as made by Aughenbaugh and seconded by Gabriel that the DuBois/Sandy Joint Board approve the Consolidation Agreement.

Salandra had a question on the motion. He asked if the motion should be to approve the agreement or just make a recommendation for approval. He went on to say, doesn't it need to be approved by the individual municipality's?

DuBois/Sandy Joint Board Counsel, Chris Gabriel, stated he would handle one thing at a time. He would approve the agreement here and then Sandy can approve it at their regular meeting. He stated that Aughenbaugh's motion was correct.

Abbott asked if Salandra would repeat his question. Salandra said, should it be a recommendation to approve as we can't bind anything here.

Walsh wanted to know what Salandra meant by "can't bind anything here".

Salandra stated it is an agreement between two municipalities, that's how we read it at the township. So, we can't ...its two municipalities that have to vote at their individual meetings to bind.

Gabriel stated that the two municipalities are sitting here in their Joint Committee, with all members present, having worked through this agreement together. It's appropriate for this body to approve the agreement. You can also vote on it at your meeting, that's totally up to you but it will have no bearing on the vote in this Committee.

Shannon Gabriel asked Aughenbaugh if he would like to restate his motion.

The motion was made by Aughenbaugh and seconded by Gabriel that the DuBois/Sandy Joint Board accept the Consolidation Agreement as presented. Roll call vote was as follows: Abbott, yea; Aughenbaugh, yea; Beers, yea; Bernardo, yea; Dietz, yea; Gabriel, yea; Mollica, yea; Sullivan, yea; Walsh, yea; Salandra, yea. Motion passed 10 – 0.

Paying of Invoice from Eckert Seaman

Company	Description	Invoice Amt.	DuBois	Sandy	Total Submit
Eckert Seamans Inv. 1711974	Services thru Oct 31, 2022	\$1,267.50	\$63.38	\$63.37	\$1,140.75

The motion was made by Beers and seconded by Gabriel that the DuBois/Sandy Joint Board approve paying the Eckert Seamans invoice No. 1711974 as shown above. Roll call vote was as follows: Abbott, yea; Aughenbaugh, yea; Beers, yea; Bernardo, yea; Dietz, yea; Gabriel, yea; Mollica, yea; Sullivan, yea; Walsh, yea; Salandra, yea. Motion passed 10 – 0.

Joint Board Member Comments

Barry Abbott

It's been long road, glad we're at the end of the process.

Ed Walsh

He agrees with Barry, it's been a long year and there have been some hills and valleys but we have made it through. Congratulations everyone.

Herm Suplizio

- Gave an update on Shaffer Avenue, Sandy and DuBois crews working together and it is going really well. Should be paving the construction site by the end of the week.
- Route 255 between Division ST and Sheetz anyone have an idea when the house that was hit by the tree will be taken down. (Tongue in Cheek) He directed his question to Beers; Beers said he had no idea, it seems a bit shady. Apparently, Sullivan owns the house and he is still waiting on the adjustor to get back to him before he can start demolition. He said he would let the insurance company know that he was questioned by the Joint Board.

Bill Beers

Asked Suplizio if he had heard back from DCED about the \$5,000,000 grant. Suplizio said nothing yet.

- Fire Sub-Committee will be meeting next Wednesday.

Mark Sullivan

Asked if we need to meet every month now that the Agreement has been signed.

Salandra said certainly not every two weeks. Postpone until January?

Abbott thought we should get through the holidays before we meet again.

Cancel Meetings Until January 16, 2023

The motion was made by Abbott and seconded by Gabriel that the DuBois/Sandy Joint Board cancel all meetings until January 16, 2023. Roll call vote was as follows: Abbott, yea; Aughenbaugh, yea; Beers, yea; Bernardo, yea; Dietz, yea; Gabriel, yea; Mollica, yea; Sullivan, yea; Walsh, yea; Salandra, yea. Motion passed 10 – 0.

Shawn Arbaugh

- He appreciates the working relationship he has with Suplizio.
- Currently the engineers from Sandy and DuBois are working on a grant with PennDOT
- Police are working on policies and procedures.

- Arbaugh is working with Joe Mitchell on a RFP for CDBG Consultants for five years, should be going out shortly.
- Joint training for Public Works employees in December.

Open Meeting to the Floor

No Comments

Close Meeting to the Floor

Adjourn

There being no further business to transact, the motion was made by Aughenbaugh and seconded by Beers that the DuBois/Sandy Joint Board adjourn. Roll call vote was as follows: Abbott, yea; Aughenbaugh, yea; Beers, yea; Bernardo, yea; Dietz, yea; Gabriel, yea; Mollica, yea; Sullivan, yea; Walsh, yea; Salandra, yea. Motion passed 10 – 0.

ATTEST: _____ APPROVED: _____

municipality consolidated or merged under section 735.1 (relating to initiative of electors seeking consolidation or merger with new home rule charter), the first document to be recorded in it shall be the consolidation agreement.

(b) **Ordinance codification.**—No later than two years after consolidation goes into effect, codification of all the ordinances of the municipality shall be completed. The codification shall include tabulation or indexing of those ordinances of the component municipalities that are of permanent effect in the consolidated municipality.

(c) **Vesting of rights, privileges, property and obligations.**—All rights, privileges and franchises of each component municipality and all property belonging to each component municipality shall be vested in the consolidated or merged municipality. The title to real estate vested in any of those municipalities shall not revert or be in any way impaired by reason of the consolidation or merger. All liens and rights of creditors shall be preserved. Agreements and contracts shall remain in force. Debts, liabilities and duties of each of the municipalities shall be attached to the consolidated or merged municipality and may be enforced against it.

1994, Oct. 13, P.L. 596, No. 90, § 1, effective in 90 days. Amended 2003, Oct. 23, P.L. 180, No. 29, § 4, effective in 60 days [Dec. 22, 2003].

Historical and Statutory Notes

Prior Laws:

1906, Feb. 7, P.L. 7, §§ 1 to 12 (53 P.S. §§ 221 to 248).	1937, April 29, P.L. 548, § 1.
1915, May 6, P.L. 260, § 1 (53 P.S. § 249).	1937, July 2, P.L. 2798, § 1.
1931, June 24, P.L. 1206, art. II, §§ 210 to 214, 216 to 219.	1947, July 10, P.L. 1481, § 1.
1933, May 1, P.L. 103, art. II, §§ 205 to 215 (53 P.S. §§ 65205 to 65215).	1949, May 22, P.L. 1955, §§ 2, 4.
1935, May 9, P.L. 163, §§ 1, 2.	1959, July 9, P.L. 508, § 1.
	1966, Feb. 1, P.L. (1965) 1656, No. 581, §§ 221 to 228 (53 P.S. §§ 45221 to 45228).
	1987, July 10, P.L. 246, No. 47, §§ 401 to 407, 409 (53 P.S. §§ 11701.401 to 11701.407, 11701.409).

Library References

Municipal Corporations ¶35.
Westlaw Topic No. 268.

C.I.S. Municipal Corporations §§ 85 to 89, 100.

§ 741. Court review of transitional plan

(a) **General rule.**—Except as provided in subsection (b), after the approval of a referendum pursuant to section 736 (relating to conduct of referenda), any person who is a resident of a municipality to be consolidated or merged may petition the court of common pleas to order the appropriate municipal governing bodies to:

Title 53 P.S. precedes Title 53 Pa.C.S.A.



(1) implement the terms of a transitional plan and schedule adopted pursuant to section 734 (relating to joint agreement of governing bodies) or 737 (relating to consolidation or merger agreement); or

(2) adopt or amend a transitional plan or schedule if the court finds that the failure to do so will result in the unreasonable perpetuation of the separate forms and classifications of government existing in the affected municipalities prior to the approval of the referendum.

(b) Exception.—After consolidation or merger pursuant to section 735.1 (relating to initiative of electors seeking consolidation or merger with new home rule charter), any person who is a resident of the newly consolidated or merged municipality may petition the court of common pleas to order the governing body of that municipality to act to accept or provide alternatives to the recommendations of the commission in accordance with section 735.1(k)(3)(iii).

1994, Oct. 13, P.L. 596, No. 90, § 1, effective in 90 days. Amended 2003, Oct. 23, P.L. 180, No. 29, § 4, effective in 60 days [Dec. 22, 2003].

Historical and Statutory Notes

Prior Laws:

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1959, July 9, P.L. 508, § 1.

1966, Feb. 1, P.L. (1965) 1656, No. 581, §§ 221 to 228 (53 P.S. §§ 45221 to 45228).

1987, July 10, P.L. 246, No. 47, §§ 401 to 407, 409 (53 P.S. §§ 11701.401 to 11701.407, 11701.409).

Library References

Municipal Corporations §33(1).
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 73 to 76.

VERIFICATION

I, EDWARD WALSH, Mayor of the City of DuBois, verify that I am authorized to make this Verification on behalf of the Defendant, CITY OF DUBOIS, and I verify that the information provided in the foregoing Preliminary Objections is true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities.



Edward Walsh

DATED: June 22, 2023

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

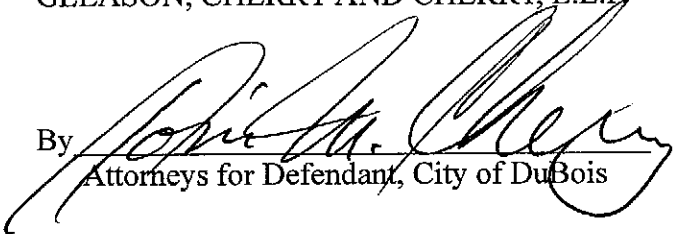
SANDY TOWNSHIP, :
Plaintiff : DOCKET NO. 2023 – 749
vs. : CIVIL ACTION - LAW
CITY OF DUBOIS, :
Defendant :

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of June, 2023, a true and correct copy of Defendant's Preliminary Objections to Plaintiff's Complaint was served upon SCOTT T. WYLAND, ESQ., counsel for Plaintiff, by mailing the same to him by United States First Class Mail, Postage Prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

SCOTT T. WYLAND, ESQ.
Salzmann Hughes, P.C.
Attorneys at Law
1801 Market Street, Suite 300
Camp Hill, PA 17011

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

By 
Attorneys for Defendant, City of DuBois

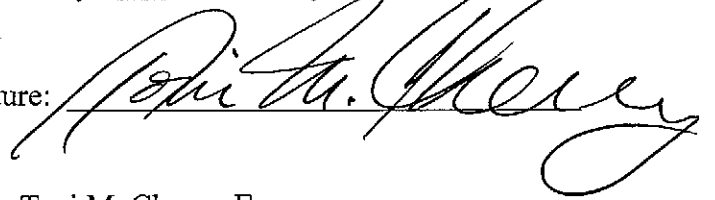
Dated: June 22, 2023

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Gleason, Cherry and Cherry L.L.P.

Signature: _____

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

Name: Toni M. Cherry, Esq.

Attorney No. (if applicable) 30205