

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

126 MD 2017

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION, PETITIONER,

v.

GRANT TOWNSHIP OF INDIANA COUNTY and
THE GRANT TOWNSHIP SUPERVISORS, RESPONDENTS.

**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION'S
BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS**

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STATEMENT OF JURISDICTION

This Court has jurisdiction under 42 Pa.C.S. § 761(a)(1).

STANDARD OF REVIEW

In ruling on preliminary objections, the Court need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stilp v. Cappy*, 931 A.2d 108, 110 (Pa. Cmwlth. 2007) (citation omitted). In order to sustain preliminary objections, it must appear with certainty that the law will not permit recovery, and any doubt should be resolved by a refusal to sustain them. *Id.*

STATEMENT OF QUESTIONS INVOLVED

1. Is Grant Township's Home Rule Charter superior in authority to the Pennsylvania Constitution and laws adopted by the General Assembly?

Suggested Answer: No.

2. Can Grant Township challenge the Department's modification of a gas well permit in this original jurisdiction proceeding?

Suggested Answer: No.

3. Should Grant Township's New Matter and Counterclaims be dismissed for lack of sufficient specificity?

Suggested Answer: Yes.

4. Is Grant Township entitled to a jury trial as a matter of law?

Suggested Answer: No.

STATEMENT OF THE CASE

Before this Court are the Department's Preliminary Objections to the New Matter and Counterclaims that Grant Township filed in response ("Response") to the Department's Petition for Review in the Nature of a Complaint Seeking Declaratory and Injunctive Relief ("Petition").

I. Factual History

A. Grant Township's Home Rule Charter

On November 3, 2015, the citizens of Grant Township adopted a home rule charter that changed the township's form of governance to home rule and, *inter alia*, banned the disposal of oil and gas waste fluids by injection ("Home Rule Charter," a copy of which is attached as Exhibit A).

The Home Rule Charter specifically forbids any government from permitting a well for the purpose of disposing oil and gas waste fluids, such as brine, by injection or otherwise. The following are sections and definitions of the Home Rule Charter that are extraordinarily overreaching in their purported scope and design:

- Section 301 of the Home Rule Charter, entitled "Depositing of Waste from Oil and Gas Extraction," states: "[i]t shall be unlawful within Grant Township for any corporation or government to engage in the depositing of waste from oil and gas extraction." (Exhibit A, Home Rule Charter, at 23).

- Article VIII of the Home Rule Charter defines “depositing of waste from oil and gas extraction” to include, but is not limited to:

the depositing, disposal, storage, beneficial use, treatment, recycling, injection, or introduction of materials including, but not limited to, brine, “produced water,” “frack water,” tailings, flowback, or any other waste or by-product of oil and gas extraction, by any means. The phrase shall also include the issuance of, or application for, any permit that would purport to allow these activities. This phrase shall not include temporary storage of oil and gas waste materials in Grant Township at existing well sites.

Id. at 27.

- Section 302 of the Home Rule Charter, entitled “State and Federal Authority,” purports to nullify government permits:

[n]o permit, license, privilege, charter, or other authorization, issued to a corporation, by any *State or federal entity*, that would violate the prohibitions of this Charter or any rights secured by this Charter, shall be deemed valid within Grant Township.

Id. at 23 (emphasis added).

Further, the Home Rule Charter even purports to sanction governments that violate the charter:

- Section 303 of the Home Rule Charter, entitled “Summary Offenses,” states:

Any corporation or *government* that violates any provisions of this Charter shall be guilty of an offense and, upon conviction thereof, shall be sentenced to pay the maximum fine allowable under State law for that violation. Each day or portion thereof, and each

violation of a section of this Charter, shall count as a separate violation.

Id at 23. (emphasis added).

Finally, the Home Rule Charter includes a supremacy clause, purporting to nullify any rule adopted by a state agency or state law contrary to the Home Rule Charter:

- Section 306 of the Home Rule Charter, entitled “Enforcement of State Laws,” states: “All laws adopted by the *legislature of the State of Pennsylvania, and the rules adopted by any State agency*, shall be the law of Grant Township only to the extent that they do not violate the rights or prohibitions recognized by this Charter.” *Id* at 23 (emphasis added).

B. The Department’s Permit

On March 27, 2017, the Department issued a modification to the “Yanity” gas well permit (“Well Permit”) held by Pennsylvania General Energy Company, LLC (“PGE”). The Well Permit authorized the change-in-use of an existing well in Grant Township from natural gas production to oil and gas fluid disposal by injection.

Grant Township did not appeal the Well Permit to the Pennsylvania Environmental Hearing Board (“EHB”), the administrative tribunal with authority to hear appeals from actions of the Department. 25 Pa. Code § 1021.2. Other parties, however, did appeal the Well Permit. Specifically, PGE filed an appeal of the Well

Permit with the EHB on April 25, 2017¹; and, on April 26, 2017, Judith Wanchisn, Stacy Long, and the “East Run Hellbenders Society” filed an appeal of the Well Permit with the EHB². The EHB consolidated the two appeals of the Well Permit on April 26, 2017 at Docket No. 2017-031-R.

II. Procedural History

The Department commenced this matter on March 27, 2017 when it filed its Petition for Review in the Nature of a Complaint Seeking Declaratory and Injunctive Relief (“Petition”). Simultaneously, the Department filed its Application for Expedited Special Relief in the Nature of a Preliminary Injunction (“Application”) and its Memorandum in Support, seeking to enjoin the enforcement of Section 303 of Grant Township’s Home Rule Charter. That provision of the Home Rule Charter purports to fine the Department on a daily basis for issuing permits such as the Well Permit.

On April 10, 2017, pursuant to a Joint Application for Expedited Special Relief in the Nature of a Stipulated Order, Senior Judge Pellegrini issued an order stating the following:

The implementation and/or enforcement of Section 303 of the Home Rule Charter against the Commonwealth of Pennsylvania, its agencies, and its employees acting within the scope of their employment, is ENJOINED until such time as a final determination on the merits of the Petition for Review is rendered.

¹ EHB Docket No. 2017-031-R.

² EHB Docket No. 2017-032-R.

On May 8, 2017, Grant Township filed its Response in this matter, including New Matter and Counterclaims. On May 19, 2017, Grant Township filed its Notice to Plead, resulting in a filing deadline of June 19, 2017 for the Department to respond to Grant Township's Response's New Matter and Counterclaims. On June 19, 2017, the Department filed Preliminary Objections to Grant Township's New Matter and Counterclaims. On July 18, 2017, Grant Township filed a Reply to the Preliminary Objections.

This Court initially ordered that oral argument on the Preliminary Objections occur on August 21, 2017. At the parties' request, the Court continued the date of the oral argument to October 3, 2017, to give the parties the opportunity to brief the issues in the Preliminary Objections, in an order dated August 1, 2017. This brief is filed in accordance with the Court's order.

SUMMARY OF ARGUMENT

The Department's Preliminary Objections identify clear legal deficiencies in Grant Township's New Matter and Counterclaims. Grant Township's Home Rule Charter plainly rejects state law, judicial precedent, and the Pennsylvania Constitution without any authority to do so. Grant Township also challenges a Department permit in this original jurisdiction proceeding, which, as a matter of law, it cannot do. Finally, Grant Township demands a jury trial in circumstances where none is available.

The Department's Petition is intentionally narrow, as it identifies only those provisions of the Home Rule Charter that: (1) are unlawful, and (2) involve the Department. In contrast, Grant Township's New Matter and Counterclaims are broad efforts to abandon precedent and the rule of law, unresponsive to the Department's objections. This case should remain narrowly focused and should not become inflated with unsupported Counterclaims and New Matter that reject precedent, law, and the Constitution for unknown aims.

For the reasons set forth below, this Court should determine that the Department's Preliminary Objections have merit and dismiss Grant Township's New Matter and Counterclaims.

ARGUMENT

I. GRANT TOWNSHIP’S HOME RULE CHARTER IS NOT SUPERIOR AUTHORITY TO STATE LAW (PRELIMINARY OBJECTION – DEMURRER TO CLAIMS OF SUPREMACY OF LOCAL LAW OVER CONSTITUTIONAL AND STATUTORY LAW).

The Department objects to Grant Township’s assertions that its Home Rule Charter is superior authority to Pennsylvania’s Constitution, statutes, and case law. (Preliminary Objections, pp. 12-23.) Specifically, Grant Township asserts that the Commonwealth’s Oil and Gas Act, 58 Pa.C.S. §§ 3201, *et seq.* (“Oil and Gas Act”), and the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, *as amended*, 35 P.S. §§ 6018.101, *et seq.* (“Solid Waste Management Act”), violate the Home Rule Charter, repeatedly asserting the supremacy of the Home Rule Charter over those statutes. (Response, pp. 10-13, 15-17, 19, 21, 23-34.) Because, as a matter of law, these state laws preempt the Home Rule Charter, and not *vice versa*, Grant Township’s New Matter and Counterclaims are flawed and should be dismissed.

A. The Portions of the Home Rule Charter that Conflict with State Statutes are Preempted.

The portions of the Home Rule Charter that conflict with state law are preempted. The law is settled: a local law “cannot permit what a state statute or regulation forbids or *prohibit what the state enactments allow.*” *Duff v. Northampton Twp.*, 532 A.2d 500, 504–05 (Pa. Cmwlth. 1987), *aff’d*, 550 A.2d 1319 (Pa. 1988) (emphasis added). In *Duff v. Northampton Twp.*, this Honorable Court

held that statutory preemption of a local law is established by answering “yes” to any of these questions:

- (1) Does the ordinance conflict with the state law, either because of conflicting policies or operational effect, that is, does the ordinance forbid what the legislature has permitted?
- (2) Was the state law intended expressly or impliedly to be exclusive in the field?
- (3) Does the subject matter reflect a need for uniformity?
- (4) Is the state scheme so pervasive or comprehensive that it precludes coexistence of municipal regulation?
- (5) Does the ordinance stand as an obstacle to the accomplishment and execution of the full purposes and objectives of the legislature?

Id. at 505 (referred to herein as “the *Duff* questions”). See *Liverpool Twp. v. Stephens*, 900 A.2d 1030, 1033 (Pa. Cmwlth. 2006).

The answer to the first *Duff* question is dispositive. There is no dispute that the Home Rule Charter conflicts with the Oil and Gas Act and the Solid Waste Management Act. Sections 301 and 302 of the Home Rule Charter ban the disposal of brine by injection, and Section 306 of the Home Rule Charter purports to invalidate any state law that allows for brine injection. (Exhibit A, Home Rule Charter, Sections 301, 302, and 306.) Moreover, the Home Rule Charter purports to forbid any government (which would include the Department) from authorizing brine injection. (*Id.*, Article VIII, definition of “Depositing of Waste from Oil and Gas Extraction”.) Those local laws directly conflict with Section 3211 of the Oil and Gas Act, 58 Pa.C.S. § 3211, which grants the Department the power to issue permits for brine injection wells, and with Section 6018.104(6) of the Solid Waste

Management Act, 35 P.S. § 6018.104(6), which grants the Department the power to regulate the disposal of wastes. *See* 58 Pa.C.S. § 3273.1(a) (expressly coordinates the regulation of oil and gas related wastes under the Oil and Gas Act and the Solid Waste Management Act); 25 Pa. Code §§ 78.11 and 78.18 (well permitting regulations were promulgated under the Oil and Gas Act and the Solid Waste Management Act, among other laws).

Given that these local and state laws conflict, the conflict must be resolved. The General Assembly has done so. The General Assembly expressly preempted local laws that are contrary to the Department’s regulation of oil and gas operations. Section 3302 of the Oil and Gas Act, 58 Pa.C.S. § 3302, provides, in pertinent part:

Except with respect to local ordinances adopted pursuant to the [Municipalities Planning Code (“MPC”)] and the act of October 4, 1978 (P.L. 851, No. 166), known as the Flood Plain Management Act, *all local ordinances purporting to regulate oil and gas operations regulated by Chapter 32 (relating to development) are hereby superseded.* No local ordinance adopted pursuant to the MPC or the Flood Plain Management Act shall contain provisions which impose conditions, requirements or limitations on the same features of oil and gas operations regulated by Chapter 32 or that accomplish the same purposes as set forth in Chapter 32.

58 Pa.C.S. § 3302 (emphasis added).³ Section 3302, outside of the context of flood plain management and zoning, expressly preempts local regulation of oil and gas

³ The last sentence of 58 Pa.C.S. § 3302 is not included in this quote because it was stricken by this Honorable Court. *Robinson Twp. v. Commonwealth of Pennsylvania*, 96 A.3d 1104, 1120-22 (Pa. Cmwlth. 2014), *aff’d in part, rev’d in part*, *Robinson Twp. v. Commonwealth of Pennsylvania*, 147 A.3d 536, 551, 565-66

operations.⁴ *Robinson Twp. v. Commonwealth of Pennsylvania*, 147 A.3d at 566 (citing *Huntley & Huntley v. Borough Council of Oakmont*, 964 A.2d 855, 866 n. 11 (Pa. 2009)).

Thus, the Home Rule Charter’s purported regulation of oil and gas waste fluid disposal in Sections 301, 302, and 306 are preempted because: (i) they conflict with a state law by forbidding what the Oil and Gas Act expressly permits (answering “yes” to the first *Duff* question), and (ii) because the Oil and Gas Act is expressly the exclusive regulator of oil and gas wells of the Commonwealth (answering “yes” to the second *Duff* question). *Duff, supra*.

The law governing waste in the Commonwealth is likewise dispositive for the Department’s objections. In *Municipality of Monroeville v. Chambers Dev. Corp.*, 491 A.2d 307, 310-311 (Pa. Cmwlth. 1985), this Court explained that the Solid

(Pa. 2016) (Commonwealth Court’s striking of the last sentence of 58 Pa.C.S. § 3302 was not appealed to the Supreme Court and therefore remains precedential).

⁴ The full quote of this text from pages 565 and 566 of the Supreme Court’s opinion is as follows:

Given the absence of those statutory provisions, municipalities may again, as they did prior to the passage of Act 13, regulate the environmental impact, setback distances, and the siting of oil and gas wells in land use districts through local ordinances enacted in accordance with the provisions of the MPC or the Flood Plain Management Act, provided that such ordinances do not impose conditions on the features of well operations which the remaining valid provisions of Act 13 regulate.

Robinson Twp. v. Commonwealth, 147 A.3d at 566.

Waste Management Act⁵ exclusively occupies the field of waste disposal regulation. Thus, *Municipality of Monroeville* provides a conclusive answer in the affirmative to the second *Duff* preemption question.⁶ Accordingly, the Home Rule Charter’s waste disposal provisions are also preempted because the Solid Waste Management Act exclusively occupies the field of waste disposal.

Therefore, as a matter of law, the Home Rule Charter’s purported ban on brine disposal wells is preempted as to the regulation of the disposal of waste and brine in injection wells. The Home Rule Charter *must* give way before the provisions of the Oil and Gas Act and the Solid Waste Management Act.

B. The Home Rule Charter and Optional Plans Law Rebutts Grant Township’s Claim that its Local Law Supersedes State Law.

Grant Township’s claim that its Home Rule Charter supersedes state law is directly contrary to the plain language of the very statute that authorized Grant Township’s Home Rule Charter. As a matter of law, the claim lacks merit.

The Home Rule Charter and Optional Plans Law (“Home Rule Law”) is the enabling legislation that authorizes municipalities to enact home rule charters. 53 Pa.C.S. §§ 2901, *et seq.* Among other things, the Home Rule Law limits the powers

⁵ The General Assembly declared that the “purpose” of the Solid Waste Management Act is to “establish and maintain a . . . comprehensive solid waste management” program and to “protect the public health, safety and welfare from the . . . short and long term dangers of . . . disposal of all wastes.” 35 P.S. § 6018.102.

⁶ The second *Duff* question is “[w]as the state law intended expressly or impliedly to be exclusive in the field?” *Duff, supra*.

that a municipality may exercise through a home rule charter. 53 Pa.C.S. § 2962. But the Home Rule Law specifically limits the power available to a home rule municipality as follows:

(c) Prohibited powers. --A municipality shall not:

...

(2) Exercise powers contrary to or in limitation or enlargement of powers granted by statutes *which are applicable in every part of this Commonwealth.*

...

(e) Statutes of general application. — Statutes that are uniform and applicable in every part of this Commonwealth shall remain in effect and shall not be changed or modified by this subpart. *Statutes shall supersede any municipal ordinance or resolution on the same subject.*

53 Pa.C.S. § 2962 (c)(2) and (e) (emphasis added).

As such, Grant Township's claims fail by the very statute under which the Home Rule Charter was promulgated. Rather than stand for Grant Township's position, the Home Rule Law specifically prohibits Grant Township from exercising powers contrary to statutes that are applicable statewide. *Id.*

In prior decisions, this Court has plainly rejected claims that home rule charters can confer on municipalities any powers that are contrary to statutorily defined limitations. In *McKeesport v. Pa. Pub. Util. Com.*, 442 A.2d 30, 31 (Pa. Cmwlth. 1982), McKeesport asserted that its home rule status exempted it from, and

otherwise made it “immune” to, the Public Utility Commission’s regulatory jurisdiction. This Court rejected that argument, explaining that:

[i]t is too clear for serious argument to the contrary that the Public Utility Law . . . is applicable in every part of the Commonwealth and that McKeesport in increasing its water rates to Versailles without PUC approval was attempting to exercise power not conferred on it by the Home Rule Charter and Optional Plans Law.

Id. See also, *City of Pittsburgh v. Fraternal Order of Police*, 161 A.3d 160, 166–67 (Pa. 2017) (Pennsylvania Supreme Court affirming trial court’s determination that a home rule charter cannot supersede a statewide statute requiring collective bargaining for police and firefighters).

These limits on home rule powers apply here because the Oil and Gas Act and the Solid Waste Management Act are statutes applicable in every part of the Commonwealth. 58 Pa.C.S. § 3202; 35 P.S. § 6018.102. See *Robinson Twp.*, 147 A.3d at 563, 565-566 (the Oil and Gas Act regulates the operational aspects of oil and gas well development); *Municipality of Monroeville*, 491 A.2d at 310-311 (the Solid Waste Management Act exclusively occupies the field of waste disposal). It must follow that the Oil and Gas Act and the Solid Waste Management Act, which are statutes of statewide application, supersede any provisions of the Home Rule Charter that conflict with those statutes.

In sum, the statute under which the Home Rule Charter was promulgated, the Home Rule Law, refutes Grant Township’s assertions that its local law somehow

supersedes state law. The sections of Grant Township’s local law that conflict with the statutes are null and not enforceable.

C. The Pennsylvania Constitution Rebutts Grant Township’s Claim that its Local Law Supersedes State Law.

Grant Township’s claims that its Home Rule Charter supersedes state statutes is also contrary to express provisions in the Pennsylvania Constitution that limit the powers that home rule charters may vest in municipalities. Article IX, Section 2 of the Pennsylvania Constitution, the seminal legal authority for municipal home rule, states in relevant part: “[a] municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter *or by the General Assembly at any time.*” Pa. Const. art. IX, § 2 (titled “Home Rule”) (emphasis added). As set forth above, the General Assembly has expressly limited local regulation of oil and gas operations (Section 3302 of the Oil and Gas Act, 58 Pa.C.S. § 3302; *Robinson Twp.*, 147 A.3d at 565-66) and expressly superseded local laws that conflict with statewide laws, such as the Solid Waste Management Act and the Oil and Gas Act (Home Rule Law; *City of Pittsburgh*; *McKeesport, supra*). Thus, Article IX of the Pennsylvania Constitution provides clear constitutional authority for the statutory preemption arguments set forth in the preceding section.

Earlier this year, in addressing whether a home rule charter could limit statutory collective bargaining protections, the Pennsylvania Supreme Court

unambiguously explained: “[t]he Pennsylvania Constitution provides that home rule charters. . . are subservient to the limitations imposed by the General Assembly.” *City of Pittsburgh*, 161 A.3d at 166–67 (Pa. 2017). Accordingly, any home rule charter that is contrary to statewide laws violates both the Constitution and the Home Rule Law. *Id.* at 166-171. This 2017 Supreme Court precedent directly addresses the issue before this Court: can a home rule charter supersede a statute of statewide applicability? The answer, as a matter of law, is that efforts to do so are unconstitutional.

Accordingly, Grant Township’s claim that its Home Rule Charter is superior to the Oil and Gas Act and the Solid Waste Management Act is contrary to the Pennsylvania Constitution and must be rejected.

D. Grant Township’s Generalized Claims that the Home Rule Charter Supersedes State Law are Meritless.

Grant Township also advances generalized arguments that the Home Rule Charter supersedes state law, untethered to any legal authority. Grant Township relies upon maxims and generalized statements of rights, such as: “[a]ny state or federal law which purports to preempt the Charter violates Grant Township’s right of local, community self-government.” (Response, p. 13, ¶ 82.)

Instead of attempting to distinguish or rebut the doctrine of preemption through legal argument, Grant Township simply rejects the concept, as follows:

The people's right of local, community self-government is not limited by the authority granted to Grant Township under the Home Rule Charter & Optional Plans Law, 53 Pa.C.S. §§ 2901, *et seq.*, or by any other grant of authority (or lack of grant of authority) to Grant Township by the State, nor can it be preempted by state or federal law.

(*Id.* at 23, ¶ 59.) Grant Township's pleadings are replete with similar unsupported conclusory paragraphs. These paragraphs are listed in the Department's Preliminary Objections. (Preliminary Objections, pp. 12-23.)

It is beyond peradventure that a party may not sustain its claims without a legal basis for doing so. Reliance on aspirational ideals cannot overcome a lack of legal authority.

As noted above, constitutional and statutory law establishes that home rule governments do not have the legal authority to reject statutes, the Constitution, and judicial precedent, or to change law by declaration, charter, edict, or otherwise. *See* Pa. Const. art. IX, § 2; 53 Pa.C.S. § 2962. What is more, to the extent that Grant Township seeks to declare itself outside of the jurisdiction of all other governmental jurisdiction, such claims are void as a matter of basic constitutional law. In Pennsylvania, the Courts are exclusively vested with the judicial power to interpret the Commonwealth's legal doctrines and laws, and the General Assembly is vested with the Commonwealth's legislative power. Pa. Const. art. II, § 1, and art. V, § 1; *accord Marbury v. Madison*, 5 U.S. 137 (1803). As a matter of our tripartite

constitutional structure, home rule local governments may only operate within that legal framework. Home Rule Law, *supra*.

Consequently, there can be no serious debate that Grant Township's rejection of state law is not supported by constitutional principle and language, as well as abundant legal authority. Therefore, the Department's preliminary objections asserting demurrer to Grant Township's New Matter and Counterclaims are legally required pursuant to Pa.R.C.P. 1028(a)(4).

II. GRANT TOWNSHIP CANNOT CHALLENGE THE MERITS OF THE WELL PERMIT BEFORE THIS COURT (PRELIMINARY OBJECTIONS – FAILURE TO EXHAUST STATUTORY REMEDY AND DEMURRER TO DECLARATORY RELIEF)

Grant Township challenges the Department's decision to issue the Well Permit in its New Matter. Because this Court does not have jurisdiction to adjudicate those challenges, this claim is deficient.

The Pennsylvania courts do not have jurisdiction over a claim where the Legislature has provided an adequate statutory remedy. *Ezy Parks v. Larson*, 454 A.2d 928, 935-936 (Pa. 1982); *Capital City Lodge No.12 v. City of Harrisburg*, 588 A.2d 584, 588 (Pa. Cmwlth. 1991). The General Assembly has directed parties that remedies prescribed by statute must be strictly pursued to the exclusion of other methods of redress. 1 Pa.C.S. § 1504. Section 1504 of the Statutory Construction Act of 1972 states, in relevant part:

In all cases where a remedy is provided or a duty is enjoined or anything is directed to be done by any statute, the directions of the statute shall be strictly pursued, and no penalty shall be inflicted, or anything done agreeably to the common law, in such cases, further than shall be necessary for carrying such statute into effect.

Id.

This is particularly true of special statutory appeals from the actions of administrative bodies. *Blank v. Board of Adjustment*, 136 A. 2d 695, 696-697 (Pa. 1957). This Court succinctly explained the law in a recent decision:

[W]here the legislature has provided an administrative procedure to challenge and obtain relief from an agency's action, failure to exhaust that remedy bars [the Commonwealth Court] from hearing claims for declaratory or injunctive relief with respect to that agency action.

Feudale v. Aqua Pennsylvania, Inc., 122 A.3d 462, 466 (Pa. Cmwlth. 2015), *aff'd*, 135 A.3d 580 (Pa. 2016), *citing Funk v. DEP*, 71 A.3d 1097, 1101 (Pa. Cmwlth. 2013).

Turning to the case at bar, the Legislature, by statute, has provided an exclusive administrative procedure to challenge actions of the Department, including permits. Any appeals of Department actions must be filed with and heard by the EHB. Section 4 of the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. § 7514(c) states, “[N]o action of the [D]epartment adversely affecting a person shall be final as to that person until the person has had the opportunity to appeal the action in accordance with the regulations of the board.” *See also* 35 P.S. § 7514(a) and (g) (jurisdiction and procedure of the Board); 25 Pa. Code § 1021.2(a) (an “action” of the Department is “[a]n order, decree, decision, determination or ruling by the Department affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of a person including, but not limited to, a permit, license, approval or certification.”); *Pennsylvania Trout v. Department of Env. Prot.*, 863 A.2d 93, 104 (Pa. Cmwlth. 2004) (“resolving conflicts in the evidence, witness credibility, and evidentiary weight are within the exclusive discretion of the EHB. . .”).

Accordingly, Grant Township’s challenges to the Well Permit (listed below) are within the purview of the EHB and not a matter for this Court to address in its original jurisdiction. This conclusion also disposes of Grant Township’s requested declaratory relief. The Declaratory Judgments Act similarly provides that declaratory relief is not available when a “[p]roceeding is within the exclusive jurisdiction of a tribunal other than a court.” 42 Pa.C.S. § 7541(c)(2).

Grant Township’s challenges to the Well Permit and its assertion of this Court’s jurisdiction are these paragraphs of the New Matter and Counterclaims, as follows:

In light of PGE’s past and current violations of environmental regulations, DEP’s decision to grant PGE a permit to dispose of fracking waste in Grant Township is yet another failure by DEP to protect the people’s health, safety and welfare, including their right to clean air, water, and soil, and of its duty to preserve the natural, scenic, historic and esthetic values of the environment; (Response, p. 12, ¶ 68)

Even if preemption could be applied to the Charter, which it cannot, the DEP has waived any right to assert the doctrine of preemption by failing to protect the health, safety, and welfare of the people of Grant Township, including by failing to prevent the disposal of fracking waste; (*Id.* at p. 12, ¶ 69)

Even if preemption could be applied to the Charter, which it cannot, the DEP is estopped from asserting the doctrine of preemption because it has failed to protect the health, safety, and welfare of the people of Grant Township, including by failing to prevent the disposal of fracking waste; (*Id.* at p. 12, ¶ 70)

DEP failed to exercise its independent judgment and was unduly influenced by corporate interests in issuing the Permit and in initiating this legal action; (*Id.* at p. 13, ¶ 83)

Grant Township, and the people of Grant Township, have suffered a direct, immediate, and substantial injury by DEP's issuance of a permit to PGE to deposit fracking waste in Grant Township in violation of the Charter. (*Id.* at p. 17, ¶ 20.)

Those New Matter and Counterclaims paragraphs directly challenge the Department's decision to issue the Well Permit based upon PGE's violation history, the Department's allegedly lax application review (*i.e.*, a failure to consider impacts on health, safety, welfare, the environment, and enumerated rights), and an alleged failure to exercise "independent judgment." Grant Township had the opportunity to raise those issues before the EHB but failed to exercise and waived its right to do so. 25 Pa. Code § 1021.52; *Pickford v. DEP*, 967 A.2d 414, 419 (Pa. Cmwlth. 2008).

Accordingly, New Matter challenging the Well Permit is deficient because it exceeds this Court's jurisdiction and pursues unavailable relief. Pa.R.C.P. 1028(a)(1) (lack of jurisdiction), (4) (demurrer – declaratory relief is unavailable), and (7) (failure to exhaust a statutory remedy).

III. GRANT TOWNSHIP’S NEW MATTER AND COUNTERCLAIMS LACK SUFFICIENT SPECIFICITY (PRELIMINARY OBJECTION – LACK OF SPECIFICITY)

The Department objects to statements in Grant Township’s New Matter and Counterclaims that contain statements that lack the specificity required of legal pleadings. These statements advance maxims and principles without associating those concepts to legal authority or facts. For example, New Matter Paragraph 63 states: “DEP is not entitled to the relief requested, as it would violate the fundamental and unalienable rights of the citizens and residents of Grant Township.” (Response, p. 11.) Other Paragraphs in Grant Township’s Response also lack the specificity necessary to respond to them, including New Matter Paragraphs 58-61 and 63-83, as well as Counterclaims Paragraphs 4-6, 11, 17, 19, 20, 36, 40, 45-63, 65, 80, 82, 86, 88-92, and 120. (Response, pp. 10, 11-13, 15-17, 19, 21-25, 27-28, 33.)

The Township is required to, at a minimum, set out facts sufficient for the Department to defend or counter Grant Township’s New Matter and Counterclaims. As this court explained in *Podolak v. Tobyhanna Twp. Bd. of Supervisors*, 37 A.3d 1283, 1287-1288 (Pa. Cmwlth. 2012), “[a]llegations will withstand challenge where they contain averments of all of the facts the plaintiff will eventually have to prove in order to prevail and they are sufficiently specific so as to enable defendant to

prepare a defense.” *Id.*, citing *Department of Transp. v. Bethlehem Steel Corp.*, 380 A.2d 1308, 1313 (Pa. Cmwlth. 1977).

The New Matter and Counterclaims Paragraphs listed above contain only broad topics, principles, and maxims, but do not recite facts that would allow the Department to defend or counter these assertions. Thus, they are defective as a matter of law.

Pursuant to Pa.R.C.P. 1028(a)(3) (insufficient specificity in a pleading), Grant Township’s New Matter and Counterclaims statements listed above are deficient because they lack sufficient specificity.

IV. JURY TRIAL IS NOT AVAILABLE ON THE CLAIMS ADVANCED BY GRANT TOWNSHIP (PRELIMINARY OBJECTION – DEMURRER)

Grant Township’s demand for a trial by jury in this matter is not supported by law. (Response, pp. 14 and 35). A jury trial is not available on the claims Grant Township asserted.

It is settled law that the right to jury trial under Article I, Section 6 of the Pennsylvania Constitution is not available when the cause of action post-dates the adoption of the Pennsylvania Constitution in 1790 and the statute in question does not provide a right to a jury trial. *Mishoe v. Erie Ins. Co.*, 824 A.2d 1153, 1155-1161 (Pa. 2003). There is no right to jury trial in this case because Grant Township’s claims are based on provisions of the Pennsylvania Constitution (Article IX, Section 2) and statutes that do not provide for jury trials (the Home Rule Law, the Oil and Gas Act, and the Solid Waste Management Act), and Grant Township’s claims did not exist in common law at the time of the adoption of the Pennsylvania Constitution in 1790.⁷

⁷ In the nineteenth century, oil and gas development was a new industry. This is illustrated by the Supreme Court in *Chartiers Block Coal Co. v. Mellon*, 25 A. 597, 598 (Pa. 1893), as follows: “The discovery of new sources of wealth, and the springing up of new industries which were never dreamed of half a century ago, sometimes present questions to which it is difficult to apply the law, as it has heretofore existed.” Given that the Pennsylvania Constitution was adopted in the eighteenth century, it is clear that the issues raised here, regarding drilling, drilling wastes, and the statutes that currently regulate drilling, wells, and waste handling, did not exist at the time of the adoption of the Pennsylvania Constitution in 1790.

Moreover, a trial by jury is not available under the Declaratory Judgments Act, 42 Pa.C.S. §§ 7531, *et seq.*, when facts are not at issue and this Court is only asked to consider matters of law. *See* 42 Pa.C.S. § 7539(b) (“When a proceeding under this subchapter involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.”). There is no dispute that the Home Rule Charter was adopted, that the Department issued the Well Permit, or that Grant Township did not appeal the Well Permit to the EHB. Grant Township may disagree with the issuance of the Well Permit, but that dispute is not for this Court to consider (*see* Section II, above). Accordingly, without facts at issue, a jury trial is not available to determine declaratory relief.

Grant Township’s demands for a jury trial are defective in that Grant Township’s claims are based on statutes that do not provide a right of jury trial, and its claims were not known at common law in 1790, when the Pennsylvania Constitution was adopted.

CONCLUSION

The Department respectfully requests that this Court enter an order sustaining its Preliminary Objections and dismissing Grant Township's New Matter and Counts 1 through 5 of its Counterclaims. Grant Township's legal positions and its pursuit of relief are unsupported. The Department opposes Grant Township's attempt to advance theories of local law supremacy that are not based in law and that are contrary to the Department's statutory authority.

Accordingly, Grant Township's New Matter and Counterclaims should be dismissed. That dismissal would allow this case to remain focused on the sections of the Home Rule Charter that purport to control or sanction governments, such as the Department, which may be adjudicated by this Court as matters of law.

Respectfully submitted,

/s/ Richard T. Watling

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FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Date: September 1, 2017

**CERTIFICATE OF COMPLIANCE WITH WORD COUNT FOR
BRIEF OF PETITIONER, COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

I, Richard T. Watling, hereby certify that the foregoing Brief of Petitioner, Commonwealth of Pennsylvania, Department of Environmental Protection, contains fewer than 14,000 words as prescribed by Pa.R.A.P. 2135(a). Excluding the parts of the Brief that are exempted by Pa.R.A.P. 2135(b), there are 5,871 words in the Brief, as counted through the use of Microsoft Word.

By: /s/ Richard T. Watling
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FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT
OF ENVIRONMENTAL PROTECTION

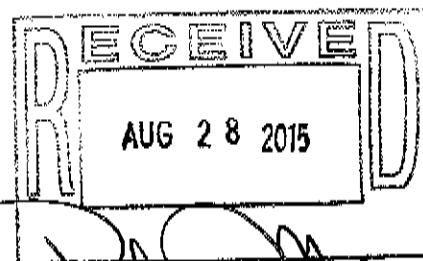
Date: September 1, 2017

EXHIBIT A

Final Report and Proposed Home Rule Charter Submitted by the Grant Township Home Rule Government Study Commission

CONTENTS of the FINAL REPORT

Page 2 Affidavit of the Study Commissioners.
Page 3 Notice to the Indiana County Board of Elections.
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Page 5 Cover Letter from the Study Commission to the People of Grant Township and their elected Board of Supervisors.
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Page 16 Statement of funds, materials and services used by the Study Commission, and their sources.
Page 19 The full text of the proposed Grant Township Charter.



[Handwritten Signature]
 Chief Clerk

AFFIDAVIT of the STUDY COMMISSIONERS

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF INDIANA
GRANT TOWNSHIP

We, the elected members of the Grant Township Government Study Commission, pursuant to Section 2923(2) of the Home Rule Charter and Optional Plans Law, recommend that a referendum be held to submit to the electors the question of adopting a home rule charter as prepared by the commission.

We, the elected members of the Grant Township Government Study Commission, present this Final Report and Home Rule Charter to the Indiana County Board of Elections, and to the People of Grant Township, in order that the following question be placed on the November 3rd, 2015, Municipal Election ballot, for the electors of Grant Township to decide on adoption or rejection of the proposed Charter:

"Shall the Home Rule Charter contained in the report dated August 25, 2015, of the Grant Township Government Study Commission, prepared in accordance with the Home Rule Charter and Optional Plans Law, be adopted by Grant Township?"

Pursuant to Section 2921 of the Home Rule Charter and Optional Plans Law, this Affidavit also serves as a declaration in support of the resources used by the commission in the performance of its work, and the preparation and filing of this report, as delineated within this report.

Sworn to and subscribed before me this 25

day of August, 2015.

Shirley Jane Porter
Notary Public

Stacy W. Long
Stacy W. Long, Chairman

William J. Woodcock
William Woodcock, Vice-Chairman

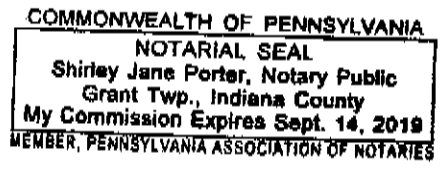
Mark Long
Mark Long, Treasurer

Judy Wanchis
Judy Wanchis, Secretary

Jon Perry
Jon Perry, Commissioner

Mona Saucier
Mona Saucier, Commissioner

Suzanne Watkins
Suzanne Watkins, Commissioner



**Notice to the Indiana County Board of Elections
From the Grant Township Home Rule Government Study Commission**

The Grant Township Home Rule Government Study Commission submits this Final Report and proposed Home Rule Charter to the Board of Elections of Indiana County, Pennsylvania for the purpose of presenting the proposed Charter to the people of Grant Township for adoption or rejection on November 3, 2015, at the Municipal Election to be held on that date.

The text of the question, as specified by the Home Rule Charter and Optional Plans Law, which the Study Commission requests and directs the Indiana County Board of Elections to place on the ballot for the Municipal Election to be held on November 3, 2015, is as follows:

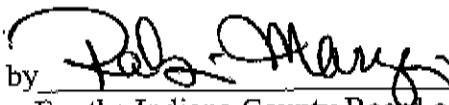
“Shall the Home Rule Charter contained in the report dated August 25, 2015, of the Grant Township Government Study Commission, prepared in accordance with the Home Rule Charter and Optional Plans Law, be adopted by Grant Township?”

The Study Commission also requests and directs the Indiana County Board of Elections to include this plain English explanation of the effect of voting on the above question upon the ballot with the question:

A “Yes” vote will mean the adoption of the proposed Grant Township Charter in its entirety. If approved, the Charter will take effect immediately upon approval by the electors of the Township. A “No” vote will reject the Charter in its entirety, and the Township will continue to be governed by the Pennsylvania Second Class Township Code.

The Study Commission further requests and directs the Indiana County Board of Elections to include the above ballot question and explanation in its official election notice, and to do all those things necessary and legally required in order that the People of Grant Township may exercise their right to decide on the question of adopting or rejecting the proposed Charter at the Municipal Election of November 3rd, 2015.

Received on August 28, 2015 by



For the Indiana County Board of Elections

**Notice to the Grant Township Municipal Secretary
From the Grant Township Home Rule Government Study Commission**

According to the Pennsylvania Home Rule Charter and Optional Plans Law, **the municipal secretary must give at least 30 days notice of the election in which a question regarding adoption or rejection of a Home Rule Charter will be presented to the voters. The notice must be published in a newspaper of general circulation once a week for three consecutive weeks during the 30-day period prior to the election and on Election Day a copy of the notice must be posted at each polling place.**

Accordingly, the Study Commission requests and directs the Township Secretary to prepare such notice and submit it for publication and to post such notice as prescribed by law.

With a copy of the Final Report and Proposed Charter, the Study Commission also submits records and materials generated by the Study Commission to the possession of the Township.

The Grant Township Home Rule Government Study Commission is submitting the attached Final Report and proposed Home Rule Charter to the Board of Elections of Indiana County, Pennsylvania for the purpose of presenting the proposed Charter to the people of Grant Township for adoption or rejection on November 3, 2015, at the Municipal Election to be held on that date. For the convenience of the Township Secretary, the text of the question, as specified by the Home Rule Charter and Optional Plans Law, which the Study Commission requests and directs the Secretary to advertise as required, is as follows:


"Shall the Home Rule Charter contained in the report dated August 25, 2015, of the Grant Township Government Study Commission, prepared in accordance with the Home Rule Charter and Optional Plans Law, be adopted by Grant Township?"

The Study Commission also requests and directs the Township Secretary to include in such notices this plain English explanation of the effect of voting on the above question:

A "Yes" vote will mean the adoption of the proposed Grant Township Charter in its entirety. If approved, the Charter will take effect immediately upon approval by the electors of the Township. A "No" vote will reject the Charter in its entirety, and the Township will continue to be governed entirely by the Pennsylvania Second Class Township Code.

The Study Commission has requested the Indiana County Board of Elections to include the above ballot question and explanation in its official election notice, and we hereby request the Township Secretary to do all those things necessary and legally required in order that the People of Grant Township may exercise their right to decide on the question of adopting or rejecting the proposed Charter at the Municipal Election of November 3rd, 2015.

Received on August 28 2015 by



For Grant Township

**Grant Township Home Rule Government Study Commission
Grant Township Municipal Building
100 East Run Road
Marion Center, PA 15759**

August 25, 2015

TO THE RESIDENTS OF GRANT TOWNSHIP:

The Grant Township Home Rule Government Study Commission is pleased to present its Report and Home Rule Charter.

The Report and Home Rule Charter reflect an intense effort of extensive study, research and deliberation by the Commission. During this time, the current form of government (Pennsylvania Second Class Township Code) was examined, deficiencies identified, and alternatives considered. The proposed Home Rule Charter offers an amended form of local government that the commission believes will provide for a focus on the rights of Grant Township residents and allows the residents of the Township to decide their collective future.

The commission held more than ten (10) meetings, all of which were open to the public in the Grant Township Municipal Building at 100 East Run Road, Marion Center, PA 15759. Two (2) public hearings were held (July 7, August 11) at which time the public was afforded the opportunity to express their views on township government and the work of the commission.

The recommended Home Rule Charter will improve our structure of government in many positive ways, but the ultimate benefit is that Home Rule will free Grant Township from the limitations we identified that are presently imposed by the Pennsylvania Second Class Township Code. The Grant Township Charter will place control of local government in the hands of its citizens, so the township may adapt and respond to the challenges facing our community, today and into the future.

The question to adopt the Grant Township Home Rule Charter will appear on the November 3, 2015 ballot.

The Commission expresses its appreciation to all of those who assisted in the Commission's work. We are grateful for the trust that the voters have placed in us and hope that they will appreciate and embrace the product of our work and study.

Respectfully submitted,
Grant Township Home Rule Study Commission

**RECOMMENDATION TO THE CITIZENS OF GRANT TOWNSHIP AND QUESTION
TO BE PLACED ON THE NOVEMBER 3, 2015 MUNICIPAL ELECTION BALLOT**

The Grant Township Home Rule Government Study Commission unanimously recommends that the residents of Grant Township adopt the Home Rule Charter prepared by the Commission, as authorized by the Pennsylvania Home Rule Charter and Optional Plans Law. Based upon this recommendation, a question will be placed on the November 3, 2015 ballot at which time the voters of Grant Township will vote on the following question:

“Shall the Home Rule Charter contained in the report dated August 25, 2015, of the Grant Township Government Study Commission, prepared in accordance with the Home Rule Charter and Optional Plans Law, be adopted by Grant Township?”

YES_____ NO_____

The following interpretative statement may accompany the question on the ballot:

“A vote of “**YES**” will mean the adoption of the proposed Grant Township Home Rule Charter in its entirety. If approved, the Charter will take effect immediately upon approval by the electors of the township. A “**NO**” vote will reject the charter in its entirety, and the Township will continue to be entirely governed by the Pennsylvania Second Class Township Code.

PURPOSE OF THE GRANT TOWNSHIP GOVERNMENT STUDY COMMISSION UNDER THE HOME RULE LAW

The Grant Township Government Study Commission has been charged with the responsibilities of providing the following tasks for the residents of Grant Township, pursuant to Section 2918 of the Pennsylvania Home Rule Charter and Optional Plans Law:

“Function and Duty of Commission:

The government study commission shall study the form of government of the municipality to compare it with other available forms under the laws of this Commonwealth and determine whether or not in its judgment the government could be strengthened or made more clearly responsible or accountable to the people or whether its operation could become more economical or efficient under a changed form of government.”

Study: A thorough review of the existing form of government is done to determine if it meets the needs of the people currently and for the future. This involves initial fact finding and polling of the residents to determine their wants and needs for their community. These needs are then evaluated in the study process for that which currently exists, what may not currently exist, or that which currently conflicts with what is desired.

Following a thorough analysis, the commission then votes to determine whether the current form of governance remains or should be replaced. If the decision of the Commission recommends replacing the current form of governance, then the following steps are taken.

Deliberation: Over several regularly scheduled meetings, discussions are held to determine those concepts and provisions of law that shall become a part of the new form of governance. The Commission has the duty to judge whether or not the municipality’s government could be strengthened and made more clearly responsible or accountable to the people. Definition of these terms and thus the definition of their charge is the responsibility of each Commission member.

Draft: When it has been determined that an alternative form of governance is recommended and the Commission has completed the deliberation phase of their duty, the Commission has the responsibility of preparing a Home Rule Charter or other document(s) which reflect the needs and desires of the community and best represents the principles of a democratic society. Upon completion of the proposed document, it is taken to the people of the township for review. Following the review period, the residents are then asked to vote to approve or reject the Home Rule Charter or other document(s) as their new form of governance.

Organization and Activities of the Study Commission

Date of Election: May 19th, 2015

List of Commissioners: Mark Long, Stacy W. Long, Jon Perry, Mona Saucier, Judy Wanchisn, Suzanne R. Watkins, William Woodcock.

Commission's Activities: Minutes for all Home Rule Government Study Commission's meetings are available at the Grant Township municipal office.

Number and Types of Meetings:

Total Meetings: 10

Organizational: 1 (June 8, 2015)

Public Hearings: 2 (July 7, 2015; August 11, 2015)

Commission Officers:

Chairman – Stacy W. Long

Vice-Chairman – William Woodcock

Secretary – Judy Wanchisn

Treasurer – Mark Long

Committees: Committees were formed on 6/8/15 to study the Second Class Township Code. Articles of the Code were divided between the 3 committees.

Committee 1: Judy Wanchisn
Suzanne Watkins

Committee 2: Stacy Long
Mark Long

Committee 3: William Woodcock
Jon Perry

Consultation to Commission:

CELDF (Community Environmental Legal Defense Fund)

- Thomas Linzey (Attorney)
- Chad Nicholson (Pennsylvania Organizer)

CELDF served as legal, historical, and research consultant during the Home Rule Government Study Commission's review of the Second Class Township Code and drafting of the Home Rule Charter for Grant Township.

Summary of Findings on a Review of the Second Class Township Code

The following paragraphs under this section were testimony delivered by William Woodcock, Government Study Commissioner and Grant Township resident, representing the entire Commission, at a public hearing hosted by the Grant Township Government Study Commission on July 7, 2015. The hearing took place following the regularly-scheduled Township meeting at 7pm.

“The Grant Township Government Study Commission has been charged with the responsibilities of providing the following tasks for the residents of Grant Township:

“**Study:** A thorough review of the existing form of government is done to determine if it meets the needs of the people currently and for the future. These needs are then evaluated in the study process for that which currently exists, what may not currently exist, or that which currently conflicts with what is desired.

“Following a thorough analysis, the commission then votes to determine whether the current form of governance remains or is to be replaced.

“Summary of Findings on our Review of the Second Class Township Code

“The Grant Township Government Study Commissioners took on the task of reading the Second Class Township Code, familiarizing themselves with it, and preparing for discussions as they reviewed its strengths and weaknesses, which is why we’re having this public hearing tonight. On June 17, 2015, that discussion focused on the general nature of the Code, and whether it serves the community well as a governing framework. The Study Commission drew conclusions using a set of questions as a guide:

“In What Way is the Code Adequate?

“What’s Wrong with the Code?

“What’s Missing in the Code?

“In What Way is the Code Adequate?

“In Article 5, Section 607, the Second Class Township Code states that ‘The board of supervisors shall: Be charged with the general governance of the township and the execution of legislative, executive and administrative powers in order to ensure sound fiscal management and to secure the health, safety and welfare of the citizens of the township.’ A Board of Supervisors is elected by the Township residents, and so, by having a good board of supervisors—who are people who live here and understand life in Grant Township, so, that’s the best bet we have for good governance in Grant, as is.

“Having a secretary and a Chairman and a tax collector and auditors and a board to supervise the ongoing and daily needs of the township seemed reasonable and adequate to all 7 of us.

“- Custodial and procedural rules including: Police, Fire Prevention, Horse Racetracks, Public Buildings, Sewage, Street Lights, Sidewalks and Curbs, Board of Health, Parks and Recreation, Storm Water Management, etc... These would all be great things to have if we were a moneyed, heavily populated area. The Code does not have a lot of solutions or advice for rural, under-populated areas like Grant Township. But we didn’t really find fault with these things—just that these things don’t fit US and the way we live right now.

“- Quite a few practical processes in the Second Class Code were found to be just adequate, but largely, we unanimously found the Code to be a ‘one size fits all’ document.

“What’s Wrong with the Code?”

“It is “one size fits all” legislation that does not allow Grant Township to make governing decisions that would differ from more than a thousand other Townships in the State.

“It was written by the State legislature, not by the people of the community, and was never voted on by the people of Grant Township. It is the form of government we got, not the one we wanted. Article 15, Section 1506 (General Powers) makes it law that the Township must comply with every and any law and regulation set forth by the Commonwealth.

“The Code puts the Township as a governing body squarely at the bottom of the pile.

“The Code seems designed for larger, more populated areas - too big for such a small place like Grant Township. With the Code, the people also have no say over important decisions and allows for no flexibility.

“The Code is not democratic; we vote for Supervisors, and that's it. If the community has any wants or desires that aren't in the Code, that's too bad.

“The Code mostly just focuses on things like money, buildings, property...and has almost nothing to do with the people. The Code's priorities are mostly about allocation of money. And since Grant Township has no money, we felt that that makes us not valuable and not worthy – and not represented. As example, Article 15, Section 1544 titled, ‘TOURIST PROMOTION AGENCIES’ states, ‘The board of supervisors may appropriate money not in excess of 10 cents for each resident of the township, as determined by the latest official census, to any tourist agency, as defined in the act of April 18, 1961 (PL 111, Number 50), known as the ‘Tourist Promotion Law’ to assist agencies in carrying out tourist promotional activities.’ So, by that math, Grant Township is awarded about \$70 should we want to move forward with contacting a tourist agency to promote tourism here in Grant Township. Clearly the Code, as a one-size-fits-all document, doesn't meet the needs equally of all Townships under its umbrella.

“It does not allow for local decision making on many issues, so that it protects the interests of large industries and corporations from ‘too much democracy from the people.’

“The State assigns us tasks they didn't want to do, and then limits Grant Township to doing just those tasks (like road maintenance or setting up a street light fund).

“It does seem that larger entities like the State or cities want to absorb what they can from small, rural communities.

“The Code does not allow for decisions to be made on issues that are unique to Grant Township.

“State Preemption – When the state writes laws for the entire state for specific activities where municipalities have no governing authority, it becomes illegal for the Township to make laws concerning these activities (coal, sewage sludge application, oil and gas, farming, timber).

“What’s Missing in the Code?”

“Wording that makes it very clear that we seek to make protecting the health and safety and welfare of this community and its environment way more important. That's what's missing in the code.

“Inalienable rights, basic individual rights, a Bill of Rights--wording that directly represent the PEOPLE living within Grant Township, not just the roads, buildings and land in Grant Township. Our inalienable rights are being ignored, as the rights of people are not mentioned in the Code.

“The enumeration of rights for the community; right now, any rights in the Code are the rights of the Supervisors to do the job that the State tells them to do. The Code is not written to protect rights...Code is currently there to limit rights. The Code is clearly different from the PA Constitution, which has a Declaration of Rights at the beginning.

“Rights recognized by the PA Constitution: Article 1/Section 2, which states, “All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper.”

“And Article 1/Section 26, which states, “Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.” And Article 1/Section 27 which states, “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.”

“Rights recognized by the Declaration of Independence: (2nd paragraph) Life, Liberty, and the Pursuit of Happiness.”

CONCLUSION:

The Second Class Township Code is adequate to run the day-to-day operations of the Township, but the elected Government Study Commissioners agreed that there were deficiencies. Most notably, what was missing in the Code was a Bill of Rights, an enumeration of rights, and better protections for our environment.

On July 7, 2015 the Grant Township Home Rule Government Study Commission voted that the Second Class Township Code is NOT satisfactory to govern Grant Township. The motion was made by Stacy W. Long, seconded by Mark Long and adopted unanimously by the Study Commissioners.

Overview of the Proposed Charter vs. the Second Class Township Code

The proposed Home Rule Charter allows the people of Grant Township to exercise a level of democracy unavailable through the PA Second Class Township Code. The Charter is rights-based, meaning that the people, who have a right to self-government that is acknowledged in the United States and the Pennsylvania Constitutions, make that right a reality in the community where they live. The Second Class Township Code is based on the relatively arbitrary decisions of the Pennsylvania legislature, applying a 'one size fits all' approach for governance in over a thousand Pennsylvania communities.

A form of government that is rights-based and adopted by the people who will govern also provides the residents of Grant Township an unparalleled opportunity to participate in the democratic process through the exercise of Emergency Town Meeting, as well as Charter Amendment through initiative. These processes, unavailable through the Second Class Township Code, provide the people of Grant Township with tools to make and change laws, ordinances and policies that were unavailable while governed by the Second Class Township Code.

Similarities and Differences between the Current And Proposed Grant Township Governments

Similarities

The current township organization, staffing, and function would be maintained as follows:

- Number of supervisors – 3
- Continuance of staff positions/roles such as:
 - Secretary
 - Engineer
 - Treasurer
 - Solicitor
 - Accountants and Auditors
 - Tax Collector
- Continuance of custodial functions such as:
 - Fire Prevention
 - Roads, Streets, Bridges, Highways
 - Street Lights
 - Public Buildings
- The current tax structure will be maintained, and no new taxes will be levied by adoption of the Charter.

Differences

The proposed Home Rule Charter will keep things mostly the same in Grant Township, with a few differences:

- All residents will have their inalienable and fundamental rights enumerated in a Bill of Rights.
- Township Supervisors will have authority to adjust the tax structure if current assessments, which are levied by the County, are too high and unfair to Township residents.
- Township voters may exercise initiative powers to amend the Charter.
- An Emergency Town Meeting provision will allow Township voters to consider temporary Ordinances to protect the Township from imminent threats to health, safety, and welfare.

**List of Articles Included in the Charter that are Retained
With Minor Changes from the Second Class Township Code**

Township Boundaries
Election of Officers
Township Officers
Board of Supervisors
Treasurer
Secretary
Auditors
Tax Collector
Solicitor
Engineer
Manager
Public Buildings
Fire Prevention
Police
Street Lights
Solid Waste Collection
Parks and Recreation
Roads, Streets, and Bridges
Sidewalks
Sanitary Sewers
Water Supply
Storm Water Management
Shade Tree Commission
Board of Health
Contracts
Taxation and Finance
Actions by Township

Recommendation Regarding Creation of a Transition Committee

The Grant Township Government Study Commission does not recommend that the Township Board of Supervisors appoint a committee to review issues associated with the transition to the new form of government, given that few adjustments will need to be made to the day-to-day operation of Grant Township. The Study Commission does recommend, however, that the Board of Supervisors have discretion to appoint a committee to review issues associated with the transition to the new form of government, upon adoption of the proposed Grant Township Charter, should the Board so choose. The Study Commission finds no immediate need for such a committee, since the basic form of government will not be altered significantly, and the new elements will be manageable by the Board of Supervisors, who will continue in office. However, should the need arise, the judgment of the Board of Supervisors shall prevail.

Expenses/ Resources/ Material/ Services*

Grant Township is responsible for all expenses incurred by the Government Study Commission. This includes consultant expenses, printing of documents, printing and postage of meeting notices, books, advertisement of public meetings and meeting space. The GSC Treasurer kept track of these expenses, and when appropriate submitted payment request - along with supporting documentation - to the Township Secretary. The township opened a separate checking account for this purpose. Some expenses, advertisement of public meetings for example, were paid directly by the township. The Township Secretary informed the GSC Treasurer of such expenses so they could be included here.

The Community Environmental Legal Defense Fund (CELDF) served as our consultant for a one dollar retainer, plus travel expenses - mileage and lodging.

To date, the total cost of GSC activities is \$1832.77. However, as can be seen below, a significant amount of these expenses are covered by in-kind donations and monetary donations. To date, the total value of all in-kind and monetary donations is \$1402.24. The difference, \$430.53 is the amount actually expended by Grant Township.

The figures presented here are accurate at the time of this writing - August 24, 2015. Additional expenses are expected for printing and notarizing the final charter document. Additional donations are expected as well. The appropriate figures (designated below by an asterisk) will be amended when all expenses have been received.

A detailed accounting of all expenses and donations, with supporting documentation, is available at the Grant Township Office.

Summary of Expenses

1) Consultant:	
CELDF - Community Environmental Legal Defense Fund	
Retainer - paid by Grant Township	\$1.00
Mileage - paid by Grant Township	\$525.00
Lodging - in-kind donation from Farnsworth House	\$517.75
Subtotal	\$1043.75
2) Documents:	
Meeting handouts, charter copies	
Printing Draft Charter handouts for August 11 GSC Hearing - paid by William Woodcock	\$24.49
Subtotal	\$24.49*
3) Community Notices:	
Two invitations mailed to residents - July 7 and August 11 GSC Meetings	
Design/Labels - in-kind donation from Cats-Up Graphics	\$110.00
Printing - paid by Grant Township	\$31.22
Postage - paid by Grant Township	\$185.50
Subtotal	\$326.72
4) Books and Materials:	
2 nd Class Twp Code (7) - paid by Grant Township	\$25.44
PA Home Rule Handbook (1) - paid by Grant Township	\$14.44
PA Constitution - accessed on-line	\$0.00
US Constitution & Bill of Rights - accessed on-line	\$0.00
Subtotal	\$39.88
5) Advertising for Public Meetings:	
Four ads placed in Indiana Gazette - paid by Grant Township	\$397.93
Subtotal	\$397.93
6) Meeting Space:	
All GSC meetings were held in the Grant Township Building.	
The Supervisors did not charge the GSC for use of the building.	\$0.00
Subtotal	\$0.00
Grand Total	\$1832.77*

* Subject to amendment as invoices and/or donations are received.

All receipts are available for examination at the Grant Township office.

Summary of In-Kind and Monetary Donations

1) Monetary Donations:

East Run Hellbenders Society	\$500.00
Mark T. Long	\$250.00
Subtotal	\$750.00*

2) In-Kind Donations:

Lodging - in-kind donation from Farnsworth House	\$517.75
Design/Labels - in-kind donation from Cats-Up Graphics	\$110.00
Printing - paid by William Woodcock	\$24.49
Subtotal	\$652.24

Grand Total \$1402.24*

Amount Paid by Grant Township

Total Expenses:	\$1832.77*
Total Donations:	\$1402.24*
Amount Paid by Grant Township:	\$430.53*

*** Subject to amendment as invoices and/or donations are received.**

All receipts are available for examination at the Grant Township office.

**Proposed Home Rule Charter
For Grant Township**

PROPOSED GRANT TOWNSHIP CHARTER
Presented to the People of Grant Township
By The
GRANT TOWNSHIP
GOVERNMENT STUDY COMMISSION
August 25, 2015

HOME RULE CHARTER OF THE TOWNSHIP OF GRANT,
INDIANA COUNTY, PENNSYLVANIA

ARTICLE I – BILL OF RIGHTS

Section 101. All legitimate governments in the United States owe their existence to the people of the community that those governments serve, and governments exist to secure and protect the rights of the people and those communities. Any system of government that becomes destructive of those ends is not legitimate, lawful, or constitutional.

Section 102. The people of Grant Township possess both the collective and individual right of self-government in their local community, the right to a system of government that embodies that right, and the right to a system of government that protects and secures their human, civil, and collective rights.

Section 103. The people of Grant Township possess the right to use their local government to make law, and the making and enforcement of law by the people through a municipal corporation, or any other institution, shall not eliminate, limit, or reduce their sovereign right of local community self-government.

Section 104. All residents of Grant Township, along with natural communities and ecosystems within the Township, possess the right to clean air, water, and soil, which shall include the right to be free from activities which may pose potential risks to clean air, water, and soil within the Township, including the depositing of waste from oil and gas extraction.

Section 105. All residents of Grant Township possess the right to the scenic, historic, and aesthetic values of the Township, including unspoiled vistas and a rural quality of life. That right

shall include the right of the residents of the Township to be free from activities which threaten scenic, historic, and aesthetic values, including from the depositing of waste from oil and gas extraction.

Section 106. Natural communities and ecosystems within Grant Township, including, but not limited to, rivers, streams, and aquifers, possess the right to exist, flourish, and naturally evolve.

Section 107. All residents of Grant Township possess the right to a sustainable energy future, which includes, but is not limited to, the development, production, and use of energy from renewable and sustainable fuel sources, the right to establish local sustainable energy policies to further secure this right, and the right to be free from energy extraction, production, and use that may adversely impact the rights of human communities, natural communities, or ecosystems. The right to a sustainable energy future shall include the right to be free from activities related to fossil fuel extraction and production, including the depositing of waste from oil and gas extraction.

Section 108. All residents of Grant Township possess a right to be fairly taxed, which includes property tax assessments and rates that are commensurate with the needs of the Township and the Township's residents, and the services required to meet those needs. Protection of that right shall require the Board of Township Supervisors to review Indiana County's administration of property taxation for Grant Township residents at least once every three years. If the Board of Supervisors deems the administration of property taxation to be unfair, unjust, or burdensome to the residents of Grant Township, the Board of Supervisors shall have the authority, through the adoption of an Ordinance, to change the administration of property taxation.

Section 109. All residents of Grant Township possess the right to enforce the rights and prohibitions secured by this Charter, which shall include the right of Township residents to intervene in any legal action involving the rights and prohibitions recognized by this Charter.

Section 110. All rights secured by this Charter are inherent, fundamental, and unalienable, and shall be self-executing and enforceable against both private and public actors. Further implementing legislation shall not be required for Grant Township, the residents of Grant Township, or the ecosystems and natural communities protected by this Charter, to enforce all of the provisions of this Charter. The rights secured by this Charter shall only be enforceable against actions specifically prohibited by this Charter, unless otherwise specifically noted.

ARTICLE II - GENERAL POWERS OF THE MUNICIPALITY

Section 201. Status and Title. The name of the municipality created by this Home Rule Charter shall be "Grant Township" and it shall operate as a Home Rule municipality, and possess the powers and authority of a Home Rule municipality.

Section 202. Boundaries. The boundaries of the Township shall be the actual boundaries of the Township at the time this Charter takes effect and as they may be lawfully changed thereafter.

Section 203. Governing Body. The governing body of the municipal Home Rule corporation shall be the Board of Supervisors, acting under the authority of, and with the consent of, the people of Grant Township.

Section 204. Rules of Operation. Unless expanded or altered as provided by this Charter, the rules of operation for the Grant Township Home Rule municipal corporation shall be the ones provided to second class Townships pursuant to the Second Class Township Code of the Commonwealth of Pennsylvania.

Section 205. Repeals. The Articles, sections, policies, and provisions of this Charter hereby repeal the provisions of any prior Ordinances, laws, or rules of the Township that are inconsistent with this Charter.

Section 206. Legal Claims and Liabilities of the Township. Upon enactment of this Charter, the Township shall continue to own, possess, and control all legal claims, power, and property of every kind and nature, owned, possessed, or controlled by it prior to when this Charter takes effect, and shall be subject to all its debts, obligations, liabilities, and duties.

Section 207. Pending Actions and Proceedings. No enforcement action or proceeding, civil or criminal, which was brought by the Township or any office, department, agency, or officer thereof, pending at the time this Charter takes effect, shall be affected by the adoption of this Charter or by anything herein contained. Any action or proceeding, civil or criminal, filed against the Township or any office, department, agency, or officer thereof, pending at the time this Charter takes effect, shall be evaluated by appropriate legal counsel and, if the transformation to a Home Rule municipality is deemed to transform the nature and character of the proceeding, the Township Board of Supervisors shall instruct legal counsel to request a dismissal of those proceedings.

Section 208. Continuation of Ordinances. All Ordinances, resolutions, rules, and regulations, or portions thereof in force when this Charter takes effect, which have been directly incorporated into this Charter, shall be deemed to have been repealed or amended to the extent that they duplicate provisions of this Charter. Other Ordinances, resolutions, rules, and regulations, or portions thereof in force when this Charter takes effect, shall temporarily be continued in force and effect until the Board of Supervisors has reviewed them, and determined to re-adopt them as Ordinances of the Home Rule municipality, or determined that they should be repealed or amended.

Section 209. Authority of Existing Officers. The Supervisors in office at the time this Charter takes effect shall remain in office for the full terms for which they were originally elected, and shall receive the same compensation until their terms expire. However, they shall have the responsibilities, duties, and authority only as set forth in and pursuant to this Charter. All other elected officials of the Township in office at the time this Charter takes effect shall remain in office for the full term for which they were elected, and shall receive the same compensation which they received prior to the adoption of this Charter.

ARTICLE III – PROHIBITIONS AND ENFORCEMENT

Section 301. Depositing of Waste from Oil and Gas Extraction. It shall be unlawful within Grant Township for any corporation or government to engage in the depositing of waste from oil and gas extraction.

Section 302. State and Federal Authority. No permit, license, privilege, charter, or other authorization issued to a corporation, by any State or federal entity, that would violate the prohibitions of this Charter or any rights secured by this Charter, shall be deemed valid within Grant Township.

Section 303. Summary Offenses. Any corporation or government that violates any provision of this Charter shall be guilty of an offense and, upon conviction thereof, shall be sentenced to pay the maximum fine allowable under State law for that violation. Each day or portion thereof, and each violation of a section of this Charter, shall count as a separate violation.

Section 304. Standing for Township and Residents. Grant Township, or any resident of Grant Township, may enforce the rights and prohibitions of the Charter through an action brought in any court possessing jurisdiction over activities occurring within Grant Township. In such an action, Grant Township or the resident shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

Section 305. Enforcement of Natural Community and Ecosystem Rights. Ecosystems and natural communities within Grant Township may enforce their rights, and this Charter's prohibitions, through an action brought by Grant Township or residents of Grant Township in the name of the ecosystem or natural community as the real party in interest. Actions may be brought in any court possessing jurisdiction over activities occurring within Grant Township. Damages shall be measured by the cost of restoring the ecosystem or natural community to its state before the injury, and shall be paid to Grant Township to be used exclusively for the full and complete restoration of the ecosystem or natural community.

Section 306. Enforcement of State Laws. All laws adopted by the legislature of the State of Pennsylvania, and rules adopted by any State agency, shall be the law of Grant Township only to the extent that they do not violate the rights or prohibitions recognized by this Charter.

ARTICLE IV - CORPORATE POWERS

Section 401. Corporate Privileges. Corporations that violate this Charter or the laws of the Township, or that seek to violate the Charter or those laws, shall not be deemed to be "persons" to the extent that such treatment would interfere with the rights or prohibitions enumerated by this Charter or those laws, nor shall they possess any other legal rights, powers, privileges, immunities, or duties that would interfere with the rights or prohibitions enumerated by the Charter or those laws, including standing to challenge the Charter or laws, the power to assert State or federal preemptive laws in an attempt to overturn the Charter or laws, or the power to assert that the people of Grant Township lack the authority to adopt this Charter or other Township laws.

ARTICLE V - EMERGENCY TOWN MEETING

Section 501. Emergency Town Meeting. In the event of a substantial public emergency affecting the health, safety, and welfare of the residents of Grant Township, or an event or activity that would infringe on the rights of the residents of Grant Township, the electors of the Township may call an Emergency Town Meeting whereby the electors of the Township may adopt a proposed Ordinance. If adopted, that Ordinance shall remain valid until the next available election at which the electors of the Township shall have the opportunity to make the Ordinance permanent by amending the Township's Home Rule Charter with the substance of the Ordinance.

Section 502. Initiation and Petition Form. To call an Emergency Town Meeting, a petition must be created by the petition filer. Each petition shall bear the name of the petition filer. The petition filer shall deliver written notice, along with a copy of the proposed Ordinance, to the Township Secretary during the hours that the Township office is officially open, and the Township Secretary shall post a copy of that notice and the proposed Ordinance at the Township Building the same day upon receiving that notice. No signatures may be affixed to the petitions until notice of the petition is posted at the Township Building. Each signature shall be in ink and shall be accompanied by the signer's address, signer's printed name, and the date of signing. Only registered electors who are residents of the Township are eligible to sign the petition. The petition shall contain the full text of the proposed Ordinance if that text can fit on a single page. If the text cannot fit on a single page, then circulators shall have full copies of the proposed Ordinance in their possession for inspection by potential signers, and the petition shall identify the Ordinance by declaring that "The signers below call for an Emergency Town Meeting to be held to consider the adoption of the Ordinance filed with the Secretary of the Township on [date] by [petition filer]." On the back of each page of the petition there shall be an attached affidavit executed by the circulator verifying the authenticity of the signers, and that the signers are registered electors who are residents of the Township to the best of the circulator's knowledge. Only registered electors who are residents within the Township may circulate petitions.

Section 503. Timeline. Petition circulators shall have 15 (fifteen) calendar days to collect the required signatures, commencing on the date that the Township Secretary posts the petition. The date that the Township Secretary posts the petition shall be included as 1 (one) of the 15 (fifteen) days that circulators may collect signatures. Petition circulators must gather valid signatures equal to at least 30% (thirty percent) of the number of registered electors within the Township. Petitions bearing the requisite number of signatures must then be filed with the Secretary of the Township during the hours that the Township office is officially open, and the Secretary shall issue a written notice of receipt, and then send the signatures to the Emergency Town Meeting Committee for verification. If the 15 (fifteen) day window for signature gathering expires on a day that the Township office is not officially open, the signatures may be submitted to the Township Secretary on the next day that the Township office is officially open; no signatures

shall be gathered on the day(s) that fall between the date that the signature gathering window expires and the next day the Township office is officially open.

Section 504. Verification and the Emergency Town Meeting Committee. The Emergency Town Meeting Committee shall verify the accuracy and sufficiency of the petition signatures within 10 (ten) days of the date upon which the petitions are submitted to the Township Secretary, and the Committee shall issue a final determination based on its review. Upon receipt of the petitions from the Secretary, the Chairman of the Board of Supervisors shall schedule and advertise, as a special meeting, a meeting of the Emergency Town Meeting Committee. The Emergency Town Meeting Committee shall consist of the Township Secretary, the Chairman of the Board of Supervisors, the Township Auditor who has served for the longest period of time in the capacity of Auditor within the Township, the petition filer, and the Township Tax Collector. A quorum of the Emergency Town Meeting Committee shall consist of three of those individuals. The number of required signatures shall be calculated using current records from the County Board of Elections; the validity of signatures shall be verified using current records from the County Board of Elections. Disputes over the validity of any individual signature shall be resolved by a majority vote of the Emergency Town Meeting Committee in attendance.

Section 505. Court Review. The petition filer shall be notified of the final determination of the Emergency Town Meeting Committee within one day of the final determination. The final determination of whether the petition satisfies the requirements for the calling of an Emergency Town Meeting shall be subject to judicial review. An appeal of the final determination of the Emergency Town Meeting Committee shall be filed to the Indiana County Court of Common Pleas, and such appeal must be filed within 10 (ten) days of the final determination of the Emergency Town Meeting Committee. Filing of the appeal shall not prejudice the ability of the original petition filer to create, circulate, and qualify a new petition, following the procedures contained within this Charter.

Section 506. Emergency Town Meeting Preparation. If the Emergency Town Meeting Committee determines that the petitions meet the requirements imposed by this Article of the Charter, it shall issue a final determination to that effect, and the Committee must set a date for the Emergency Town Meeting, which must occur no later than 15 (fifteen) days after the Emergency Town Meeting Committee has made its final determination. Notices shall be sent via U.S. Mail to all registered electors who are residents of the Township, informing those electors of the date of the Emergency Town Meeting. The Notices shall contain a brief summary of the proposed Ordinance, and also a brief overview of the nature of the Emergency Town Meeting, including informing electors that they will have the opportunity to cast a vote on the proposed Ordinance. The Notices shall be sent out no later than 7 (seven) days before the date of the Emergency Town Meeting. Two advertisements, containing the summary of the proposed Ordinance and the date of the Emergency Town Meeting, shall also be published on 2 (two) consecutive days in a newspaper of general circulation within the Township before the meeting is held.

Section 507. Running of the Meeting. The Chairman of the Board of Supervisors shall facilitate the Emergency Town Meeting. All Township electors will be issued a ballot upon arrival at the Emergency Town Meeting. The ballots shall be created and printed by the Emergency Town Meeting Committee. The ballot shall contain the summary of the proposed Ordinance, the question "Shall this Ordinance become law within Grant Township?" and a space for the elector to vote "yes" or "no" on the question. Sufficient copies of the full text of the Ordinance shall be available for inspection at the Emergency Town Meeting. The Chairman of the Board of Supervisors shall call the meeting to order. The petition filer shall have ten minutes to present the proposed Ordinance. Public comment shall follow, with registered Township electors having three minutes each to speak. Following public comment, electors shall individually deliver their ballots to the Chairman of the Board of Supervisors; and the Chairman, upon receiving each ballot, shall direct the Township Secretary to verify the name of the elector on records obtained from the County Board of Elections. Once verified, the Chairman shall place the ballot into a container overseen by the Emergency Town Meeting Committee.

Section 508. Ballot Counting. When all the votes have been cast, the Emergency Town Meeting Committee shall, in the open, immediately sort and count the ballots. Only the Emergency Town Meeting Committee shall be involved in the sorting and counting of ballots; no other person shall in any manner interfere. After counting, the Emergency Town Meeting Committee shall make a public declaration of the outcome of the vote. No ballot shall be received and counted after the outcome of the vote has been declared. A tie vote shall be resolved by a majority vote of the Emergency Town Meeting Committee in attendance. In the event of a tie vote of the Emergency Town Meeting Committee in attendance, the Ordinance shall be deemed to have been defeated.

Section 509. Effect of the Vote. If a majority of registered electors casting votes at the Meeting vote "no," the proposed Ordinance shall not take effect in Grant Township. If a majority of registered electors casting votes at the Meeting vote "yes," the proposed Ordinance shall immediately take effect in Grant Township. If a majority of registered electors casting votes at the Meeting vote "yes," the Township Board of Supervisors shall then take the necessary steps for the Ordinance to appear as a proposed amendment to the existing Grant Township Home Rule Charter at the next available general, municipal, or primary election. If a majority of registered electors casting votes at the Meeting vote "yes," the Ordinance shall remain in effect only until the electors in Grant Township have the opportunity to vote on whether or not to amend the existing Charter with the Ordinance.

ARTICLE VI - CHARTER AMENDMENT

Section 601. Amendment. No proposed amendment to this Charter shall be withheld from the people's consideration on the basis that existing legal authority may consider the substance of the amendment to be "illegal" or "unconstitutional." Proposed amendments may only be withheld from the people's consideration if they have the effect of denying, abridging, or removing the rights of people, natural communities, or ecosystems, as recognized by this Charter. Amendments to this Charter shall be adopted pursuant to Pennsylvania law governing the amendment of Home Rule Charters.

Section 602. Severability. All provisions, sections, and subsections of this Charter are severable, and if any sub-section, clause, sentence, part, or provision thereof shall be held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of this Charter. It is hereby declared to be the intent of the people that this Charter would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence, part, or provision had not been included herein.

ARTICLE VII – CALL FOR CONSTITUTIONAL CHANGES

Section 701. State and Federal Constitutional Changes. Through the adoption of this Charter, the people of Grant Township call for amendment of the Pennsylvania Constitution and the federal Constitution to recognize a right of local community self-government free from governmental preemption and nullification by corporate “rights” and powers.

ARTICLE VIII – DEFINITIONS

The following terms shall have the meanings defined in this section wherever they are used in this Charter:

“**Charter**” means the Grant Township Home Rule Charter.

“**Corporation**” for purposes of this Charter, includes any corporation, or other business entity, organized under the laws of any State or country.

“**Depositing of waste from oil and gas extraction**” includes, but is not limited to, the depositing, disposal, storage, beneficial use, treatment, recycling, injection, or introduction of materials including, but not limited to, brine, “produced water,” “frack water,” tailings, flowback, or any other waste or by-product of oil and gas extraction, by any means. The phrase shall also include the issuance of, or application for, any permit that would purport to allow these activities. This phrase shall not include temporary storage of oil and gas waste materials in the Township at existing well sites.

“**Extraction**” means the digging or drilling of a well for the purposes of exploring for, developing, or producing shale gas, oil, or other hydrocarbons.

“**Person**” means a natural person, or an association of natural persons, that does not qualify as a corporation under this Charter.

“**Township**” means Grant Township in Indiana County, Pennsylvania, its Township Board of Supervisors, or its representatives or agents.