

ORDINANCE NO. 2006 - /

AN ORDINANCE AUTHORIZING THE TOWNSHIP OF MARION, BERKS COUNTY, PENNSYLVANIA, TO JOIN WITH OTHER PARTICIPATING MUNICIPALITIES TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT TO ESTABLISH THE BERKS COUNTY UNIFORM CONSTRUCTION CODE BOARD OF APPEALS IN COOPERATION WITH THE COUNTY OF BERKS.

BACKGROUND

A. Certain townships and boroughs in Berks County, Pennsylvania have enacted ordinances adopting the Uniform Construction Code ("UCC"), Act 45 of 1999, 35 P.S. § 7210.101, et seq. (the "Act").

B. Section 301 of the Act directed the Pennsylvania Department of Labor and Industry to promulgate regulations with respect to the administration and enforcement of the Act, which regulations were codified at Title 34 Pa. Code, Chapters 401, 403 and 405 ("Regulations").

C. Section 403.121(d) of the Regulations, 34 Pa. Code § 403.121(d), as authorized by Section 501(c) of the Act, 35 P.S. § 7210.501(c), provides that two or more municipalities may establish a joint board of appeals through an intergovernmental agreement adopted under the authority of the Pennsylvania Intergovernmental Cooperation Act, 53 Pa.C.S. § 2301, et seq.

D. Under the Pennsylvania Intergovernmental Cooperation Act, a municipality may enter into an intergovernmental cooperation agreement upon the passage of an ordinance by its governing body.

E. The Township of Marion, Berks County, Pennsylvania ("Township") desires to enter into an intergovernmental agreement ("Agreement") with other participating municipalities in cooperation with Berks County, Pennsylvania ("County") to establish the Berks County Uniform Construction Code Board of Appeals ("UCC Board of Appeals"), to hear and rule on appeals, requests for variances and requests for extension of time as may be filed under the Township's UCC ordinance.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Supervisors of the Township of Marion, Berks County, Pennsylvania ("Board"), as follows:

Section 1. The Title and Background of this Ordinance set forth above are incorporated herein by reference.

Section 2. The Board hereby approves entering into the Agreement, a copy of which is attached hereto and incorporated herein by reference (and which shall be filed with the minutes of the meeting at which this Ordinance was enacted), with the intent and effect that the Township shall be bound by the Agreement.

Section 3. The Chairman of the Board is hereby authorized and directed on behalf of the Township: (i) to execute and deliver the Agreement; and (ii) to execute and deliver such additional instruments, and to take such further actions, as may be necessary or appropriate to carry forth the Agreement and the transactions to be effected under the Agreement, including payment of the participation fee to Berks County on behalf of the UCC Board of Appeals, as may be due from the Township under the Agreement.

Section 4. All actions of any officer, agent or other representative of the Township heretofore taken in the pursuit of the establishment of the UCC Board of Appeals and/or the Township's participation therein are hereby ratified and approved in all respects.

Section 5. The Board is hereby authorized to take such other action as may be necessary or appropriate to carry out the purposes of this Ordinance and of the Agreement.

Section 6. As required by the Pennsylvania Intergovernmental Cooperation Act, the following matters are specifically found and determined:

- (a) The conditions of the Agreement are set forth in the Agreement.
- (b) The Township shall utilize the UCC Board of Appeals for all appeals filed from application of the Township's UCC ordinance for the term as set forth in the Agreement.
- (c) The purpose and objectives of the Agreement are as set forth in the Background of this Ordinance and in the Agreement.
- (d) The manner and extent of financing the Agreement are that: (i) no borrowing will be required by the Township; (ii) funds to implement the Township's obligations under the Agreement shall come from normal and usual budgeted amounts for such matters; and (iii) other provisions governing the manner and extent of the financing of the UCC Board of Appeals shall be as set forth in the Agreement;
- (e) The UCC Board of Appeals shall be administered by the Board of Commissioners of Berks County, or its designee.
- (f) All property, real or personal, of the UCC Board of Appeals shall be acquired, managed, licensed or disposed of by the UCC Board of Appeals in accordance with the terms of the Agreement and the rules and procedures as may be adopted by the UCC Board of Appeals.
- (g) The UCC Board of Appeals will not be entering into any contracts.

Section 7. The provisions of this Ordinance are severable and if any section, sentence, clause, or part or provision hereof shall be held to be illegal, invalid or unconstitutional by any court of competent jurisdiction such decision of the court shall not affect the remaining sections, clauses, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Township that such Ordinance would have been enacted if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

Section 8. Nothing contained in this Ordinance shall be construed to affect any suit or proceeding in any court, or any rights acquired or liability incurred, or any cause of action existing prior to the enactment of this ordinance.

Section 9. This Ordinance shall become effective five days after the date of its enactment.

DULY ORDAINED AND ENACTED THIS 30 day of *March*, 2006,
by the Board of Supervisors of the Township of Marion, Berks County, Pennsylvania.

MARION TOWNSHIP BOARD OF
SUPERVISORS

Attest: *Lisa A. Brubaker*
Secretary

Tony L. Brubaker
Tony L. Brubaker, Chairman
Harold Markel
Harold E. Zechman

EXHIBIT "A"

EXHIBIT "A"

**INTERGOVERNMENTAL AGREEMENT FOR THE
ESTABLISHMENT OF THE BERKS COUNTY
UNIFORM CONSTRUCTION CODE BOARD OF APPEALS**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made this _____ day of _____, 2006 by and among Berks County, Pennsylvania ("County") and the undersigned Boroughs and Townships of Berks County.

BACKGROUND

A. Certain townships and boroughs in Berks County have enacted ordinances adopting the Uniform Construction Code ("UCC"), Act 45 of 1999, 35 P.S. § 7210.101, et seq. (the "Act").

B. Section 301 of the Act directed the Pennsylvania Department of Labor and Industry to promulgate regulations with respect to the administration and enforcement of the Act, which regulations were codified at Title 34 Pa.Code, Chapters 401, 403 and 405 ("Regulations").

C. Section 403.121(d) of the Regulations, 34 Pa.Code § 403.121(d), as authorized by Section 501(c) of the Act, 35 P.S. § 7210.501(c), provides that two or more municipalities may establish a joint board of appeals through an intergovernmental agreement adopted under the authority of the Pennsylvania Intergovernmental Cooperation Act, 53 Pa.C.S. § 2301, et seq.

D. Under the Pennsylvania Intergovernmental Cooperation Act, a municipality may enter into an intergovernmental cooperation agreement upon the passage of an ordinance by its governing body.

E. Certain boroughs and townships located in Berks County (individually, "Participating Municipality" and collectively, "Participating Municipalities") desire to enter into an intergovernmental agreement ("Agreement") in cooperation with the County to establish the Berks County Uniform Construction Code Board of Appeals, to hear and rule on appeals, requests for variances and requests for extension of time as may be filed under each Participating Municipality's UCC ordinance.

NOW, THEREFORE, based on the foregoing and pursuant to the authority of the Pennsylvania Intergovernmental Cooperation Act, as amended, the County and the Participating Municipalities agree and intend to be legally bound as follows:

SECTION 1. ESTABLISHMENT OF THE BOARD OF APPEALS

1.1 The Berks County Board of Commissioners, in cooperation with the governing bodies of the Participating Municipalities, hereby establish the Berks County Uniform Construction Code Board of Appeals ("Board")

- 1.2 The Participating Municipalities shall designate the Board, by resolution or ordinance, as the body to hear appeals brought under the codes and standards promulgated in the most current version of the Act, as maybe amended and adopted by a Participating Municipality.

SECTION 2. PURPOSE

- 2.1 The purpose of the Board is to hear and rule on appeals, requests for variances, and requests for extensions of time under the Act. An application for appeal shall be based on a claim that the true intent of the Act has been incorrectly interpreted, the provisions of the Act do not fully apply or an equivalent or better form of construction is to be used.

SECTION 3. ORGANIZATION

- 3.1 The Board shall consist of five (5) members and three (5) designated alternates.
- 3.2 Members of the governing body of a Participating Municipality and its building code official may not serve on the Board.
- 3.3 A member of the Board shall be qualified by training and experience to pass on matters pertaining to building construction. Training and experience may consist of licensure as an architect or engineer, experience in the construction industry, or training or experience as an inspector or plan reviewer.
- 3.4 A member of the Board holds office at the discretion of the Berks County Board of Commissioners.
- 3.5 The Board shall hold an annual organizational meeting, at which it shall elect a Chairman and Vice Chairman. The Chairman or Vice Chairman shall have the authority to call the Board into a special session.
- 3.6 The Secretary to the Board shall be the Berks County Planning Director or the Director's designee.
- 3.7 The County Board of Commissioners may fill a position on the Board with a qualified person who resides outside of the County when it cannot find a person within the County who satisfies the requirements of this section.
- 3.8 A member of the Board may not cast a vote or participate in a meeting or hearing in any appeal, request for variance or request for extension of time in which the member has a personal, professional or financial

interest, or where such participation may otherwise constitute a conflict of interest within the meaning of the State Ethics Act.

- 3.9 The Board shall schedule meetings and hearings and provide public notice of meetings and hearings in accordance with the Pennsylvania Sunshine Act, 65 Pa.C.S. § 701, *et seq.*, as amended.
- 3.10 The Board may not act on appeals, requests for variance or requests for extension of time relating to accessibility.
- 3.11 The Board may, as it deems necessary, hire legal, architectural, engineering or other professional consultants.
- 3.12 Each Participating Municipality shall pay an annual subscription fee in an amount as may be determined by resolution of the Board from time to time. Any Participating Municipality that fails to pay the annual subscription fee shall be required to withdraw from this Agreement and appeals from a decision of such Participating Municipality's building code official shall not be heard by the Board.

SECTION 4. APPEALS AND EXTENSIONS OF TIME

- 4.1 An owner or owner's agent may seek a variance or extension of time or appeal a decision of a Participating Municipality's building code official by filing with the Board Secretary an Appeal Form available from the County Planning Office or the Participating Municipality.
- 4.2 The postmark date or the date of personal service on the Board Secretary will establish the filing date of the appeal or request for variance or extension of time.
- 4.3 An appeal or request for extension of time to the Board will automatically suspend an action to enforce an order to correct issued by the building code official until the matter is resolved; provided, however, an action under Section 403.84 of the Regulations, 34 Pa.Code § 403.84 (relating to unsafe building, structure or equipment) may not be stayed.
- 4.4 The Board shall decide an appeal, request for variance or request for extension of time by reviewing the Appeals Form, accompanying documents, and the written brief or argument, if any, unless the owner or owner's agent requests a hearing.
- 4.5 The Board shall hold a hearing within 60 days from the date of the request for hearing by the owner or owner's agent unless the owner or owner's agent agrees in writing to an extension of time for the hearing.

- 4.6 All hearings shall be held in accordance with the Local Agency Law, 2 Pa.C.S. § 551, *et seq.*
- 4.7 The Board shall only consider the following factors when deciding an appeal under Section 501 (c) (2) of the Act:
 - 4.7.1 The true intent of the Act or the Regulations was incorrectly interpreted.
 - 4.7.2 The provisions of the Act do not apply.
 - 4.6.3 An equivalent or better form of construction is to be used.
- 4.8 The Board may consider the following factors when ruling on a request for extension of time:
 - 4.8.1 The reasonableness of the application of the Act or the Regulations in a particular case.
 - 4.8.2 The extent to which the granting of an extension of time will pose a violation of the Act or the Regulations or an unsafe condition.
 - 4.8.3 The availability of professional or technical personnel needed to come into compliance.
 - 4.8.4 The availability of materials and equipment needed to come into compliance.
 - 4.8.5 The efforts being made to come into compliance as quickly as possible.
 - 4.8.6 Compensatory features that will provide an equivalent degree of protection to the Act and/or the Regulations.
- 4.9 If the owner or owner's agent requests a hearing, the Board shall schedule a hearing and notify the owner or owner's agent and Participating Municipality's building code official of the date, time and place of the hearing.
- 4.10 The Board may:
 - 4.10.1 Deny the appeal or request in whole or in part.
 - 4.10.2 Grant the appeal or request in whole or in part
 - 4.10.3 Grant the appeal or request upon certain conditions being satisfied.

- 4.11 The Board shall provide a written notice of its decision to the owner and to the Participating Municipality's building code official.
- 4.12 An owner shall file an appeal and request for extension of time relating to accessibility with the Accessibility Advisory Board under Section 403.142 of the Regulations, 34 Pa.Code § 403.12 (relating to Accessibility Advisory Board).
- 4.13 An owner desiring to appeal the decision of the Board shall do so to the Berks County Court of Common Pleas within thirty (30) days of the date of the written decision.

SECTION 5. EFFECTIVE DATE

- 5.1 The effective date of this Agreement shall be upon enactment by ordinance of this Agreement by all the Participating Municipalities.

IN WITNESS WHEREOF, the County and the Participating Municipalities, pursuant to actions of their respective governing boards, have entered into this Agreement the day and year first above written.

ATTEST:

COUNTY OF BERKS, PENNSYLVANIA

Secretary

Chairman

TOWNSHIP, BERKS
COUNTY, PENNSYLVANIA

ATTEST:

Secretary

Chairman

BOROUGH, BERKS
COUNTY, PENNSYLVANIA

ATTEST:

Secretary

President