

TOBYHANNA TOWNSHIP
MONROE COUNTY, PENNSYLVANIA
ORDINANCE NO. 499

AN ORDINANCE OF TOBYHANNA TOWNSHIP AMENDING CHAPTER 77, FLOODPLAIN MANAGEMENT, OF THE TOBYHANNA TOWNSHIP CODE OF ORDINANCES ESTABLISHING FLOODPLAIN MANAGEMENT PROVISIONS; REQUIRING ALL PERSONS, PARTNERSHIPS, BUSINESSES, AND CORPORATIONS TO OBTAIN A PERMIT FOR ANY CONSTRUCTION OR DEVELOPMENT; PROVIDING FOR THE ISSUANCE OF SUCH PERMITS; SETTING FORTH CERTAIN MINIMUM REQUIREMENTS FOR NEW CONSTRUCTION AND DEVELOPMENT WITHIN AREAS OF TOBYHANNA TOWNSHIP WHICH ARE SUBJECT TO FLOODING; AND ESTABLISHING PENALTIES FOR ANY PERSONS WHO FAIL OR REFUSE TO COMPLY WITH THE REQUIREMENTS OR PROVISIONS OF SUCH FLOODPLAIN MANAGEMENT PROVISIONS.

WHEREAS, it is the purpose of this Ordinance to promote the public health, safety and general welfare by establishing floodplain management regulations within the Township of Tobyhanna; and,

WHEREAS, in accordance with the Pennsylvania Flood Plain Management Act of 1978, the Township of Tobyhanna, Monroe County, Pennsylvania, does hereby adopt the following floodplain management regulations to promote public health, safety, and the general welfare of its citizenry.

NOW, THEREFORE, the Tobyhanna Township Board of Supervisors, upon the recommendation of the Monroe County Planning Commission and the Tobyhanna Township Planning Commission, hereby *ENACTS* and *ORDAINS* the following Ordinance amending Chapter 77, Floodplain Management, of the Tobyhanna Township Code of Ordinances.

ARTICLE I.

Chapter 77, Floodplain Management, of the Tobyhanna Township Code of Ordinances is hereby amended in its entirety to read as follows:

Chapter 77
FLOODPLAIN MANAGEMENT

§ 77-1.	Statutory Authorization.	§ 77-12.	Elevation and Floodproofing Requirements.
§ 77-2.	General Provisions.	§ 77-13.	Design and Construction Standards.
§ 77-3.	Administration.	§ 77-14.	Prohibited Uses.
§ 77-4.	Start of Construction.	§ 77-15.	Special Requirements for Subdivisions.
§ 77-5.	Enforcement.	§ 77-16.	Special Requirements for Manufactured Homes.
§ 77-6.	Appeals.	§ 77-17.	Recreational Vehicles
§ 77-7.	Identification of Floodplain Areas.	§ 77-18.	Variances.
§ 77-8.	Description and Special Requirements of Identified Floodplain Areas.	§ 77-19.	Modification to Existing Structures in Floodplain Areas.
§ 77-9.	Changes in Identification Area.	§ 77-20.	Definitions.
§ 77-10.	Boundary Disputes.		
§ 77-11.	Miscellaneous Provisions.		

§77-1. STATUTORY AUTHORIZATION

The Legislature of the Commonwealth of Pennsylvania has, by the passage of the Pennsylvania Flood Plain Management Act of 1978, delegated the responsibility to local governmental units to adopt floodplain management regulations to promote public health, safety, and the general welfare of its citizenry. Therefore, the Board of Supervisors of Tobyhanna Township, Monroe County, Pennsylvania does hereby adopt and order as follows.

§77-2. GENERAL PROVISIONS

A. The intent of this Ordinance is to:

1. Promote the general health, welfare, and safety of the community.
2. Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
3. Minimize danger to public health by protecting water supply and natural drainage.
4. Reduce financial burdens imposed on the community, its governmental units, and its residents, by preventing excessive development in areas subject to flooding.
5. Comply with federal and state floodplain management requirements.

B. Applicability.

1. It shall be unlawful for any person, partnership, business or corporation to undertake, or cause to be undertaken, any construction or development anywhere within the Township of Tobyhanna unless a Permit has been obtained from the duly appointed Floodplain Administrator.
2. A Permit shall not be required for minor repairs to existing buildings or structures or for an internal alteration of a preexisting structure that does not increase its size, dimensions, or total square feet of area, and which does not affect the bearing walls thereof, and such work shall be exempt from the requirements of this section unless otherwise specifically stated herein.

C. Abrogation and Greater Restrictions.

All other ordinance provisions shall remain in full force and effect to the extent that those provisions are more restrictive than this Chapter. If there is any conflict between any of the provisions of this Chapter, the more restrictive shall apply.

D. Severability

If any section, subsection, paragraph, sentence, clause, or phrase of this Chapter shall be declared invalid for any reason whatsoever, such a decision shall not affect the remaining portions of the Chapter, which shall remain in full force and effect, and for this purpose the provisions of this Chapter are hereby declared to be severable.

E. Warning and Disclaimer of Liability.

The degree of flood protection sought by the provisions of this Chapter is considered reasonable for regulatory purposes and is based on accepted engineering methods of study. Larger floods may occur or flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Chapter does not imply that areas outside any identified floodplain areas or that land uses permitted within such areas will be free from flooding or flood damages. This Chapter shall not create liability on the part of Tobyhanna Township or any officer or employee thereof for any flood damages that result from reliance on this Chapter or any administrative decision lawfully made thereunder.

§77-3. ADMINISTRATION

A. Designation of the Floodplain Administrator

The Tobyhanna Township Zoning Officer is hereby appointed to administer and enforce this Chapter and is referred to herein as the Floodplain Administrator.

B. Duties and Responsibilities of the Floodplain Administrator.

1. The Floodplain Administrator shall issue a Permit only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of this Chapter and all other applicable codes and ordinances.
2. The Floodplain Administrator shall not issue any permit until the Applicant provides copies of all other necessary government permits required by state and federal laws, such as those required by the Pennsylvania Sewage Facilities Act (Act 1966-537, as amended); the Pennsylvania Dam Safety and Encroachments Act (Act 1978-325, as amended); the Pennsylvania Clean Streams Act (Act 1937-394, as amended); and the U.S. Clean Water Act, Section 404, 33, U.S.C. 1344.
3. During the construction period, the Floodplain Administrator or other authorized official shall inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable municipal laws and

ordinances. He/she shall make as many inspections during and upon completion of the work as are necessary.

4. In the discharge of his/her duties, the Floodplain Administrator shall have the authority to enter any building, structure, premises or development in the identified floodplain area, upon presentation of proper credentials, at any reasonable hour to enforce the provisions of this Chapter.

5. In the event the Floodplain Administrator discovers that the work does not comply with the permit application or any applicable laws and ordinances, or that there has been a false statement or misrepresentation by any applicant, the Floodplain Administrator shall revoke the Permit and report such fact to the Board of Supervisors for whatever action it considers necessary.

6. The Floodplain Administrator shall maintain all records associated with the requirements of this Chapter including, but not limited to, permitting, inspection and enforcement.

7. The Floodplain Administrator shall consider the requirements of the UCC and all International Codes and appendices as amended and/or adopted by the Township.

C. Permits Required

1. A Permit shall be required before any construction or development is undertaken within any area of the Township of Tobyhanna.

2. It shall be unlawful for any person, partnership, business or corporation to undertake, or cause to be undertaken, any construction or development anywhere within the Township, unless an approved permit has been obtained from the Floodplain Administrator.

D. Permit Application Procedures and Requirements

1. Application for a Permit shall be made, in writing, to the Floodplain Administrator on forms supplied by the Township of Tobyhanna. Such application shall contain the following:

- a. Name and address of applicant.
- b. Name and address of owner of land on which proposed construction is to occur.
- c. Name and address of contractor.
- d. Site location including address.

e. Listing of other permits required.

f. In the event that flood damage has occurred, a brief description of proposed work and estimated cost, including a breakout of flood-related cost and the market value of the building before the flood damage occurred shall be provided.

g. A plan of the site showing the exact size and location of the proposed construction as well as any existing buildings or structures.

E. Permits for Construction or Development in Identified Floodplain Area.

If any proposed construction or development is located entirely or partially within any identified floodplain area, applicants for Permits shall provide all the necessary information set forth in this Chapter in sufficient detail to enable the Floodplain Administrator to determine that:

1. All such proposals are consistent with the need to minimize flood damage and conform with the requirements of this and all other applicable codes and ordinances.
2. All utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage.
3. Adequate drainage is provided so as to reduce exposure to flood hazards.
4. Structures will be anchored to prevent floatation, collapse, or lateral movement.
5. Building materials are flood-resistant.
6. Appropriate practices that minimize flood damage have been or will be used.
7. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities have been designed and located to prevent water entry or accumulation.

F. Minimum Information to be Submitted with Permit Application for Construction or Development in Identified Floodplain.

Applicants shall file the following minimum information plus any other pertinent information as may be required by the Floodplain Administrator to make the determinations referenced in this Chapter:

1. A completed Permit Application Form.
2. A plan of the entire site, clearly and legibly drawn at a scale of one (1) inch being equal to one hundred (100) feet or less, showing the following:

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- a. North arrow, scale, and date;
 - b. Topographic contour lines, if available;
 - c. The location of all existing and proposed buildings, structures, and other improvements, including the location of any existing or proposed subdivision and development;
 - d. The location of all existing streets, drives, and other access ways; and
 - e. The location of any existing bodies of water or watercourses, identified floodplain areas, and, if available, information pertaining to the floodway, and the flow of water including direction and velocities.
3. Plans of all proposed buildings, structures and other improvements, drawn at suitable scale showing the following:
- a. The proposed lowest floor elevation of any proposed building based upon North American Vertical Datum of 1988, as amended;
 - b. The elevation of the base flood;
 - c. Supplemental information as may be necessary under the UCC and all International Codes and appendices as amended and/or adopted by the Township.
4. The following data and documentation:
- a. If available, information concerning flood depths, pressures, velocities, impact and uplift forces and other factors associated with a base flood; and
 - b. Detailed information concerning any proposed floodproofing measures and corresponding elevations.
 - c. Documentation, certified by a registered professional engineer or architect, to show that the cumulative effect of any proposed development within an AE Area/District without floodway when combined with all other existing and anticipated development, will not increase the base flood elevation more than one (1) foot at any point.
 - d. A document, certified by a registered professional engineer or architect, which states that the proposed construction or development has been adequately designed to withstand the pressures, velocities, impact and uplift forces associated with the base flood. Such

statement shall include a description of the type and extent of flood proofing measures which have been incorporated into the design of the structure and/or the development.

e. Detailed information needed to determine compliance with other sections of this Chapter.

f. The appropriate component of the Department of Environmental Protection's "Sewage Facilities Planning Module for Land Development" as determined by the Sewage Enforcement Officer shall be provided.

g. Where any excavation or grading is proposed, a plan meeting the requirements of the Department of Environmental Protection, to implement and maintain erosion and sedimentation control.

G. Permit Fee.

Applications for Permits shall be accompanied by a fee, payable to the Township of Tobyhanna, based upon the then current fee schedule resolution of the Township.

H. Additional Review.

When deemed appropriate, the Floodplain Administrator may forward the application to the Township Engineer and/or other Township representatives for review and approval.

I. Changes in Application and/or Permit.

After the issuance of a Permit by the Floodplain Administrator, no changes of any kind shall be made to the application, permit or any of the plans, specifications or other documents submitted with the application without the written consent and approval of the Floodplain Administrator. Requests for any such change shall be in writing, and shall be submitted by the applicant to the Floodplain Administrator for consideration.

J. Placards.

In addition to the Permit, the Floodplain Administrator shall issue a placard which shall be displayed on the premises during the time construction is in progress. This placard shall show the number of the Permit, the date of its issuance, and shall be signed by the Floodplain Administrator.

§77-4. START OF CONSTRUCTION.

A. Work on the proposed construction or development shall begin within 180 days after the date of issuance of the Permit and shall be completed within twenty four (24) months after the date of

issuance of the Permit or the Permit shall expire unless a time extension is granted, in writing, by the Floodplain Administrator. The actual start of construction means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

B. Time extensions shall be granted only if a written request is submitted by the applicant, which sets forth sufficient and reasonable cause for the Floodplain Administrator to approve such a request.

§77-5. ENFORCEMENT

A. Notices.

Whenever the Floodplain Administrator or other authorized municipal representative determines that there has been a violation of any provisions of this Chapter, or of any regulations adopted pursuant thereto, the Floodplain Administrator shall give notice of such alleged violation as hereinafter provided. Such notice shall:

1. Be in writing;
2. Include a statement of the reasons for its issuance;
3. Allow a reasonable time not to exceed a period of thirty (30) days for the performance of any act it requires;
4. Be served upon the property owner or his agent as the case may require; provided, however, that such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been served with such notice by any other method authorized or required by the laws of Pennsylvania;
5. Contain an outline of remedial actions which, if taken, will effect compliance with the provisions of this Ordinance.

B. Penalties

Any person who fails to comply with any or all of the requirements or provisions of this Chapter or who fails or refuses to comply with any notice, order of direction of the Floodplain Administrator or any other authorized employee of the Township shall be guilty of a misdemeanor and upon conviction shall pay a fine to Tobyhanna Township of not more than One Thousand Dollars (\$1000.00) plus costs of prosecution, or by imprisonment for a term not exceeding 90 days, or both. In addition to the above penalties, all other actions are hereby reserved including an action in equity for the proper enforcement of this Chapter. The imposition of a fine or penalty for any violation of, or noncompliance with this Chapter shall not excuse the violation or noncompliance or permit it to continue and all such persons shall be required to correct or remedy such violations and noncompliance within a reasonable time. Any development initiated or any structure or building constructed, reconstructed, enlarged, altered, or relocated, in noncompliance with this Chapter may be declared by the Township of Tobyhanna to be a public nuisance and abatable as such.

§77-6. APPEALS

- A. Any person aggrieved by any action or decision of the Floodplain Administrator concerning the administration of the provisions of this Chapter may appeal to the Zoning Hearing Board. Such appeal must be filed, in writing, within thirty (30) days after the decision, determination or action of the Floodplain Administrator.

- B. Upon receipt of such appeal, the Zoning Hearing Board shall set a time and place, within not less than ten (10) or not more than sixty (60) days, for the purpose of considering the appeal. Notice of the time and place at which the appeal will be considered shall be given to all parties.

- C. Any person aggrieved by any decision of the Zoning Hearing Board may seek relief therefrom by appeal to court, as provided by the laws of Pennsylvania, including the Pennsylvania Flood Plain Management Act.

§77-7. IDENTIFICATION OF FLOODPLAIN AREAS

- A. For the purpose of this Chapter, the Identified Floodplain Areas, as referenced throughout this Chapter, are the areas of Tobyhanna Township classified as special flood hazard areas (SFHAs) in the Flood Insurance Study (FIS) and the accompanying Flood Insurance Rate Maps (FIRMs) as last revised and amended, having an effective date of May 2, 2013, and issued by the Federal Emergency Management Agency (FEMA) or the most recent revision thereof, including all digital data developed as part of the Flood Insurance Study. The above referenced FIS and FIRMs, and any subsequent revisions and amendments are hereby adopted by Tobyhanna Township and declared to be a part of this Chapter.

- B. The above-referenced identified floodplain areas may be reviewed or modified by the Board of Supervisors where studies or information provided by a qualified agency or person documents the

need for such revision or modification. However, prior to any such change, approval must be obtained from the Federal Emergency Management Agency.

§77-8. DESCRIPTION AND SPECIAL REQUIREMENTS OF IDENTIFIED FLOODPLAIN AREAS.

The identified floodplain areas shall consist of the following specific areas:

A. The Floodway Area/District identified as floodway in the FIS which represents the channel of a watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation by more than one (1) foot at any point. This term shall also include floodway areas which have been identified in other available studies or sources of information for those Special Flood Hazard Areas where no floodway has been identified in the FIS.

1. No construction, development, use or activity within any floodway area is permitted.

B. The AE Area/District without floodway shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA and for which base flood elevations have been provided in the FIS but no floodway has been delineated.

1. No permit shall be granted for any construction, development, use, or activity within any AE Area/District without floodway unless it is demonstrated that the cumulative effect of the proposed development would not, together with all other existing and anticipated development, increase the BFE more than one (1) foot at any point.

2. No new construction or development shall be located within the area measured fifty (50) feet landward from the top-of-bank of any watercourse, unless a permit is obtained from the Department of Environmental Protection Regional Office.

C. The A Area/District shall be those areas identified as an A Zone on the FIRM included in the FIS prepared by FEMA and for which no one-percent (1%) annual chance flood elevations have been provided. For these areas, elevation and floodway information from other Federal, State, or other acceptable source shall be used when available. Where other acceptable information is not available, the elevation shall be determined by using the elevation of a point on the boundary of the identified floodplain area which is nearest the construction site.

In lieu of the above-referenced ways of determining elevation, the Township may require the applicant to determine the elevation with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the municipality.

§77-9. CHANGES IN IDENTIFICATION AREA

The identified floodplain area may be revised or modified by the Board of Supervisors where studies or information provided by a qualified agency or person documents the need for such revision. However, prior to any such change, approval must be obtained from the FEMA. Additionally, as soon as practicable, but not later than six (6) months after the date such information becomes available, a community shall notify the FEMA of the changes by submitting technical or scientific data.

§77-10. BOUNDARY DISPUTES

Should a dispute concerning any identified floodplain boundary arise, an initial determination shall be made by the Tobyhanna Township Floodplain Administrator and any party aggrieved by this decision or determination may appeal to the Tobyhanna Township Zoning Hearing Board. The burden of proof shall be on the appellant.

§77-11. MISCELLANEOUS PROVISIONS

A. Alteration or Relocation of Watercourse.

1. No encroachment, alteration, or improvement of any kind shall be made to any watercourse until all adjacent municipalities which may be affected by such action have been notified by the applicant and/or Township of Tobyhanna, and until all required permits or approvals have been first obtained from the Department of Environmental Protection Regional Office.
2. No encroachment, alteration, or improvement of any kind shall be made to any watercourse unless it can be shown that the activity will not reduce or impede the flood carrying capacity of the watercourse in any way.
3. In addition, the FEMA and Pennsylvania Department of Community and Economic Development shall be notified prior to any alteration or relocation of any watercourse.

B. Technical or scientific data shall be submitted by the applicant and/or the Township of Tobyhanna to FEMA for a Letter of Map Revision (LOMR) as soon as practicable but within six (6) months of any new construction, development, or other activity resulting in changes in the BFE. The situations when a LOMR or a Conditional Letter of Map Revision (CLOMR) are required are:

1. Any development that causes a rise in the base flood elevations within the floodway; or
2. Any development occurring in Zones A1-30 and Zone AE without a designated floodway, which will cause a rise of more than one foot in the base flood elevation; or
3. Alteration or relocation of a stream (including but not limited to installing culverts and bridges).

C. Any new construction, development, uses or activities allowed within any identified floodplain area shall be undertaken in strict compliance with the provisions contained in this Chapter and any other applicable codes, ordinances and regulations.

D. Within any Identified Floodplain Area, no new construction or development shall be located within the area measured fifty (50) feet landward from the top-of-bank of any watercourse, unless a permit is obtained from the Department of Environmental Protection Regional Office and other applicable agency.

§77-12. ELEVATION AND FLOODPROOFING REQUIREMENTS

A. Residential Structures

1. In AE, A1-30, and AH Zones, any new construction or substantial improvement shall have the lowest floor (including basement) elevated up to, or above, the regulatory flood elevation.
2. In A Zones, where there are no Base Flood Elevations specified on the FIRM, any new construction or substantial improvement shall have the lowest floor (including basement) elevated up to, or above, the regulatory flood elevation determined in accordance with Section 77-8.C and/or other applicable section of this Chapter.
3. The design and construction standards and specifications contained in the UCC and all International Codes and appendices as amended and/or adopted by the Township shall at all times be complied with unless a more restrictive provision is contained in this Chapter, in which case the more restrictive provision shall govern.

B. Non-residential Structures

1. In AE, A1-30 and AH Zones, any new construction or substantial improvement of a non-residential structure shall have the lowest floor (including basement) elevated up to, or above, the regulatory flood elevation, or be designed and constructed so that the space enclosed below the regulatory flood elevation:
 - a. Is floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water and,
 - b. Has structural components with the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy:

2. In A Zones, where no Base Flood Elevations are specified on the FIRM, any new construction or substantial improvement shall have the lowest floor (including basement) elevated or completely floodproofed up to, or above, the regulatory flood elevation determined in accordance with Section 77-8.C or other applicable section of this Chapter.

3. Any non-residential structure, or part thereof, made watertight below the regulatory flood elevation shall be floodproofed in accordance with the WI or W2 space classification standards contained in the publication entitled "Flood-Proofing Regulations" published by the U.S. Army Corps of Engineers (June 1972, as amended March 1992) or with some other equivalent standard. All plans and specifications for such floodproofing shall be accompanied by a statement certified by a registered professional engineer or architect which states that the proposed design and methods of construction are in conformance with the above referenced standards.

4. The design and construction standards and specifications contained in the UCC and all International Codes and appendices as amended and/or adopted by the Township shall at all times be complied with unless a more restrictive provision is contained in this Chapter, in which case the more restrictive provision shall govern.

C. Space below the lowest floor.

1. Fully enclosed space below the lowest floor (excluding basements) which will be used solely for the parking of a vehicle, building access, or incidental storage in an area other than a basement, shall be designed and constructed to allow for the automatic entry and exit of flood waters for the purpose of equalizing hydrostatic forces on exterior walls. The term "fully enclosed space" also includes crawl spaces.

2. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria:

a. A minimum of two openings having a net total area of not less than one (1) square inch for every square foot of enclosed space.

b. The bottom of all openings shall be no higher than one (1) foot above grade.

c. Openings may be equipped with screens, louvers, etc. or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

D. Accessory structures.

Structures accessory to a principal building need not be elevated or floodproofed to remain dry, but shall comply, at a minimum, with the following requirements:

1. The structure shall not be designed or used for human habitation, but shall be limited to the parking of vehicles, or to the storage of tools, material, and equipment related to the principal use or activity.
2. Floor area shall not exceed 600 square feet.
3. The structure will have a low damage potential.
4. The structure will be located on the site so as to cause the least obstruction to the flow of flood waters.
5. Power lines, wiring, and outlets will be elevated to the regulatory flood elevation.
6. Permanently affixed utility equipment and appliances such as furnaces, heaters, washers, dryers, etc. are prohibited.
7. Sanitary facilities are prohibited.
8. The structure shall be adequately anchored to prevent flotation or movement and shall be designed to automatically provide for the entry and exit of floodwater for the purpose of equalizing hydrostatic forces on the walls.

§77-13. DESIGN AND CONSTRUCTION STANDARDS.

In addition to complying with the applicable building code as adopted by Tobyhanna Township and all other applicable ordinances of the Township, the following minimum standards shall apply for all construction and development proposed within any identified floodplain area:

A. Drainage Facilities

Storm drainage facilities shall be designed to convey the flow of storm water runoff in a safe and efficient manner. The system shall insure proper drainage along streets, and provide positive drainage away from buildings. The system shall also be designed to prevent the discharge of excess runoff onto adjacent properties.

B. Water and Sanitary Sewer Facilities and Systems

1. All new or replacement water supply and sanitary sewer facilities and systems shall be located, designed and constructed to minimize or eliminate flood damages and the infiltration of flood waters.

2. Sanitary sewer facilities and systems shall be designed to prevent the discharge of untreated sewage into flood waters.

3. No part of any on-site sewage system shall be located within any identified floodplain area except in strict compliance with all State and local regulations for such systems. If any such system is permitted, it shall be located so as to avoid impairment to it, or contamination from it, during a flood.

C. Other Utilities

All other utilities such as gas lines, electrical, and telephone systems shall be located, elevated (where possible) and constructed to minimize the chance of impairment during a flood.

D. Streets

The finished elevation of all new streets shall be no more than one (1) foot below the Regulatory Flood Elevation.

E. Storage

All materials that are buoyant, flammable, explosive, or in times of flooding, could be injurious to human, animal, or plant life, and not otherwise listed in Section 77-14.E. herein, shall be stored at or above the Regulatory Flood Elevation or flood proofed to the maximum extent possible.

F. Placement of Buildings and Structures

All buildings and structures shall be designed, located, and constructed so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum effect upon the flow and height of flood water.

G. Anchoring

1. All buildings and structures shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, or lateral movement.

2. All air ducts, large pipes, storage tanks, and other similar objects or components located below the regulatory flood elevation shall be securely anchored or affixed to prevent flotation.

H. Floors, Walls and Ceilings

1. Wood flooring used at or below the Regulatory Flood Elevation shall be installed to accommodate a lateral expansion of the flooring, perpendicular to the flooring grain without causing structural damage to the building.
2. Plywood used at or below the regulatory flood elevation shall be of a "marine" or "water-resistant" variety.
3. Walls and ceilings at or below the regulatory flood elevation shall be designed and constructed of materials that are "water-resistant" and will withstand inundation.
4. Windows, doors, and other components at or below the regulatory flood elevation shall be made of metal or other "water-resistant" material.

I. Electrical Components

1. Electrical distribution panels shall be at least three (3) feet above the base flood elevation.
2. Separate electrical circuits shall serve lower levels and shall be dropped from above.

J. Equipment

1. Water heaters, furnaces, air conditioning and ventilating units, and other electrical, mechanical or utility equipment or apparatus shall not be located below the Regulatory Flood Elevation.

K. Fuel Supply Systems

All gas and oil supply systems shall be designed to prevent the infiltration of flood waters into the system and discharges from the system into flood waters. Additional provisions shall be made for the drainage of these systems in the event that flood water infiltration occurs.

§77-14. PROHIBITED USES

The following activities, uses and development present a special hazard to the health and safety of the general public or may result in significant pollution, increased flood levels or flows or debris endangering life and property if such activities, uses and development are located, either entirely or partially, within any identified floodplain area and are therefore prohibited within any identified floodplain area.

- A. No construction, development, use or activity within any floodway area.

B. No construction, development, use or activity within any AE area that would, together with all other existing and anticipated development, increase the one-hundred-year-flood elevation more than one foot at any point is permitted.

C. The commencement of any of the following activities; or the construction enlargement, or expansion of any structure used, or intended to be used, for any of the following activities, is prohibited within an identified floodplain area:

1. Hospitals
2. Nursing homes
3. Jails or prisons

D. The commencement of, or any construction of, a new manufactured home park or manufactured home subdivision, or substantial improvement to an existing manufactured home park or manufactured home subdivision is prohibited within any Floodway Area and/or Identified Floodplain Area.

E. Any new or substantially improved structure which will be used for the production or storage of any of the following dangerous materials or substances; or, will be used for any activity requiring the maintenance of a supply of more than 50 gallons, or other comparable volume, of any of the following dangerous materials or substances on the premises; or, will involve the production, storage, or use of any amount of radioactive substances, shall be prohibited within any floodway and/or identified floodplain area.

1. Acetone
2. Ammonia
3. Benzene
4. Calcium carbide
5. Carbon disulfide
6. Celluloid
7. Chlorine
8. Hydrochloric acid
9. Hydrocyanic acid
10. Magnesium
11. Nitric acid and oxides of nitrogen
12. Petroleum products (gasoline, fuel oil, etc.)
13. Phosphorus
14. Potassium
15. Sodium

16. Sulphur and sulphur products
17. Pesticides (including insecticides, fungicides, and rodenticides)
18. Radioactive substances, insofar as such substances are not otherwise regulated.

§77-15. SPECIAL REQUIREMENTS FOR SUBDIVISIONS

All subdivision proposals and development proposals containing at least 50 lots or at least 5 acres, whichever is the lesser, in Identified Floodplain Areas where base flood elevation data are not available, shall be supported by hydrologic and hydraulic engineering analyses that determine base flood elevations and floodway information. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant.

§77-16. SPECIAL REQUIREMENTS FOR MANUFACTURED HOMES

- A. Within any Floodway Area/District, manufactured homes shall be prohibited.
- B. Where permitted within any Identified Floodplain Area, all manufactured homes, and any improvements thereto, in addition to complying with all other provisions of this Chapter, shall be:
 1. Placed on a permanent foundation.
 2. Elevated so that the lowest floor of the manufactured home is at least one and one half (1 ½) feet above base flood elevation.
 3. Anchored to resist flotation, collapse, or lateral movement.
- D. Installation of manufactured homes shall be done in accordance with the manufacturers' installation instructions as provided by the manufacturer and the applicable building code as adopted by Tobyhanna Township.

§77-17. RECREATIONAL VEHICLES

- A. Within any Identified Floodplain Area, recreational vehicles shall be prohibited. If a variance is obtained in accordance with the criteria in this Chapter, then the following provisions shall apply:
 1. Recreational vehicles in Zones A, A1-30, AH and AE must either:
 - a. be on the site for fewer than 180 consecutive days,
 - b. be fully licensed and ready for highway use, or
 - c. meet the permit requirements for manufactured homes in Section 77-16.

§77-18. VARIANCES

If compliance with any of the requirements of this chapter would result in an exceptional noneconomic hardship to a prospective builder, developer or landowner, the Zoning Hearing Board may, upon request, grant relief from the strict application of the requirements. Requests for such relief shall be considered by the Zoning Hearing Board in accordance with the existing township ordinances and statutes and as otherwise set forth herein.

A. Notwithstanding the provisions of this section, no variance shall be granted for any use specifically prohibited by Section 77-14 of this Chapter.

B. If granted, a variance shall involve only the least modification necessary to provide relief. If it should become necessary to grant any variance, the applicant shall be required to comply with all applicable requirements of the National Flood Insurance Program Regulations, including the requirements for elevation, floodproofing and anchoring. The applicant must also comply with any other requirements or conditions of all other applicable township ordinances.

C. In granting any variance, the Zoning Hearing Board shall attach whatever reasonable conditions and safeguards it considers necessary in order to protect the public health, safety and welfare, and to achieve the objectives of this Chapter.

D. Whenever a variance is granted, the Zoning Hearing Board shall notify the applicant, in writing, that:

1. The granting of the variance may result in increased premium rates for flood insurance.
2. Such variance may increase the risks to life and property and that the erection of such structure or improvement is at the sole risk of the applicant.

E. In reviewing any request for a variance, the Zoning Hearing Board shall consider the following as the minimum criteria:

1. That there is good and sufficient cause.
2. That failure to grant the variance would result in exceptional noneconomic hardship to the applicant.
3. That the granting of the variance will neither result in an unacceptable or prohibited increase in flood heights, additional threats to public safety or extraordinary public expense, nor create nuisances, cause fraud on or victimize the public, or conflict with any other applicable state or local ordinances and regulations.

F. A complete record of all variance requests and related action shall be maintained by the Township. In addition, a report of all variances granted during the year shall be included in the Annual Zoning Report to the Federal Emergency Management Agency.

G. Notwithstanding any of the above, all structures shall be designed and constructed so as to have the capability of resisting a one-percent (1%) annual chance of flood.

H. No variance shall be granted for any construction, development, use, or activity within any AE Area/District without floodway that would, together with all other existing and anticipated development, increase the BFE more than one (1) foot at any point.

§77-19. MODIFICATION TO EXISTING STRUCTURES IN FLOODPLAIN AREAS

The following provisions shall apply whenever any improvement is made to an existing structure located within any Identified Floodplain Area:

A. No expansion or enlargement of an existing structure shall be allowed within any Floodway Area/District.

B. No expansion or enlargement of an existing structure shall be allowed within AE Area/District without floodway that would, together with all other existing and anticipated development, increase the BFE more than one (1) foot at any point.

C. Structures existing in any identified floodplain area prior to the enactment of this Chapter, but which are not in compliance with these provisions, may continue to remain, provided that any modification, alteration, reconstruction or improvement of any kind to an existing structure, to an extent or amount of fifty (50) percent or more of its market value, shall constitute a substantial improvement and shall be undertaken only in full compliance with the provisions of this Chapter. Any modification, alteration, reconstruction, or improvement of any kind to an existing structure, to an extent or amount of less than fifty (50) percent of its market value, shall be elevated and/or floodproofed to the greatest extent possible.

D. Any modification, alteration, reconstruction, or improvement of any kind that meets the definition of "repetitive loss" shall be undertaken only in full compliance with the provisions of this Chapter.

E. Any reconstruction required as a result of a natural disaster other than a flood to a structure existing in any identified floodplain area prior to the enactment of this Chapter, but not in compliance with these provisions, shall be permitted within the pre-existing building footprint and shall be elevated and/or floodproofed to the greatest extent possible.

§77-20. DEFINITIONS

A. General

Unless specifically defined below, words and phrases used in this Ordinance shall be interpreted so as to give this Ordinance its' most reasonable application.

B. Definitions

As used in this chapter, the following terms shall have the meanings indicated:

1. Accessory structure - a structure not over two stories in height, the use of which is customarily accessory and incidental to that of the primary structure and which is located on the same lot.
2. Accessory use - a use of land or, or portion thereof, customarily incidental and subordinate in extent or purpose to the principal use of the land or building and located on the same lot with such principal use.
3. Base flood - a flood which has a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood" or one-percent (1%) annual chance flood).
4. Base flood discharge - the volume of water resulting from a Base Flood as it passes a given location within a given time, usually expressed in cubic feet per second (cfs).
5. Base flood elevation (BFE) - the elevation shown on the Flood Insurance Rate Map (FIRM) for Zones AE, AH, A1-30 that indicates the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.
6. Basement - any area of the building having its floor subgrade (below ground level) on all sides.
7. Building – see Structure.
8. Construction -- The construction, reconstruction, renovation, repair, extension, expansion, alteration or relocation of a building or structure, including the placement of manufactured homes.
9. Development -- any man-made change to improved or unimproved real estate, including but not limited to the construction, reconstruction, renovation, repair, expansion, or alteration of buildings or other structures; the placement of manufactured homes; streets, and other paving; utilities; filling, grading and excavation; mining; dredging; drilling operations; storage of equipment or materials; and the subdivision of land.
10. Existing Construction -- means a structure for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975 for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."
11. Existing manufactured home park or subdivision – a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final

site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

12. Existing structure – see Existing Construction.

13. Expansion to an existing manufactured home park or subdivision – the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

14. Flood or Flooding –

(a) a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters.

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

(3) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a)(2) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

(b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition.

15. Flood Insurance Rate Map (FIRM) - the official map on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

16. Flood Insurance Study (FIS) – the official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

17. Floodplain area or flood-prone area – any land area susceptible to being inundated by water from any source (see definition of ‘flooding’’).

18. Floodproofing - any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

19. Floodway - the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

20. Highest Adjacent Grade -- the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

21. Historic structures – any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation that have been certified either:
 - i. By an approved state program as determined by the Secretary of the Interior or
 - ii. Directly by the Secretary of the Interior in states without approved programs.

22. Lowest floor - the lowest floor of the lowest enclosed area (including basement). An unfinished, flood resistant partially enclosed area, used solely for parking of vehicles, building access, and incidental storage, in an area other than a basement area is not considered the lowest floor of a building, provided that such space is not designed and built so that the structure is in violation of the applicable non-elevation design requirements of this Chapter.

23. Manufactured home - a structure, transportable in one or more sections, which is built on a permanent chassis, and is designed for use with or without a permanent foundation when attached to the required utilities. The term includes park trailers, travel trailers, recreational and other similar vehicles which are placed on a site for more than 180 consecutive days.

24. Manufactured home park or subdivision – a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

25. Minor repair - the replacement of existing work with equivalent materials for the purpose of its routine maintenance and upkeep, but not including the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam or bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the exitway requirements; nor shall minor repairs include addition to, alteration of, replacement or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, oil, waste, vent, or similar piping, electric wiring or mechanical or

other work affecting public health or general safety.

26. New construction - structures for which the start of construction commenced on or after May 2, 2013 and includes any subsequent improvements to such structures. Any construction started after December 16, 1988 and before May 2, 2013 is subject to the ordinance in effect at the time the permit was issued, provided the start of construction was within 180 days of permit issuance.

27. New manufactured home park or subdivision – a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of this Chapter regulating floodplain management as adopted by the Township.

28. Person - an individual, partnership, public or private association or corporation, firm, trust, estate, municipality, governmental unit, public utility or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

29. Post-FIRM Structure - is a structure for which construction or substantial improvement occurred after December 31, 1974 or on or after the Township's initial Flood Insurance Rate Map (FIRM) dated December 16, 1988, whichever is later, and, as such, would be required to be compliant with the regulations of the National Flood Insurance Program.

30. Pre-FIRM Structure - is a structure for which construction or substantial improvement occurred on or before December 31, 1974 or before the Township's initial Flood Insurance Rate Map (FIRM) December 16, 1988, whichever is later, and, as such, would not be required to be compliant with the regulations of the National Flood Insurance Program.

31. Recreational vehicle - a vehicle which is: a. built on a single chassis; b. not more than 400 square feet, measured at the largest horizontal projections; c. designed to be self-propelled or permanently towable by a light-duty truck, d. not designed for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

32. Regulatory flood elevation - the base flood elevation (BFE) or estimated flood height as determined using simplified methods plus a freeboard safety factor of one and one-half (1 ½) feet.

33. Repetitive loss – flood related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood events on average, equals or exceeds 25 percent of the market value of the structure before the damages occurred.

34. Special flood hazard area (SFHA) - means an area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. It is shown on the FIRM as Zone A, AO, A1-A30, AE, A99, or, AH.

35. Start of construction - includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit and shall be completed within twenty-four (24) months after the date of issuance of the permit unless a time extension is granted, in writing, by the Floodplain Administrator. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

36. Structure – a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

37. Subdivision - the division or redivision of a lot, tract, or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs, or devisees, transfer of ownership or building or lot development: Provided, however, that the subdivision by lease of land for agricultural purposes into parcels of more than ten acres, not involving any new street or easement of access or any residential dwelling, shall be exempted.

38. Substantial damage - damage from any cause sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

39. Substantial improvement - any reconstruction, rehabilitation, addition, or other improvement of a structure, of which the cost equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage" (or "repetitive loss" when a repetitive loss provision is used) regardless of the actual repair work performed. The term does not, however, include any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.

Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined in this ordinance, must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

40. Uniform Construction Code (UCC) – The statewide building code adopted by The Pennsylvania General Assembly in 1999 applicable to new construction in all municipalities whether administered by the municipality, a third party or the Department of Labor and Industry. Applicable to residential and commercial buildings, The Code adopted The International Residential Code (IRC) and the International Building Code (IBC), by reference, as the construction standard applicable with the State floodplain construction.

41. Violation - means the failure of a structure or other development to be fully compliant with the Township's floodplain ordinance regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR §60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

ARTICLE II.

Repealer. All ordinances, parts of ordinances, and amendments thereof are repealed insofar as they are inconsistent with this Ordinance, unless otherwise set forth herein.

ARTICLE III.

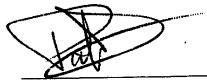
Severability. If any section, paragraph, sub-section, clause or provision of this Ordinance shall be declared invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of this Ordinance as a whole or any part thereof other than that portion specifically declared invalid.

ARTICLE IV.

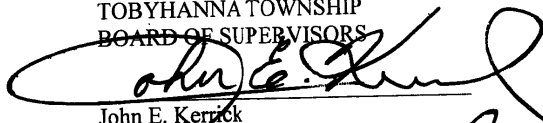
Effective Date. This Ordinance shall become effective on May 2, 2013 as permitted by law.

ORDAINED and **ENACTED** this *25* day of *April*, A.D., 2013.

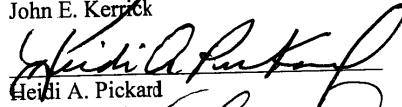
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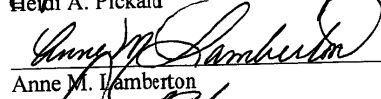
TOBYHANNA TOWNSHIP
BOARD OF SUPERVISORS



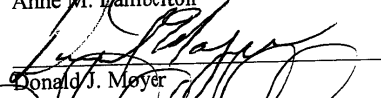
John E. Kerrick



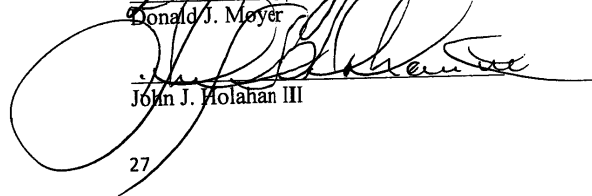
Heidi A. Pickard



Anne M. Lambertson



Donald J. Meyer



John J. Molahan III