

Mifflin Township  
DAUPHIN COUNTY, PENNSYLVANIA

ORDINANCE NO. 2-08

AN ORDINANCE OF THE BOARD OF SUPERVISORS , MIFFLIN TOWNSHIP, DAUPHIN COUNTY, PENNSYLVANIA, TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT TO PROVIDE A JOINT MUNICIPAL BUILDING CODES BOARD OF APPEALS.

WHEREAS, pursuant to the Uniform Construction Code Act (35 P.S. § 7210, et seq., as amended) (hereinafter the "Act"), the Township of Mifflin has adopted the Uniform Construction Code (34 Pa. Code Chapters 401-405, as amended) (hereinafter the "Code");

WHEREAS, the Township of Mifflin has "opted in" to the enforcement of the Act and Code, meaning the Municipality is responsible for enforcement of the provisions of the Uniform Construction Code;

WHEREAS, the Act and code requires municipalities opting to so enforce the provisions of the Act and Code to establish a Board of Appeals;

WHEREAS, the Act and Code provide that municipalities may elect to create and anticipate in a Joint Board of Appeals, if such action is approved by the individual governing bodies of said municipalities, pursuant to an intermunicipal agreement under 53 Pa. C.S. § 2301 et seq., relating to inter-governmental cooperation;

WHEREAS, pursuant to the Pennsylvania Intergovernmental Cooperation Act, 53 Pa. C.S.A. § 2301 et seq., a municipality may into an intergovernmental cooperation agreement upon the passage of an ordinance by its governing body; and

WHEREAS, a joint appeals board will be established pursuant to an intermunicipal cooperation agreement entitled the "Intermunicipal Agreement Creating a Joint Upper Dauphin Council of Governments UCC Board of Appeals" (hereinafter the "Agreement").

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, by the Board of Supervisors of Mifflin Township, Dauphin County, Pennsylvania (hereinafter the "Municipality"), as follows:

1. The recitals of this Ordinance as set forth above are incorporated herein by reference.
2. The Municipality hereby approves and adopts the Agreement, a copy of which is attached hereto and incorporated herein by reference as Exhibit "A" and directs the appropriate Township official to execute the Agreement on its behalf.
3. The conditions of Agreement, the duration of the term of the Agreement, the purpose and objectives of the Agreement, and the manner and extent in financing the Agreement

and the organizational structure necessary to implement the Agreement are all set forth at length in the Agreement which is attached as Exhibit "A" hereto.

4. A copy of the Agreement shall be filed with the minutes of the meeting at which this Ordinance was enacted and the appropriate Township official is directed to execute the Agreement on behalf of Mifflin Township, with the intent and effect that this Municipality shall be bound by the Agreement and all terms and conditions thereof.

5. This Ordinance shall become effective immediately upon enactment hereof.

DULY ORDAINED AND ENACTED this 11 day of Nov., 2008, by the  
Mifflin Twp of the Twp. of Mifflin, Dauphin County, Pennsylvania.  
Supervisors

ATTEST:

BY:

(Secretary)

Mifflin Township

By:

(Chairman/President)

08146-001/132442

**INTERMUNICIPAL AGREEMENT CREATING UPPER DAUPHIN  
COUNCIL OF GOVERNMENTS BUILDING CODE JOINT BOARD OF APPEALS**

**THIS AGREEMENT**, is made this 1<sup>st</sup> day of October, 2008, by and between undersigned participating municipalities (the "Member Municipalities").

WHEREAS, pursuant to the Uniform Construction Code Act (35 P.S. §7210, et. seq., as amended) (hereinafter the "Act"), the undersigned Member Municipalities have all adopted the Uniform Construction Code (34 Pa. Code Chapters 401-405 as amended) (hereinafter the "Code").

WHEREAS, the undersigned Member Municipalities have all "opted in" to enforcement of the Code, meaning the municipality is responsible for enforcement of the provisions of the Uniform Construction Code;

WHEREAS, pursuant to Section 501(c) of the Act, (35 P.S. §7210.501(c)), and Section 403.121 of the Code, a municipality which has adopted an Ordinance for the Administration and Enforcement of the Code or is a party to an Agreement for the Joint Administration and Enforcement of the Code, must establish a board of appeals;

WHEREAS, pursuant to Section 501(b) of the Act (35 P.S. §7210.501(b)) and in accordance with 34 Pa. Code § 403.121(d), a municipality that elects to administer and enforce the Code may do so pursuant to an Intermunicipal Agreement under 53 Pa. C.S. §2301 through 2315 (relating to intergovernmental cooperation);

WHEREAS, there may be difficulties in fully staffing a board of appeals with qualified personnel in each municipality;

WHEREAS, the Member Municipalities desire collectively to associate themselves by virtue of this Agreement to create a Building Code Joint Board of Appeals;

WHEREAS, the Member Municipalities have determined that the provision of a Joint Board of Appeals on a regional basis will enhance their ability to safeguard the public health, safety, and welfare;

WHEREAS, cooperation among Member Municipalities is a proper exercise and discharge of their governmental powers, duties and functions; and

WHEREAS, the Member Municipalities enter into this Agreement pursuant to Article 9, Section S, of the Pennsylvania Constitution and the Act commonly known as the "Intergovernmental Cooperation Act," 53 Pa. C. S. §§ 2301 et. seq.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

**ARTICLE I**  
**FORMATION OF JOINT BOARD OF APPEALS**  
**AND APPOINTMENT OF ADMINISTRATOR**

1.0 Agreement to Cooperate. Pursuant to 53 Pa. C.S. §§ 2301 et. seq., the parties agree to cooperate and associate themselves together for the purpose of creating a Building Code Joint Board of Appeals.

1.1 Formation of Board. There is hereby established and maintained the Upper Dauphin Council of Governments Building Code Joint Board of Appeals ("Board of Appeals").

1.2 Appointment of Administrator. The administrative functions of the Board of Appeals shall be under the direction and management of the Upper Dauphin Council of Governments ("Administrator") subject to the limitations of this Agreement and those imposed by law.

1.3 Start Date. The Board of Appeals shall be formed and organized upon execution of this Agreement by the Member Municipalities.

**ARTICLE II**  
**BOARD MEMBERSHIP**

2.0 Members and Terms. The Board of Appeals shall consist of no less than three (3) and no greater than five (5) members appointed by the Administrator, which appointees will serve at the pleasure of the Administrator. The Administrator may replace a Board member with a qualified alternate, or may remove from the Board a member when, in the Administrator's sole discretion, such replacement or removal is in the best interest of the participating Member Municipalities.

2.1 Qualifications. The Board of Appeals shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction in accordance with applicable provision of the Act and the Code. Such Board of Appeals members shall not be employees or elected officials in any of the Member Municipalities.

2.2 Vacancies. Any position on the Board of Appeals that becomes vacant shall be filled by appointment by the Administrator.

**ARTICLE III**  
**REVIEW OF APPEALS AND HEARINGS**

3.0 Duties of Administrator. The Administrator shall have all expressed and implied powers as may be necessary to carry out the purposes of this Agreement, and the requirements of the Act and the Code and all regulations promulgated thereunder, and shall have the authority to:

- (a) Appoint qualified persons to serve on the Board of Appeals.
- (b) Set a Schedule of Fees for submission of an Appeal Application to the Board of Appeals to cover the minimum anticipated costs of an Appeal to the Board of Appeals.
- (c) Establish procedures for submission of an Appeal, so long as the procedures are in accordance with and comply with the requirements of the Act and related Code regulations, including, but not limited to, fees to be paid to Board members and the Board's professional services providers, engineers, solicitors, stenographers, as well as fees for the building code official, administrative fee, and legal advertisement fees (the "Schedule of Fees"). This Schedule of Fees will be set no less than annually by the Administrator.
- (d) Establish rules designating the location for hearing Appeals, the advertisement of Appeals and the scheduling of Appeals, so long as the rules comply with the Act and all Code regulations promulgated thereunder.
- (e) Designate the form for an Application to the Board of Appeals which must be completed and submitted to the designated officer of the Board of Appeals, together with proof of a municipality's receipt of the minimum, mandatory application fees from the Property Owner.
- (f) Select and retain professional advisers and professional service providers to assist and advise the Administrator and the Board of Appeals in carrying out the functions of the Board of Appeals.
- (g) Maintain a copy of all Applications and written decisions of the Board of Appeals for each Appeal in order to maintain the case number files in an orderly manner. All original records of Applications, written decisions and related documents shall be maintained by the affected Member Municipality in which the Appeal was filed.
- (h) Otherwise administer and manage and do all acts which may be necessary in the management of the Board of Appeals.

3.1 The Administrator may do all things, execute all instruments, and enter into all agreements and transactions as are reasonable, desirable or necessary to execute the specific powers set forth herein, but not contrary to the terms or conditions of this Agreement.

#### **ARTICLE IV**

##### **SUBMISSION OF APPEALS**

4.0 An application for an appeal from an adverse decision of a Member Municipality (the "Appeal") by a property owner, contractor or owners' representative or other interested party (the "Applicant" or "Appellant") shall be filed with the Secretary of the applicable Member

Municipality in accordance with the provisions of the Act, the Code and any rules or procedures established by the Administrator ("Application"). Applications must be submitted to the Secretary of the Member, together with the minimum application fee pursuant to the Schedule of Fees. The Application shall be forwarded to the Board of Appeals on a form designated by the Administrator within five (5) business days of receipt by the Member Municipality.

4.1 It will be the responsibility of the Member Municipality to collect all fees from the Appellant, to submit the Application to the Building Code Official and the Board of Appeals.

4.2 The Chairman of the Board of Appeals shall schedule and notify the Member Municipality and Building Code Official of the date, time and place for the Appeal to be heard. Hearings and meetings of the Board of Appeals shall be held in accordance with the requirements of the Uniform Construction Code and Act, as amended, as well as any rules, regulations or procedures established by the Administrator.

## ARTICLE V

### REVIEW OF APPEALS AND HEARINGS

5.0 The Board of Appeals shall decide Appeals, variance requests and requests for extensions of time by reviewing documents and written briefs or arguments unless the Appellant or Appellant's agent requests, in writing, a hearing. If no request for a hearing is made, the Board of Appeals shall schedule either a meeting or a hearing as it deems to be appropriate. Upon request from the Applicant or other interested party, the Board of Appeals shall conduct a hearing as follows:

5.1 Schedule of Hearings. Board of Appeals hearings shall be scheduled upon receipt of a request for hearing by the Applicant or by any of the Member Municipalities. Hearings shall be conducted in compliance with the "Sunshine Act", 65 P.S. §§271 et. seq., as amended from time to time.

5.2 Notice of Hearings and Meetings. The applicable Member Municipality shall be responsible to provide the following:

(a) Written notice to Board of Appeals members of scheduled meetings and hearings.

(b) Written notice to Appellants and all interested parties of scheduled meetings and hearings.

(c) Public advertisement of all meetings and hearings as may be required by law or ordinance.

(d) Secretarial services for the Board of Appeals, as needed.

(e) Stenographer, as needed

5.3 Location of Hearings. The applicable Member Municipality shall be responsible to provide meeting space and related facilities necessary to conduct hearings for Appeals, as requested by the Board of Appeals.

5.4 Costs. Each Member Municipality agrees to establish the Schedule of Fees as determined from time to time by the Administrator and to collect from Appellants and remit to the Board of Appeals and its service provider the appropriate portion of such fees. The appeal fees shall be set by the Administrator in such a sufficient amount to cover costs for advertising, stenographic services, engineer's services, solicitor and other professional services and other administrative services related to the Appeals. Each Member Municipality is responsible for its own costs for participating in the Appeals including, but not limited to, costs for the presence of its designated representative and the participation of any expert witnesses and/or legal counsel for said Appeals. Each Member Municipality agrees to establish and to adhere to such rules and regulations concerning Appeals as the Administrator may be required to carry out the purposes of this Agreement.

5.5 Hearing Records. All minutes, notes and stenographic records of hearings shall become the property of the involved Member Municipality. Such records shall be subject to the provisions of the Right-to-Know Act, 6S P.S. §§ 66.1 et. seq. as amended from time to time.

5.6 A transcribed copy of the record will not be made unless the Appellant or other party requests such a record, in which event the Appellant or party requesting a copy of the record will be responsible for payment of all transcription costs directly to the stenographer.

## ARTICLE VI

### FEES

6.0 The Schedule of Fees will be set no less than annually by the Administrator. Included in the fee schedule will be a minimum Application cost for each Appeal.

6.1 It will be each Member Municipality's responsibility to collect the initial Application fees and all other fees from the Appellant with respect to the Appeal.

6.2 Upon completion of the hearing on any Appeal submitted to the Board of Appeals, a statement shall be submitted by the Board of Appeals to the Member Municipality wherein the Appeal originated for payment of all costs of the Appeal. The notice from the Board of Appeals shall itemize the fees to be paid to each Board of Appeals member and to each individual service provider. Each Member Municipality agrees to immediately make payment to the Board of Appeals members and the service providers within ten (10) days from the date the notice is mailed or delivered by the Board of Appeals to the Member Municipality. In the event the fees exceed the minimum application fee collected initially by the Member Municipality, the Member Municipality shall have the right and be responsible to collect all additional fees from the

Appellant, but failure or inability to do so shall not relieve the Member Municipality of its obligation to pay the full amount to the Board of Appeals members and the Board of Appeals service providers.

**ARTICLE VII**  
**JOINDER OF MUNICIPALITIES**

7.0 New Members. Additional municipalities may become parties to this Agreement upon application to and acceptance by the Administrator, approval by a majority of the then Member Municipalities, and formal adoption of this Agreement and acceptance by the applicant municipality of the provisions of this Agreement, as amended.

**ARTICLE VIII**  
**TERM**

8.0 Term. The initial term of this Agreement shall be for a period commencing with the execution of the Agreement through December 31, 2008. The Agreement shall thereafter renew automatically for one-year periods.

8.1 Agreement Not to Withdraw. By accepting and signing this Agreement, each party expresses its belief that a Joint Board of Appeals is in the best interest of the Member Municipalities, and the parties commit not to withdraw during the initial term of this Agreement unless such Member Municipality has good cause to do so.

**ARTICLE IX**  
**WITHDRAWAL**

9.0 Withdrawal. After the initial term of this Agreement, a Member Municipality may withdraw from this Agreement by giving written notice of its intent to withdraw, by certified mail, return receipt request to the Administrator and all other parties no later than September 30 of the year preceding the year in which withdrawal shall be effective. If notice of a Member Municipality's intent to withdraw is timely sent, such withdrawal shall be effective January 1 of the immediately following year.

**ARTICLE X**  
**ADOPTION OF AGREEMENT**

10.0 Ordinance. The Member Municipalities shall advertise and adopt an ordinance authorizing acceptance and adoption of this Agreement, each providing for all action necessary for participation in the Board of Appeals. Such ordinances shall include provisions abolishing the Member Municipality's individual board of appeals, if applicable.



10.1 Compliance with Laws. The ordinance shall comply with the provisions of and be adopted in accordance with the Intergovernmental Cooperation Act and the respective First Class Township, Second Class Township or Borough Code.

## **ARTICLE XI**

### **AMENDMENT AND TERMINATION OF AGREEMENT**

11.0 Any decision to modify, amend or terminate this Agreement shall require the approval of two-thirds (2/3) of all of the Member Municipalities. Following approval of any amendments, all interested Member Municipalities shall be bound thereby; provided, however, that in the event of any amendment, any Member Municipality may, within thirty (30) days of the date of approval of such amendment, withdraw from this Agreement by providing written notice of such withdrawal to the Administrator in the same manner as provided in Article IX hereof.

11.1 This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, and those Member Municipalities who agree to be bound thereby, their successors and assigns, and shall continue in full force and effect in all of its terms and provisions until terminated by the Member Municipalities as provided herein.

11.2 In the event Member Municipalities shall withdraw that there are no longer at least two (2) Member Municipalities who wish to share a common Board of Appeals, then this Agreement shall automatically terminate, and the Board of Appeals shall cease to exist.

## **ARTICLE XII**

### **EFFECTIVE DATE**

12.0 This Agreement shall be effective when any two (2) of more Member Municipalities have executed the Agreement following the passage of an appropriate Ordinance by the governing body of said Member Municipality.

12.1 This Agreement shall remain in full force and effect until terminated pursuant to the provisions of Article XI hereinabove.

## **ARTICLE XIII**

### **GENERAL PROVISIONS**

13.0 Governing Law. This Agreement shall be governed by and construed under the laws of the Commonwealth of Pennsylvania.

13.1 Headings/Number. The headings, captions, article numbers, and section numbers in this Agreement are for convenience and ease of reference only. They shall not limit or restrict the subject matter that precedes or follows them. The use of the singular form shall include the plural and vice versa.

13.2 Legal Construction. In the event any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such invalidity, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if the invalid or unenforceable provision had not been included.

13.3 Invalidity. Should any provision in this Agreement or any rule or regulation adopted by the Administrator hereunder be deemed or determined to be invalid by any authoritative body, such provision shall be deemed to be removed from this Agreement and the balance of the Agreement shall continue in full force and effect; provided, however, that if such an invalidity shall make impractical the further operation of the Board of Appeals under this Agreement, the Agreement shall be forthwith amended so as to provide for its effective continuance according to its general purposes.

13.4 Member Assessments. Each Member Municipality shall be responsible only for its proportionate share of costs for the administration of the Board of Appeals and for the actual fees and costs associated with hearing any Appeal originating from such Member Municipality. In no event shall Member Municipalities be responsible for fees incurred by another Member Municipality when the Board of Appeals hears an Appeal originating from another member Municipality.

13.5 Liability. A Member Municipality shall not have any responsibility or liability for the decisions of the Board of Appeals concerning Appeals originating at other Member Municipalities or for the acts of other Member Municipalities.

13.6 Notice. Any notice required to be given under the terms of this Agreement, or rules and regulations adopted by the Administrator, shall be deemed to have been duly served if delivered personally to the Building Code Official of the Member Municipality or other person to be notified, as set forth in writing by the Member Municipality, or, if mailed, by placing same in a sealed envelope with sufficient postage to be paid thereon, addressed to such person at the particular Member Municipality's last known address as shown in the records of the Administrator of the Board of Appeals and deposited in the United States mail. In the event that notice is given by mail, it shall be deemed to have been served Seventy-Two (72) hours after depositing the same in a depository of the United States mail.

13.7 Time. If the last day of any time period set forth in any procedural rules or requirements under the terms of this Agreement or as promulgated hereinafter by the Administrator, falls on a Saturday, Sunday or legal holiday, said time period shall be extended to the next day that is not a Saturday, Sunday or legal holiday.

13.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**ARTICLE XIV**  
**EXECUTION OF AGREEMENT**

14.0 Upon its execution, after authorization granted pursuant to appropriately adopted Ordinances, this Agreement shall be binding upon and inure to the benefit of all undersigned Member Municipalities including upon the joinder of a new Member Municipality as provided in Article VII hereof.

IN WITNESS WHEREOF, the parties hereto have executed and sealed this.

ATTEST:

Secretary

Mifflin Township

By: \_\_\_\_\_ 11-11-08  
(Name: John Ritz, Chairman) Date

ATTEST:

Secretary

Mifflin Township

By: Albert J. Mausy 11-11-08  
(Name: Supervisor Title) Date

ATTEST:

Secretary

Mifflin Township

By: Ronald C. Kolva 11-11-08  
(Name: Roadmaster, Title) Date

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