

FAWN GROVE BOROUGH
YORK COUNTY, PENNSYLVANIA

ORDINANCE NO. 2004 - 5

AN ORDINANCE OF FAWN GROVE BOROUGH PROVIDING FOR AN INTERGOVERNMENTAL COOPERATION AGREEMENT FOR THE PURPOSE OF JOINING WITH THE COUNTY OF YORK TO CREATE AND OPERATE A COUNTY BOARD OF APPEALS PURSUANT TO THE PENNSYLVANIA CONSTRUCTION CODE ACT AND REGULATIONS PROMULGATED THEREUNDER.

IT IS HEREBY ENACTED AND ORDAINED by the Borough Council of Fawn Grove Borough, York County, Pennsylvania, as follows:

Section 1. The Borough Council of Fawn Grove Borough, York County, Pennsylvania is authorized and directed to execute and deliver an Intergovernmental Cooperation Agreement attached hereto and entitled Intergovernmental Cooperation Agreement Creating a County Board of Appeals (the "Agreement"). The specific terms, conditions and provisions of the Agreement are made a part hereof.

Section 2. The conditions, duration and term, purpose and objective, scope and authority delegated, manner and extent of financing, organizational structure and manner in which personal property shall be acquired, managed and disposed of, are set forth in the attached Agreement.

ENACTED AND ORDAINED by the Borough Council of Fawn Grove Borough, York County, Pennsylvania, on June 7, 2004.

Attest:

Monica L. Reinsfelder
Secretary

FAWN GROVE BOROUGH COUNCIL

By: John M. Fudge
President

APPROVED on June 7 2004.

David Sear
Mayor

EXHIBIT "A"

INTERGOVERNMENTAL COOPERATION AGREEMENT CREATING
COUNTY BOARD OF APPEALS

THIS AGREEMENT, effective this _____ day of _____ 2004, by and between the Borough of Fawn Grove, York County, Pennsylvania (hereafter referred to as "Municipality") and the County of York, Pennsylvania (hereafter referred to as "County").

WHEREAS, the Commonwealth of Pennsylvania has adopted the Pennsylvania Construction Code Act, Act 45 of 1999, creating the Uniform Construction Code, as amended from time to time (hereafter referred to as "Act"), and pursuant to the Act, the Pennsylvania Department of Labor and Industry has promulgated regulations contained in 34 Pa. Code Chapters 401-405, as amended from time to time (collectively with the Act hereafter referred to as the "UCC"); and

WHEREAS, the Municipality has adopted an ordinance adopting the UCC; and

WHEREAS, the UCC requires that a board of appeals be appointed to hear appeals from decisions of the Municipal code administrator; and

WHEREAS, the Municipality desires to enter into an Intergovernmental Cooperation Agreement as authorized by the Act of December 19, 1996, P.L. 1158, 53 Pa.C.S.A. Section 2301 et seq., known as the Intergovernmental Cooperation Act, and Section 501 (c) and 34 Pa. Code Section 403,121(d) of the UCC, for the purposes of creating and operating a County Board of Appeals.

NOW, THEREFORE, WITNESSETH that, for and in consideration of the mutual promises and agreements contained herein, the Municipality and the County agree as follows:

1. The foregoing recitations are incorporated by reference.
2. The Municipality is a municipal corporation, being a borough, governed by the Borough Code.
3. The County is a municipal corporation, being a Third Class County, governed by the County Code.
4. The Municipality delegates its responsibility to create a UCC board of appeals to the County; and the County accepts the delegation and will by ordinance create a County Board of Appeals (hereafter referred to as "County Board" to hear appeals from the decisions of the Municipal code administrator).
5. The County shall appoint five (5) members of the County Board, with no fewer than two (2) or more than five (5) alternate members, meeting the following requirements.

A. The initial County Board shall consist of one (1) member appointed for a term of five (5) years, one (1) member appointed for a term of four (4) years, one (1) member appointed for a term of three (3) years, one (1) member appointed for a term of two (2) years, and one (1) member appointed for a term of (1) year. Thereafter, each new member shall serve for five (5) years or until a successor has been appointed. Alternate members shall be appointed for a five (5) year membership.

B. The County Board shall consist of members and alternate members from each of the following professions or disciplines.

- i. Registered design professional who is a registered architect; or a builder or superintendent of building construction with at least ten (10) years of experience, five (5) of which shall have been in responsible charge of work.
- ii. Registered design professional with structural engineering or architectural experience.
- iii. Registered design professional with mechanical or plumbing engineering experience; or a mechanical or plumbing contractor with at least ten (10) years of experience, five (5) of which shall have been in responsible charge of work.
- iv. Registered design professional with electrical engineering experience; or an electrical contractor with at least ten (10) years of experience, five (5) of which shall have been in responsible charge of work.
- v. Registered design professional with fire protection engineering experience; or a fire protection contractor with at least ten (10) years of experience, five (5) of which shall have been in responsible charge of work.

C. A member or alternate member of the County Board shall serve at the pleasure of the County Board of Commissioners.

D. Members of the County Board of Commissioners, or members of the Municipality's governing body or its code administrators, may not serve on the County Board.

E. The Building Code Official (hereafter referred to as "BCO") of the Municipality may be an ex officio member of the County Board for any appeal from the Municipality, but shall have no vote on any matter before the County Board.

F. The County may fill a position on the County 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.

G. A County Board member or alternate member may not cast a vote or participate in any appeal, request for hearing, variance, or extension of time in which the member has a personal, professional or financial interest.

H. The County Board shall schedule meetings and provide for public notice of meetings in accordance with 65 Pa.C.S.A. Sections 701-716, relating to the Sunshine Act.

7. The County Board shall be governed by the following rules.

A. At its first convened meeting in each calendar year, the County Board shall elect

i. a chair, who shall be responsible for running the meetings,

ii. a vice chair, who shall take the place of the chair if he or she is unable to perform his or her duties, and

iii. a secretary, who shall be responsible for keeping minutes of each meeting.

B. The County Board shall publish the date, time and location for the meetings for the following calendar year no later than December 31 of each year.

C. The County Board may not act upon an appeal, request for variance or request for extension of time relating to accessibility under the Act.

D. The County Board shall have no authority to waive requirements of the UCC.

E. The County Board shall consider an appeal, request for hearing, request for variance, or request for extension of time only if it has been filed with the Municipality, on a form provided by the Municipality or its BCO. A fee in an amount to be determined by the Municipality shall be paid by the applicant to the Municipality prior to the scheduling of the appeal, hearing, or request with the County Board. The fee shall be considered an integral part such appeal or request, and failure to file the fee at the time of filing of the appeal or request shall render the appeal or request for hearing, variance or extension of time incomplete as filed, and it will not be forwarded to the County Board until such fee has been paid. The postmark or date of personal service will establish the filing date of the appeal or request for variance or extension of time. Such appeal shall automatically suspend any action to enforce an order to correct, until the matter is resolved, except that any action relating to an unsafe building, structure, or equipment shall not be stayed by the appeal, request for variance, or request for extension of time.

F. Within sixty (60) days from the date of appeal or request for variance or extension of time, the County Board shall decide an appeal, variance request, or request for extension of time by reviewing documents and written brief or argument, unless the applicant requests a hearing.

G. The County Board shall hold a hearing if requested by the applicant within sixty (60) days from the date of request, unless the applicant agrees in writing to an extension of time.

- i. Upon the filing of a written request for a hearing with the payment of fee for additional estimated costs, the County Board shall schedule a hearing and notify the applicant and BCO of the date, time and place of the hearing.
- li. The County Board may deny the hearing request in whole or in part, grant the hearing request in whole or in part, or grant the hearing request upon certain conditions being satisfied.

H. The BCO of the Municipality shall be responsible for circulating to all members of the County Board in advance of a meeting or hearing all necessary and appropriate documents for each appeal, request for variance, or request for extension of time filed with the Municipality.

I. The review standards of the County Board are as follows:

- i. Appeals. An application for appeal shall be limited to consideration of only
 - (1) whether the true intent of the Act or the UCC have been incorrectly interpreted,
 - (2) whether the provision of the Act does not apply, or
 - (3) whether an equally good or better form of construction is proposed.
- ii. Request for Variance or Extension of Time. When considering a request for variance or extension of time, the County Board may consider the following factors:
 - (1) the reasonableness of the UCC's application in a particular case.
 - (2) the extent to which granting of a variance or an extension of time will constitute a violation of the UCC or create an unsafe condition.

- (3) the availability of professional or technical personnel, or materials and equipment, needed to come into compliance.
- (4) the efforts being made to come into compliance as quickly as possible.
- (5) compensatory features that will provide an equivalent degree of protection to the UCC.

I. The County Board shall render all decisions and findings in writing to the appellant, with a copy to the Municipal BCO. It shall be the responsibility of the BCO to forward a copy of each decision to the Municipality.

J. The County Board may adopt such other rules of procedure as it shall deem necessary to conduct its business.

K. A quorum of the County Board shall consist of a majority of the then appointed members, excluding alternate members. Any action by the County Board shall be by majority vote of the quorum at any meeting. Failure to achieve a majority vote shall result in denial of the appeal or other action requested.

L. The Chairman of the County Board shall call an alternate member or members to hear appeals and requests if a quorum cannot be achieved due to absence or disqualification of a member or members.

8. If no appeal, request for hearing, request for variance, or request for extension of time has been filed with the County Board, the Municipality may withdraw from participation in this Agreement by adopting an Ordinance and notifying the County in writing. If an appeal, request for hearing, request for variance, or request for extension of time has been filed with the County Board pursuant to the requirements of this Agreement, the Municipality may withdraw from participation in this Agreement by adopting an ordinance and notifying the County in writing not less than ninety (90) days' prior to the date of the termination.

9. The Municipality agrees that it will be responsible for the costs of any services provided pursuant to this Agreement, and that the fees charged will cover the costs. If the fees established pursuant to Paragraphs 7.E. and 7.G.i do not cover the costs, the Municipality agrees that it will increase those fees to an amount that will do so.

10. This Agreement shall be effective pursuant to the adoption of an ordinance authorizing the Municipality to enter this Intergovernmental Cooperation Agreement, the adoption of an ordinance creating the County Board by the County, and execution of this Agreement by the Municipality and County.

11. This Agreement may be modified or amended from time to time by the

Municipality and County, which modifications may be authorized by resolution, except for termination, which shall be by ordinance, as set forth in Paragraph 8.

12. The County and Municipality agree to indemnify and hold hat-mless each other, and their respective officers, employees, agents affiliates (and their officers, partners, directors, employees and agents) and their respective successors and assigns from and against any and all claims, losses, costs and expenses (including but not limited to personal injury, death, illness, or loss Of or damage to property, and attorneys' fees and expenses) which arise out of or are related to the existence of this Agreement or duties and responsibilities hereunder.

IN WITNESS WHEREOF, the parties by their authorized officers have fixed their hands and seals on the dates set forth below.

ATTEST:

COUNTY OF YORK

Charles R. Noll
Administrator/Chief Clerk

Lori O. Mitrick
President Commissioner

Date: _____

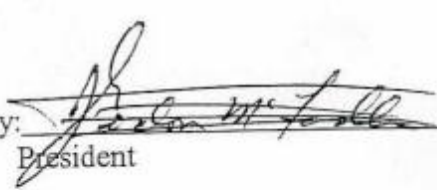
Douglas E. Kilgore
Commissioner

Steve Chronister
Commissioner

ATTEST:

FAWN GROVE BOROUGH

Secretary

By: 

President

Date: _____