

**POCONO TOWNSHIP
MONROE COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2012-01

AN ORDINANCE OF THE TOWNSHIP OF POCONO, COUNTY OF MONROE, AND COMMONWEALTH OF PENNSYLVANIA, AMENDING AND REVISING THE POCONO TOWNSHIP SUBDIVISION AND LAND DEVELOPMENT ORDINANCE, ORDINANCE NO. 77, AS PREVIOUSLY AMENDED, TO ADD PROVISIONS FOR THE SUBMISSION, REVIEW AND PROCESSING OF APPLICATIONS FOR APPROVAL OF PRELIMINARY PLANS FOR MAJOR SUBDIVISIONS AND LAND DEVELOPMENTS DEPENDENT UPON PUBLIC SEWER SERVICE NOT AVAILABLE AT THE TIME OF PRELIMINARY PLAN SUBMISSION BY AMENDING SECTIONS 2.302 AND 2.304 THEREOF.

WHEREAS, The Subdivision and Land Development Ordinance of Pocono Township, as amended, requires the submission of Preliminary Plans for Major Subdivisions and Land Developments dependent upon public sewer service to include as supporting documentation, among other items, two (2) copies of a letter from the applicable company or authority providing public sewer service stating said company or authority can adequately serve the planned Subdivision or Land Development (a "will serve" letter); and

WHEREAS, The Subdivision and Land Development Ordinance of Pocono Township, as amended, states that following Preliminary Plan approval the Board of Supervisors will submit copies of the relevant planning module and necessary documentation (where same are required) to the Pennsylvania Department of Environmental Protection for review; and

WHEREAS, In the case of Major Subdivisions and Land Developments depending on the Pocono Township public sewer system for sanitary sewer service, which system is not yet on line or available at the time of enactment of this Ordinance, submission and review of Preliminary Plans has been hindered by the inability of Developers to provide will serve letters and the inability of the Board of Supervisors to execute certain portions of planning modules; and

WHEREAS, In the case of Major Subdivisions and Land Developments, in the opinion of the Board of Supervisors, the hindrance of submission and review of Preliminary Plans as explained above is unnecessary, avoidable, and does not serve the public good; and

WHEREAS, In the opinion of the Board of Supervisors, the interests of the Township and the public will be better served by an amendment to the Subdivision and Land Development Ordinance allowing for submission and review of Preliminary Plans for Major Subdivisions and Land Developments relying on the Pocono Township public sewer system, despite the current unavailability of the system, provided Final Plans for such Major Subdivisions and Land Developments cannot be approved unless and until the system is on line and available to serve the development,

NOW THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Supervisors of Pocono Township, Monroe County, Pennsylvania (the "Board"), and it is hereby ordained and enacted by the authority of the same, that the Subdivision and Land Development Ordinance of Pocono Township, Ordinance #77, as amended, is hereby further amended as follows, to wit:

ARTICLE I – Section 2.302, Submission of Preliminary Plan, is hereby amended by the addition of the following subsection:

- "2.302.D.5.a-1. Public – To be Constructed – When the Subdivision or Land Development is to be served by the Pocono Township public sewer system and said system is not yet on line or available at the time the Developer submits Preliminary Plans, the Developer shall:
- i. Include on the Preliminary Plan illustration of the proposed sewerage system showing all pertinent features.
 - ii. Prior to Final Plan approval submit two copies of a letter from the Township or the applicable company or authority that states that the system can adequately serve the Subdivision or Land Development, including any conditions and/or costs imposed by the Township, company or authority. Preliminary Plan approval will be conditional until this requirement is met.
 - iii. Prior to Final Plan approval submit proof of the approval of the design of the system by the appropriate agency/agencies. Preliminary Plan approval will be conditional until this requirement is met.
 - iv. The Commission and Supervisors shall have the right to review any such Preliminary and Final Plans to determine compliance and compatibility of the same with any Township plans or studies and the overall adequacy of the proposed system.
 - v. Prior to Preliminary Plan approval, and as an irrevocable, non-waivable condition of Preliminary Plan approval, execute the indemnification and hold-harmless agreement set forth in Appendix "H" hereto."

ARTICLE II – The following paragraph is added at the end of Section 3.204, Water Supply and Sewage Disposal Requirements:

"In the case of a Subdivision or Land Development relying on the Pocono Township public sewer system and in the event the system is not on line or available at the time of the Developer's submission of Preliminary Plans pursuant to Section 2.302.D.5.a-1., above, the Board of Supervisors will submit copies of the module and necessary documentation to the Pennsylvania Department of Environmental Protection for review within a reasonable time after the Pocono Township public sewer system becomes available to serve the proposed development."

ARTICLE III – The following Indemnification and Hold Harmless Agreement is added as Appendix “H”:

**“APPENDIX “H”
INDEMNIFICATION AND HOLD HARMLESS AGREEMENT**

THIS AGREEMENT, dated the _____ day of _____, 20____, by and between:

Pocono Township, a Pennsylvania Second Class Township, with a primary address of P.O. Box 197, Tannersville, Pennsylvania (hereinafter “Township), and

_____, with a primary address of _____, (hereinafter “Developer”)

WITNESSETH:

WHEREAS, Developer is the legal or equitable owner of a certain tract or tracts of land situate in Pocono Township, Monroe County, as shown on a certain Preliminary Subdivision Plan or Preliminary Land Development Plan plot or plan entitled

_____, which Plan Developer has submitted to the Township for review pursuant to the Pocono Township Subdivision and Land Development Ordinance (“SALDO”), as amended; and

WHEREAS, as illustrated on Developer’s Preliminary Plan, the development will rely on the Pocono Township public sewer system (the “System”) for sanitary sewer service, which System is not yet on line or available at the time of the submission of the Preliminary Plan and the execution of this Agreement; and

WHEREAS, Developer has elected to proceed with the submission of the Preliminary Plan for review pursuant to SALDO §2.302.D.5.a-1., as amended,

NOW THEREFORE, for good and valuable consideration, the receipt of which is herein acknowledged, Developer represents and agrees to be legally bound as follows:

1. Developer has elected of its own free will to proceed with submission of its Preliminary Plan for review at a time when the System is not yet on line or available to serve Developer’s proposed development.
2. Developer has elected of its own free will to design its Preliminary Plan as solely dependent upon the System for sanitary sewer service and has not provided for any alternative sanitary sewer service (private central, individual on-lot, or otherwise) to serve its proposed development.

3. Developer acknowledges that its submission of its Preliminary Plan under these circumstances carries certain risks, including but not limited to:
 - a. The risk that the System may not yet be on line or available by the time Developer has satisfied other conditions of Preliminary Plan approval, is otherwise ready to proceed to Final Plan approval, is otherwise ready to apply for federal, state or local permits that are dependent in full or in part on the availability of sanitary sewer service, or is otherwise ready to commence or complete construction of improvements.
 - b. The risk that unavailability of the System may delay or prevent Developer's application for certain federal, state or local permits, resulting in the imposition of federal, state or local regulatory requirements not initially imposed upon Developer at the time of Preliminary Plan submission.
4. Developer represents that it is a sophisticated person / entity, well versed in both the statutory and regulatory requirements applicable to Developer's Preliminary Plan as well as the practical, legal, and financial risks of proceeding with the submission of the Preliminary Plan in advance of the availability of the System and further represents that it has thoroughly evaluated all such risks itself and with the advice and counsel of appropriate professionals has elected to so proceed.
5. INDEMNIFICATION and HOLD HARMLESS - Developer, on behalf of itself and its successors and assigns, hereby agrees to indemnify, defend and save and hold harmless Township, its individual Supervisors, employees, agents, partners, heirs, successors and assigns (collectively, the "Indemnified Party") from and against, and to reimburse the Indemnified Party with respect to, any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees and expenses, court costs, and costs of appeals) asserted against or incurred by the Indemnified Party by reason of or arising out of the lack of availability of the System to serve Developer's project. Further, Developer, on behalf of itself and its successors and assigns, hereby agrees to save and hold harmless Township, its individual Supervisors, employees, agents, partners, heirs, successors and assigns (collectively, the "Indemnified Party") from and against any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees and expenses, court costs, and costs of appeals) asserted against or incurred by the Developer, its successors or assigns, by reason of or arising out of the lack of availability of the System to serve Developer's project.
6. Developer acknowledges that any prior or contemporaneous statements by the Township, its individual Supervisors, employees, agents, partners, heirs, successors and assigns regarding anticipated date(s) of availability of the System to serve Developer's project were speculative in nature and do not form any part of this Agreement or the basis for Developer's decision to proceed as set forth herein. This Agreement supersedes all prior oral or written representations, understandings, promises or agreements which are not included herein and Developer hereby waives, and releases the Township, its individual

Supervisors, employees, agents, partners, heirs, successors and assigns, from any such statement.

7. This Agreement shall be governed by, and interpreted in accordance with, the laws of the Commonwealth of Pennsylvania.
8. Any provision of this agreement which may prove unenforceable under any law shall not affect the validity of any other provision hereof.

IN WITNESS WHEREOF, for good and valuable consideration, and intending to be legally bound hereby, the Parties have hereunto set their hands and seals as of the day and date first above written.

Developer:

Township of Pocono:

Supervisor

Supervisor

Supervisor"

ARTICLE IV – SEVERABILITY.

If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any remaining provisions, sentences, clauses, sections of parts of this ordinance. It is hereby declared to be the intent of the Board that such remainder shall be, and shall remain, in force and effect.

ARTICLE V – REPEALER.

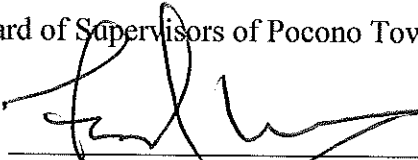
All ordinances or parts of ordinances or resolutions conflicting or inconsistent with any of the provisions of this Ordinance are hereby repealed, but only insofar as the same are in direct conflict or directly inconsistent with this Ordinance.

ARTICLE VI – EFFECTIVE DATE.

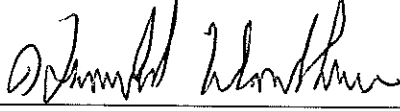
This ordinance shall take effect five (5) days after the date of its enactment.

ORDAINED AND ENACTED into an Ordinance at a regular meeting of the Board of Supervisors of Pocono Township, Monroe County, Pennsylvania, this 21st day of May, 2012.


Board of Supervisors of Pocono Township

By: 


Frank J. Hess, Chairman

By: 

Harold Werkheiser, Vice-Chairman

By: 

Henry Bengel, Supervisor

ATTEST: 

Township Secretary


[TOWNSHIP SEAL]

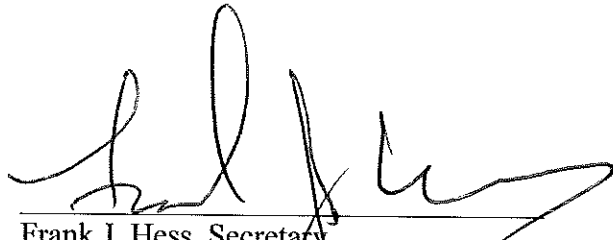
ORDINANCE NO. 2012-01

IN RE:

AN ORDINANCE OF THE TOWNSHIP OF POCONO, COUNTY OF MONROE, AND COMMONWEALTH OF PENNSYLVANIA, AMENDING AND REVISING THE POCONO TOWNSHIP SUBDIVISION AND LAND DEVELOPMENT ORDINANCE, ORDINANCE NO. 77, AS PREVIOUSLY AMENDED, TO ADD PROVISIONS FOR THE SUBMISSION, REVIEW AND PROCESSING OF APPLICATIONS FOR APPROVAL OF PRELIMINARY PLANS FOR MAJOR SUBDIVISIONS AND LAND DEVELOPMENTS DEPENDENT UPON PUBLIC SEWER SERVICE NOT AVAILABLE AT THE TIME OF PRELIMINARY PLAN SUBMISSION BY AMENDING SECTIONS 2.302 AND 2.304 THEREOF; PROVIDING FOR SEVERABILITY OF ITS PROVISIONS AND REPEAL OF INCONSISTENT ORDINANCES AND RESOLUTIONS; AND ESTABLISHING AN EFFECTIVE DATE.

CERTIFICATION

I hereby certify that the attached Ordinance is a true and correct copy of an Ordinance enacted by the Board of Supervisors of Pocono Township, Monroe County, Pennsylvania, on the 21st day of May, 2012.



Frank J. Hess, Secretary
Pocono Township Board of Supervisors

(TOWNSHIP SEAL)