

## ORDINANCE # 592

### AN ORDINANCE AMENDING THE CONEMAUGH TOWNSHIP SUBDIVISION AND LAND DEVELOPMENT ORDINANCE

Be it ordained and enacted by the Supervisors of Conemaugh Township, Somerset County, Pennsylvania and it is hereby ordained and enacted by the authority of the same as follows:

SECTION 1: The following definitions set forth in Section 202.01 are amended to read as follows:

"Developer" - Any landowner, agent of such landowner, or tenant with the permission of such landowner, who makes or causes to be made a subdivision of land or a land development.

"Landowner" - The legal or beneficial owner or owners of land including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), a lessee if he is authorized under the lease to exercise the rights of the landowner, or other person having a proprietary interest in land.

"Lot" - A designated parcel, tract or area of land established by a plat or otherwise as permitted by law and to be used, developed or built upon as a unit.

"Mobilehome" - A transportable, single family dwelling intended for permanent occupancy, contained in one unit, or in two or more units designed to be joined into one integral unit capable of again being separated for repeated towing, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations, and constructed so that it may be used without a permanent foundation.

"Subdivision" - For the purpose of these regulations, "subdivision" shall be defined as follows:

(a) 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.

(b) Any development of a parcel of land (including shopping centers, industrial parks and multiple dwelling projects) which involves the installation of streets even though the streets may not be dedicated to general public use and the parcel may not be divided immediately for purposes of conveyance, lease, transfer or sale.

SECTION 2: Article III, Section 313.02, 313.03 and 313.05 are repealed and replaced as follows:



313.02 (a) No plat shall be finally approved unless the streets shown on such plat have been improved to a mud-free or otherwise permanently passable condition, or improved as may be required by this ordinance, and any walkways, curbs, gutters, street lights, fire hydrants, shade trees, watermains, sanitary sewers, storm sewers and other improvements as may be required by this ordinance have been installed in accordance with said ordinance. In lieu of the completion of any improvements required as a condition for the final approval of a plat, including improvements or fees required pursuant to Section 313.02(i), the Developer shall deposit with the Board financial security in an amount sufficient to cover the costs of such improvements or common amenities including, but not limited to, roads, storm water detention and/or retention basins and other related drainage facilities, recreational facilities, open space improvements, or buffer or screen plantings which may be required.

(b) When requested by the Developer, in order to facilitate financing, the planning Commission shall furnish the Developer with a signed copy of a resolution indicating approval of the final plat contingent upon the Developer obtaining a satisfactory financial security. The final plat or record plan shall not be signed nor recorded until the financial improvements agreement is executed. The resolution or letter of contingent approval shall expire and be deemed to be revoked if the financial security agreement is not executed within ninety (90) days unless a written extension is granted by the governing body; such extension shall not be unreasonably withheld and shall be placed in writing at the request of the Developer.

(c) Federal or Commonwealth chartered lending institution irrevocable letters of credit and restrictive or escrow accounts in such lending institutions, in addition to a Contract Performance Bond, shall be deemed acceptable financial security for the purposes of this section.

(d) Such financial security shall be posted with a bonding company or Federal or Commonwealth chartered lending institution chosen by the party posting the financial security, provided said bonding company or lending institution is authorized to conduct such business within the Commonwealth.

(e) Such bond or other security shall provide for, and secure to the public, the completion of any improvements which may be required on or before the date fixed in the formal action of approval or accompanying agreement for completion of the improvements.

(f) The amount of financial security to be posted for the completion of the required improvements shall be equal to 110% of the cost of completion estimated as of ninety (90) days following the date scheduled for completion by the Developer. Annually, the Commission may adjust the amount of the financial security by comparing the actual cost of the improvements which have been completed and the estimated cost for the completion of the remaining improvements as of the expiration of the 90th day after either the original date scheduled for completion or a rescheduled date of completion. Subsequent to said adjustment, the Commission may require the Developer to post additional security in order to assure that the financial security equals said 110%. Any additional security shall be posted by the Developer in accordance with this subsection.

(g) The amount of financial security required shall be based upon an estimate of the cost of completion of the required improvements, submitted by an applicant or Developer and prepared by a professional engineer licensed as such in this Commonwealth and



certified by such engineer to be a fair and reasonable estimate of such cost. The Commission, upon the recommendation of the municipal engineer, may refuse to accept such estimate for good cause shown. If the applicant or Developer and the Commission are unable to agree upon an estimate, then the estimate shall be recalculated and recertified by another professional engineer licensed as such in this Commonwealth and chosen mutually by the Board and the applicant or Developer. The estimate certified by the third engineer shall be presumed fair and reasonable and shall be the final estimate. In the event that a third engineer is so chosen, fees for the services of said engineer shall be paid equally by the Commission and the applicant or Developer.

(h) If the party posting the financial security requires more than one year from the date of posting of the financial security to complete the required improvements, the amount of financial security may, if the Commission believes it is necessary to protect the public, be increased by an additional 10% for each one-year period beyond the first anniversary date from posting of financial security or to an amount not exceeding 110% of the cost of completing the required improvements as reestablished on or about the expiration of the preceding one-year period by using the above bidding procedure.

(i) In the case where development is projected over a period of years, the Commission may authorize submission of final plans by section or stages of development subject to such requirements or guarantees as to improvements in future sections or stages of development as it finds essential for the protection of any finally approved section of the development.

(j) As the work of installing the required improvements proceeds, the party posting the financial security may request the Board to release or authorize the release, from time to time, such portions of the financial security necessary for payment to the contractor or contractors performing the work. Any such requests shall be in writing addressed to the Board, and the Board shall have forty-five (45) days from the receipt of such request within which to allow the municipal engineer to certify, in writing, to the Board that such portion of the work upon the improvements has been completed in accordance with the approved plat. Upon such certification, the Board shall authorize the release by the bonding company or lending institution of an amount as estimated by the municipal engineer fairly representing the value of the improvements completed or, if the Board fails to act within said forty-five (45) day period, the Board shall be deemed to have approved the release of funds as requested. The Board may, prior to final release at the time of completion and certification by its engineer, require retention of 10% of the estimated cost of the aforesaid improvements.

(k) Where the Board accepts dedication of all or some of the required improvements following completion, the Board may require the posting of financial security to secure structural integrity of said improvements as well as the functioning of said improvements in accordance with the design and specifications as depicted on the final plat for a term not to exceed eighteen (18) months from the date of acceptance of dedication. Said financial security shall be of the same type as otherwise required in this section with regard to installation or such improvements, and the amount of the financial security shall not exceed 15% of the actual cost of installation of said improvements.

(l) If water mains or sanitary sewer lines, or both, along with apparatus or facilities related thereto, are to be installed under the jurisdiction and pursuant to the rules and regulations of a public utility or municipal authority separate and distinct from the



Township, financial security to assure proper completion and maintenance thereof shall be posted in accordance with the regulations of the controlling public utility or municipal authority and shall not be included within the financial security as otherwise required by this section.

(m) Unless otherwise provided, the Conemaugh Township Planning Commission is hereby designated to be the body to determine the financial security requirements as set forth in this section.

(n) Subject to subsection (i) above, all construction items shall be completed within one year after the plat is placed on record, except where bituminous paving construction is required. When bituminous construction is required, it shall be completed within two years after the plat is placed on record. Extension of time may be granted upon good cause shown by the Commission.

Section 313.03 (a) When the Developer has completed all of the necessary and appropriate improvements, the Developer shall notify the Board, in writing, by certified or registered mail, of the completion of the aforesaid improvements and shall send a copy thereof to the municipal engineer. The Board shall, within ten (10) days after receipt of such notice, direct and authorize the municipal engineer to inspect all of the aforesaid improvements. The municipal engineer shall, thereupon, file a report, in writing, with the Board, and shall promptly mail a copy of the same to the Developer by certified or registered mail. The report shall be made and mailed within thirty (30) days after receipt by the municipal engineer of the aforesaid authorization from the Board; said report shall be detailed and shall indicate approval or rejection of said improvements, either in whole or in part, and if said improvements, or any portion thereof, shall not be approved or shall be rejected by the municipal engineer, said report shall contain a statement of reasons for such nonapproval or rejection.

(b) The Board shall notify the Developer, within fifteen (15) days of receipt of the engineer's report, in writing, by certified or registered mail, of the action of the Board with relation thereto.

(c) If the Board or the municipal engineer fails to comply with the time limitation provisions contained herein, all improvements will be deemed to have been approved and the Developer shall be released from all liability, pursuant to its performance guaranty bond or other security agreement.

(d) If any portion of the said improvements shall not be approved or shall be rejected by the Board, the Developer shall proceed to complete the same and, upon completion, the same procedure of notification, as outlined herein, shall be followed.

(e) Nothing herein, however, shall be construed in limitation of the Developer's right to contest or question by legal proceedings or otherwise, any determination of the Board or the municipal engineer.

(f) Where herein reference is made to the municipal engineer, he shall be as a consultant thereto.

(g) The Developer shall reimburse the Board for the reasonable and necessary expenses incurred for the inspection of the improvements. The Board shall periodically



establish by Resolution a schedule of the reimbursements based upon the ordinary and customary fees charged by the municipal engineer for said work.

(1) In the event the applicant disputes the amount of any such expense in connection with the inspection of improvements, the applicant shall, within ten (10) working days of the date of billing, notify the Board that such expenses are disputed as unreasonable or unnecessary, in which case the Board shall not delay or disapprove a subdivision or land development application or any approval or permit related to development due to the applicant's request over disputed engineer expenses.

(2) If, within twenty (20) days from the date of billing, the Board and the applicant cannot agree on the amount of expenses which are reasonable and necessary, then the applicant and Board shall jointly, by mutual agreement, appoint another professional engineer licensed as such in the Commonwealth of Pennsylvania to review the said expenses and make a determination as to the amount thereof which is reasonable and necessary.

(3) The professional engineer so appointed shall hear such evidence and review such documentation as the professional engineer in his or her sole opinion deems necessary and render a decision within fifty (50) days of the billing date. The applicant shall be required to pay the entire amount determined in the decision immediately.

(4) In the event that the Board and applicant cannot agree upon the professional engineer to be appointed within twenty (20) days of the billing date, then, upon application of either party, the President Judge of the Court of Common Pleas of Somerset County shall appoint such engineer, who, in that case, shall be neither the municipal engineer nor any professional engineer who has been retained by, or performed services for, the Board or the applicant within the preceding five (5) years.

(5) The fee of the appointed professional engineer for determining the reasonable and necessary expenses shall be paid by the applicant if the amount of payment required in the decision is equal to or greater than the original bill. If the amount of payment required in the decision is less than the original bill by \$1,000 or more, the Board shall pay the fee of the professional engineer, but otherwise the Board and the applicant shall each pay one-half of the fee of the appointed professional engineer.

Section 313.05. In the event that any improvements which may be required have not been installed as provided in this ordinance or in accord with the approved final plat, the Board may enforce any corporate bond, or other security by appropriate legal and equitable remedies. If proceeds of such bond, or other security are insufficient to pay the cost of installing or making repairs or corrections to all the improvements covered by said security, the Board may, at its option, install part of such improvements in all or part of the subdivision or land development and may institute appropriate legal or equitable action to recover the moneys necessary to complete the remainder of the improvements. All of the proceeds, whether resulting from the security or from any legal or equitable action brought against the Developer, or both, shall be used solely for the installation of the improvements covered by such security, and not for any other municipal purpose.



SECTION 3: Article V, Section 502.02(b), 503.04 and 504.06 are repealed.

SECTION 4: Article VI, Section 605 is amended as follows:

Section 605.01 is amended to add: Developer shall present evidence to the Commission proof that the subdivision or development will be supplied by a certified public utility or by a municipal corporation, authority or utility. A copy of a Certificate of Public Convenience from the Pennsylvania Public Utility Commission or an application for such Certificate or a commitment or Agreement to Serve the area in question, whichever is appropriate, shall be acceptable evidence.

Section 605.02 is amended to add: Developer shall present evidence to the Commission proof that the subdivision or development will be supplied by a certified public utility or bonafide cooperative association of lot owners or other entity. A copy of a Certificate of Public Convenience from the Pennsylvania Public Utility Commission or an application for such Certificate or a commitment or Agreement to Serve the area in question, whichever is appropriate, shall be acceptable evidence.

SECTION 5: Article VII is amended as follows:

Section 701.01 is amended to add: All proposed amendments shall conform to the procedures and requirements of the Pennsylvania Municipal Planning Code and any amendments thereto.

Section 706.01 is repealed and in its place is enacted the following:

(a) In addition to other remedies, the Board may institute and maintain appropriate actions by law or in equity to restrain, correct or abate violations, to prevent unlawful construction, to recover damages and to prevent illegal occupancy of a building, structure or premises. The description by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring shall not exempt the seller or transferor from such penalties or from the remedies herein provided.

(b) The Commission and Board may refuse to issue any permit or grant any approval necessary to further improve or develop any real property which has been developed or which has resulted from a subdivision of real property in violation of any ordinance adopted pursuant to the Municipal Planning Code. The denial of a permit or approval shall apply to any of the following applicants:

- (1) The owner of record at the time of such violation.
- (2) The vendee or lessee of the owner of record at the time of such violation without regard as to whether such vendee or lessee had actual or constructive knowledge of the violation.
- (3) The current owner of record who acquired the property subsequent to the time of violation without regard as to whether such current owner had actual or constructive knowledge of the violation.



(4) The vendee or lessee of the current owner of record who acquired the property subsequent to the time of violation without regard as to whether such vendee or lessee had actual or constructive knowledge of the violation.

As an additional condition for issuance of a permit or the granting of an approval to any such owner, current owner, vendee or lessee for the development of any such real property, the Commission and Board shall require compliance with the conditions that would have been applicable to the property at the time the applicant acquired an interest in such real property.

There is added Section 706.02 as follows:

(a) Any person, partnership or corporation who or which has violated the provisions of this ordinance, shall, upon being found liable therefor in a civil enforcement proceeding commenced by the Township, pay a judgment of not more than \$500.00 plus all court costs, including reasonable attorney fees incurred by the Township as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the district justice. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the district justice determining that there has been a violation further determines that there was a good faith basis for the person, partnership or corporation violating the ordinance to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the district justice and thereafter each day that a violation continues shall constitute a separate violation.

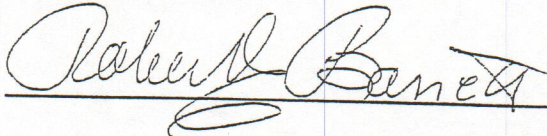
(b) Nothing contained in this section shall be construed or interpreted to grant to any person or entity other than the Township the right to commence any action for enforcement pursuant to this section.

SECTION 6: All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed.

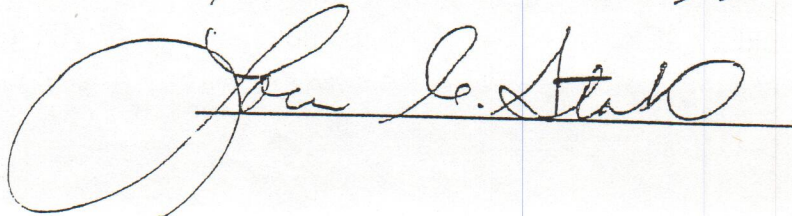
SECTION 7: This Ordinance shall become effective upon its enactment.

ORDAINED AND ENACTED this 13 day of DECEMBER, 1990.

BOARD OF SUPERVISORS OF  
CONEMAUGH TOWNSHIP

  
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ORDINANCE NO. 607

**Conemaugh Township, Somerset County**

AN ORDINANCE OF THE TOWNSHIP OF CONEMAUGH, SOMERSET COUNTY REVISING PENALTY PROVISIONS OF ORDINANCES NOS. 295, 327, 379, 401, 440, 443 AND 581, ESTABLISHING A MAXIMUM PENALTY OF UP TO \$1,000.00 PER DAY FOR VIOLATIONS AS A CIVIL PENALTY PURSUANT TO ARTICLE XVI OF THE AMENDED SECOND CLASS TOWNSHIP CODE AND AUTHORIZING TOWNSHIP ADMINISTRATION TO SETTLE VIOLATIONS FOR LESS THAN \$1,000.00 PER DAY.

Whereas, Conemaugh Township has Numerous Ordinances established under the Second Class Township Code which provide for violation to be prosecuted before the District Magistrate as a criminal offense, providing for various levels of fines, and providing for imprisonment of offenders upon failure to pay, and,

Whereas, the Pennsylvania Legislature has adopted and the Governor signed a comprehensive amendment of the Second Class Township Code which makes a major change in the penalties and enforcement procedures of for ordinances of the Township, and,

Whereas, the Township is desirous of amending certain of its ordinances as listed below to specify maximum fine and establish enforcement procedures consistent with the mandate to make violations subject to a civil penalty rather than criminal prosecution.

Now Therefore, be it ordained and enacted by the Conemaugh Township Supervisors that:

**Section 1. Ordinances covered by new civil penalty**

Ordinance No. 295 relating to Subdivision, Ordinance Nos. 327 and 401 relating to Building Permits, Ordinances No 379 and 581 relating to garbage, rubbish and junk cars, Ordinance No 443 relating to zoning and Ordinance No. 440 relating to burning are hereby amended to provide for a maximum penalty of \$1,000.00 per day per violation.

**Section 2. Discretion of Township Administration**

The Township Code Enforcement Officer shall assess penalties for the violation of Ordinance according to the penalty(ies) in the category listed as "After Magistrate Conviction" in the *Schedule of Penalties* tables herein. Notice of assessment of Civil penalty shall be delivered to the person responsible in writing. Certain violations of ordinance are deemed to justify a penalty less than the maximum penalty established under section 1 above. A person receiving a notice of Civil Assessment, who admits the violation may request adjustment by the Code enforcement Officer within 15 days of receipt of the assessment, in which case upon written acknowledgment of responsibility and waiver of hearing before the Magistrate on the issue of responsibility, the Codes Enforcement Office may reduce the assessment to the amount shown in the category listed as "Guilt admitted".

**Section 3. Administrative Hearing on amount of Penalty**

If a person is aggrieved by the amount of assessment, as opposed to whether a violation has occurred, the person may appeal a determination of the permit officer to the Township Supervisors, who shall in such instance sit as a Board of Adjustment under the local public agency law. Request for such appeal must be filed within 30 days of the original assessment and must be accompanied by a fee of \$150.00 to cover the costs of the hearing. At the hearing, the Supervisors shall have the power to eliminate or modify the assessment, modification may



reduce or increase the assessment within the limits permitted by this ordinance.

**Section 4. Schedule of Penalties**

<b>Ordinance No 295. Subdivision &amp; Development Ordinance</b>		
<u>Type of Violation</u>	<u>After Magistrate Conviction</u>	<u>Guilt Admitted</u>
Failure to record Approved Plan	\$500.00 per day	\$50.00 per day
Selling Property without approval of a Plan	\$500.00 per day	\$250.00 per day
Failure to Make Improvements required in Approved Plan	\$500.00 per day	\$250.00 per day
Construction of Improvements without plan approval	\$500.00 per day	\$100.00 per day
Other violation of Ordinance	\$500.00 per day	\$100.00 per day

<b>Ordinance No. 327, 401 Building Permits</b>		
<u>Type of Violation</u>	<u>After Magistrate Conviction</u>	<u>Guilt Admitted</u>
Construction of New Primary Structure without Permit	\$1000.00 per day	\$150.00 per day
Construction of New Accessory Structure without Permit	\$1000.00 per day	\$150.00 per day
Construction not in compliance with permit	\$500.00 per day	\$150.00 per day
Covered improvements to existing structure without Permit	\$500.00 per day	\$150.00 per day
Other Violation of Ordinance	\$500.00 per day	\$150.00 per day

<b>Ordinance No. 379, 581 Storage of Junk Cars, Refuse, Nuisance</b>		
<u>Type of Violation</u>	<u>After Magistrate Conviction</u>	<u>Guilt Admitted</u>
Commercial related refuse from other site	\$1,000.00 per day	\$500.00 per day
Junk Car	\$1000.00 per vehicle per day	\$250.00 per vehicle per day
other violation	\$500.00 per day	\$100.00 per day



Zoning Ordinance No. 443		
<u>Type of Violation</u>	<u>After Magistrate Conviction</u>	<u>Guilt Admitted</u>
Non permitted use of property (commercial)	\$1,000.00 per day	\$500.00 per day
Non permitted use of property (non-commercial)	\$500.00 per day	\$250.00 per day
Other Violation	\$500.00 per day	\$250.00 per day

Ordinance No. 440 Burning		
<u>Type of Violation</u>	<u>After Magistrate Conviction</u>	<u>Guilt Admitted</u>
Fire larger than permitted without notifying Fire Company	\$500.00	\$250.00
No Permit 1st Offense	\$250.00	\$50.00
No Permit 2nd Offense	\$500.00	\$100.00
No permit 3rd or more	\$1000.00	\$250.00

**Section 4. No penalty effective until convicted or admitted.**

No Penalty established hereunder shall be enforceable until the fact of the violation is established in an action before a magistrate or admitted to by the person in writing on a standard waiver form provided by the township.


**Section 5 Severability**

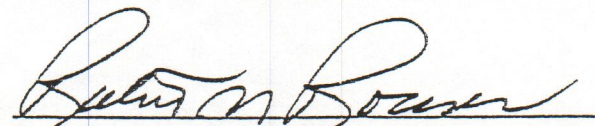
If section 2 or 3 of this ordinance should be found invalid, then it is the Townships intention to impose a flat non discretionary penalty of \$1000.00 per day.

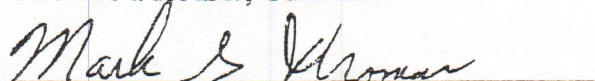
Adopted the 21<sup>st</sup> day of AUGUST, 1996 at a regular meeting of the Conemaugh Township Supervisors by the

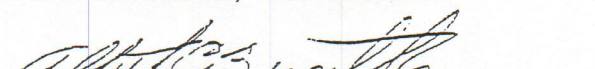
**BOARD OF SUPERVISORS, CONEMAUGH TOWNSHIP, SOMERSET COUNTY**

ATTEST: (Seal)

  
 Albert E. Zuccolotto, Secretary-Treas.

  
 Robert M. Rouser, Chairman

  
 Mark G. Thomas, Vice-Chairman

  
 Albert E. Zuccolotto, Secretary-Treas.