LOWER SAUCON TOWNSHIP
NORTHAMPTON COUNTY, PENNSYLVANIA

ORDINANCE NO. 2008-05

AN ORDINANCE OF THE TOWNSHIP OF LOWER SAUCON, NORTHAMPTON COUNTY, PENNSYLVANIA, DELETING THE EXISTING CHAPTER 90 (FLOODPLAIN MANAGEMENT) OF THE CODE OF THE TOWNSHIP OF LOWER SAUCON, IN ITS ENTIRETY, AND REPLACING IT WITH A NEW COMPREHENSIVE CHAPTER 90 (FLOODPLAIN MANAGEMENT) PROVIDING FOR UPDATED FLOODPLAIN REGULATIONS

WHEREAS, Lower Saucon Township is a Township of the Second Class, Optional Plan located in Northampton County, Pennsylvania; and

WHEREAS, Lower Saucon Township desires to amend The Code of the Township of Lower Saucon by deleting the existing Chapter 90, **Floodplain Management**, in its entirety and replacing it with a new Chapter 90, to provide updated and comprehensive floodplain regulations within Lower Saucon Township; and

WHEREAS, The Lehigh Valley Planning Commission has promulgated a proposed Model Floodplain Ordinance, and the Township of Lower Saucon desires to amend Chapter 90 of the Code of the Township of Lower Saucon to provide compatibility with the provisions of said Model Ordinance; and

WHEREAS, the Township of Lower Saucon believes that this amendment to Chapter 90 of the Code of the Township of Lower Saucon is in the best interests of the public health, safety, and welfare of the citizens of Lower Saucon Township.

NOW, THEREFORE BE IT ENACTED AND ORDAINED by the Council of the Township of Lower Saucon, Northampton County, Pennsylvania, as follows:

SECTION I:

AMENDMENT TO CHAPTER 90 OF THE CODE OF THE TOWNSHIP OF LOWER SAUCON

The existing Chapter 90 (Floodplain Management) of the Code of the Township of Lower Saucon shall, and hereby is, deleted in its entirety and replaced as follows:

ARTICLE I
Terminology

§ 90-1. Definitions.
Unless specifically defined below, words and phrases used in this Chapter shall be interpreted so as to give this Chapter its most reasonable application.

A Zone – The Flood Insurance Rate Zone that corresponds to the 100-year floodplain where base flood elevations are not shown.

AE Zone – The Flood Insurance Rate Zone that corresponds to the 100-year floodplain where base flood elevations are shown at selected intervals.

Accessory Use or Structure – A use or structure on the same lot with and of a nature customarily incidental and subordinate to the principal use or structure.

Base Flood – The flood having a 1% chance of being equaled or exceeded in any given year, also known as the "100-year" flood.

Base Flood Elevation – The elevation shown on the Flood Insurance Rate Map (FIRM) that indicates the water surface elevation resulting from a flood that has a one percent (1%) chance of equaling or exceeding that level in any given year.

Basement – Any area of the building having its floor subgrade (below ground level) on all sides.

Building – A combination of materials to form a permanent structure having walls and a roof. Included shall be all mobile homes and trailers to be used for human habitation.

Completely Dry Space – A space which will remain totally dry during flooding; the structure is designed and constructed to prevent the passage of water and water vapor.

Construction – The construction, reconstruction, renovation, repair, extension, expansion, alteration or relocation of a building or structure, including the placement of mobile homes.

Cost of Improvement – Cost that includes both the structural and finish or labor and materials, minus those required to meet floodproofing and flood elevation regulations and the cost of permits. This includes lighting fixtures, built-in appliances, interior moldings, paneling, tiling, wall-to-wall carpet over sub-flooring, built-in cabinets, etc. The cost to demolish undamaged building components must be established and included.

Cost of Reconstruction – Cost that includes both the structural and finish or labor and materials minus those required to meet floodproofing and flood elevation regulations and the cost of permits, to reproduce by new construction the exact form and detail of a structure or a part thereof, as it appeared at a specific period of time.

Critical Facilities – Those facilities that are vital to the community in the event of a hazard event or disaster, that provide essential services to the general public, are necessary to preserve the welfare and quality of life in the region, that fulfill important public safety, emergency response or disaster recovery functions, or contain at-risk or special needs populations such as the elderly or children. Examples include emergency shelters, emergency services, hospitals, public utilities, government buildings, schools, daycares, and elderly housing.

Current Cost – A basis of valuation, which values an asset at the amount which it would currently cost to obtain.

Development – Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, the placement of mobile homes, streets and other paving, utilities, filling, grading, excavation, mining, dredging or drilling operations, the subdivision of land and the storage of materials or equipment.

Encroachment – Construction, placement of fill or similar alteration of topography in the floodplain that reduces the area available to convey floodwaters.

Essentially Dry Space – A space which will remain dry during flooding, except for the passage of some water vapor or minor seepage; the structure is substantially impermeable the passage of water.

Fill – Any clean soil or rock materials (sand or clay) used to raise the ground elevation.

Flood – A temporary inundation of normally dry land area.

Flood, One Hundred Years – A flood that has a 1% chance of being equaled or exceeded in any given year. Over a long period, it is a flood that is likely to occur, on average, once for every 100 years of record.

Floodplain Area – A relatively flat or low land area which is subject to partial or complete inundation from an adjoining or nearby stream, river, or watercourse; and/or any area subject to the unusual and rapid accumulation of surface waters from any source. For the purpose of this Chapter, the floodplain area shall include the area within the Flood Hazard District as defined by Section 90-19.

Floodway – The channel of a river, stream, or other watercourse, plus 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 (1').

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 as specified in the Lower Saucon Township Building Code, as amended.

Flood Protection Elevation – The base flood elevation plus 1.5 feet of freeboard. In areas where no base flood elevations exist from any authoritative source, the flood protection elevation can be historical flood elevations or base flood elevations determined and/or approved by Lower Saucon Township plus 1.5 feet of freeboard.

Freeboard – An additional amount of height above a flood elevation used as a factor of safety (e.g., 1.5 feet above the base flood elevation) in determining the level at which a structure's lowest floor, including basement, must be elevated or floodproofed.

Historic Structure – Any structure that is:

1. 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;

2. 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;

3. Individually listed on a State of Pennsylvania inventory of historic places;

4. Individually listed on a local inventory of historic places in Lower Saucon Township that has been approved by the Pennsylvania Historic and Museum Commission (PHMC).

Identified Floodplain Area – The floodplain area specifically identified in this Ordinance as being inundated by the one hundred (100) year flood.

Improvement – The creation or addition of structural or functional capacity of a structure that adds to its value and useful life. The term does not include either:

1. 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, or

2. Any improvement of a "historic structure," provided that the improvement will not preclude the structure's continued designation as a "historic structure."

Intact Structure – A structure that is undamaged in any way; whole.

Land Development – Any of the following activities:

1. The improvement of one (1) lot or two (2) or more contiguous lots, tracts, or parcels of land for any purpose involving:

    a. A group of two (2) or more residential or nonresidential buildings, whether proposed initially or cumulatively, or a single nonresidential building on a lot or lots regardless of the number of occupants or tenure; or

    b. The division or allocation of land or space, whether initially or cumulatively, between or among two (2) or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, building groups, or other features.

2. A subdivision of land.

3. A development in accordance with section 503(1.1) of the Pennsylvania Municipalities Planning Code.

Manure – The animal excrement, including poultry litter, which is produced at an agricultural operation. It includes materials such as bedding and raw materials which are commingled with that excrement.

Manure stockpile – A storage pile of manure accumulated for future use that is not confined within a manure storage facility.

Manure storage facility – A permanent structure or pond, a portion of a structure or pond, or a group of structures or ponds at one (1) agricultural operation utilized for the purpose of containing manure or agricultural process wastewater. This includes concrete, metal, or other fabricated tanks and underground structures, as well as earthen and synthetically-lined manure storage ponds.

Market Value – The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale; the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus.

Minimize – To reduce to the smallest amount or extent possible. "Minimize" shall not mean complete elimination but shall require that the most substantial efforts possible under the circumstances have been taken to reduce the adverse effect(s) of the action required to be minimized. "Minimize" shall include but not be limited to the requirement that the placement of dwellings and other structures and the locations of roads, stormwater management facilities, and other land disturbance shall be planned and designed to reduce the adverse effect(s) of the activity in question to the smallest amount possible under the circumstances consistent with otherwise permitted development.

Minor Repair – The replacement of existing work with equivalent materials for the purpose of its routine maintenance and upkeep, but not including any addition, change or modification in construction, exit facilities or permanent fixtures or equipment.

Mobile Home – A transportable, single-family dwelling intended for permanent occupancy, office or place of assembly, contained in one or more sections, build on a permanent chassis, 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 with or without a permanent foundation. The term does not include recreational vehicles or travel trailers.

Mobile Home Park – A parcel of land under single ownership which has been planned and improved for the placement of two or more mobile homes for nontransient use.

New Construction – Any structure that was not constructed on the effective date of this Ordinance. The first placement of permanent features of the structure such as pouring of slabs or footings constitute beginning of construction but land preparation, grading and filling do not.

Non-Conforming Structure – A structure or part thereof which does not conform to the applicable provisions or requirements of the Zoning District in which it is located, either at the time of enactment of an Ordinance, or as a result of subsequent amendments thereto, where such structure lawfully existed prior to the enactment of such Ordinance or amendment.

Non-Conforming Use – Use of land or structure, which use does not conform to the applicable regulations of the Zoning District in which it is located, either at the time of the enactment of an Ordinance or as a result of subsequent amendment of an Ordinance or as a result of subsequent amendments thereto, but which did not violate such regulations prior to the enactment of Ordinance or amendments.

Obstruction – Any wall, dam, wharf, embankment, levee, dike, pile abutment, projection, excavation, channel, rectification, culvert, building, fence, stockpile, refuse, fill, structure or matter in, along, across or projecting into any channel, watercourse or flood-prone area, which may impede, retard or change the direction of the flow of water either in itself or by catching or collecting debris carried by such water or which is placed where the flow of the water might carry the same downstream to the damage of life and property.

One-Hundred-Year Flood – A flood that, on the average, is likely to occur once every 100 years (i.e., that has a one-percent chance of occurring each year, although the flood may occur in any year).

Partially Damaged Structure – A structure that has sustained damage from any cause whereby the cost of restoring the structure to its before-damaged condition is less than fifty percent (50%) of the market value of the structure before the damage occurred.

Reconstruction – The act or process of reproducing by new construction the exact form and detail of a structure or a part thereof, as it appeared at a specific period of time.

Redevelopment – The removal and replacement, rehabilitation, or adaptive reuse of an existing structure or structures, or of vacant but formerly developed land.

Regulatory Flood Elevation – The one-hundred-year-flood elevation, plus a freeboard safety factor of eighteen inches (18").

Repetitive Loss Structure – As determined by FEMA, structures for which two (2) or more claims of more than $1,000 were paid by the National Flood Insurance Program (NFIP) within any rolling ten-year period, since 1978. At least two of the claims must be more than 10 days apart but, within ten years of each other.

Residential structure – A structure regularly used by its occupants as a permanent place of abode, which is made one's home as opposed to one's place of business.

Severe Repetitive Loss Structure – As determined by FEMA, a residential structure that is covered under flood insurance by the NFIP and has incurred flood-related damage for which four or more separate claim payments have been paid since 1978 under flood insurance coverage with the amount of each claim payment exceeding $5,000 and with cumulative amount of such claim payments exceeding $20,000; or for which at least two (2) separate claim payments have been made since 1978 with the cumulative amount of such claims exceeding the reported value of the property.

Structure – Any man-made object having an ascertainable stationary location on or in land or water whether or not affixed to land.

Subdivision – The division or re-division 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, transfer of ownership or building or lot development; provided however, that the division of land for agricultural purposes into parcels of more than 10 acres not involving any new street or easement of access shall be exempted.

Substantially Damaged Structure – A structure that has sustained damage from any cause whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty percent (50%) or more of the market value of the structure before the damage occurred.

Vacant but Formerly Developed Land – Land from which previous improvements have been removed.

Watercourse – A watercourse is a channel or conveyance of surface water having defined bed and banks, whether natural or artificial, with perennial or intermittent flow. Manmade swales, constructed specifically for stormwater management purposes, are excluded from this definition.

ARTICLE II
General Provisions

§ 90-2. Purposes

The purpose of these provisions is to prevent the loss of property and life, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

A. Regulating uses, activities and land development which, acting alone or in combination with other existing or future uses, activities, and land development, will cause unacceptable increases in flood heights, velocities and frequencies.

B. Restricting or prohibiting certain uses, activities, and land development from locating within areas subject to flooding.

C. Requiring all uses, activities and land development that do occur in flood-prone areas to be protected and/or flood-proofed against flooding and flood damage.

D. Minimizing the financial burden imposed on the community, its governmental bodies and individuals by floods.

E. Maintaining, to the maximum extent possible, the floodplain in its natural state and minimizing the removal of vegetation and compaction of soil to maximize its flood carrying capacity and water filtering capabilities.

F. Complying with the provisions of the National Flood Insurance Program and the Pennsylvania Flood Plain Management Act (Act 1978-166).

§ 90-3. General Provisions and Applicability

A. These provisions shall apply to all lands within Lower Saucon Township and shown as being located within the boundaries of any identified Flood Hazard District, as defined in Article IV, which are considered as a part of the official Zoning Map.

B. The Flood Hazard District shall be an overlay to the existing Zoning Districts as shown on the Lower Saucon Township Zoning Map and, as such, the provisions of the Flood Hazard District shall be imposed in addition to the requirements of the underlying Zoning Districts. In the event

that a conflict exists between the overlay and the underlying Districts, the more restrictive provisions shall apply.

C. No development shall be undertaken, no structure or land shall hereafter be used; no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered; and no area shall be developed, graded, filled, or excavated in any Flood Hazard District except in full compliance with the terms and provisions of this Ordinance and any other applicable Ordinances and regulations.

§ 90-4. Abrogation and Greater Restrictions

This chapter supersedes any provisions currently in effect in flood-prone areas. However, any underlying ordinance shall remain in full force and effect to the extent that those provisions are more restrictive.

§ 90-5. Warning and Disclaimer of Liability

A. The degree of flood protection sought by the provisions of this chapter is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. 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 flood-prone area or that land uses permitted within such areas will be free from flooding or flood damages.

B. This chapter shall not create liability on the part of the 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.

§ 90-6. Interpretation and Priority

In the event of a conflict between the terms of this chapter and Chapter 65, Building construction, Article I, Building and Occupancy Permits, then such provisions shall be interpreted in the following priority:

A. Chapter 65, Building Construction, Article I, Building and Occupancy Permits, and any resolution enacted pursuant thereto, shall be paramount.

B. This chapter.

ARTICLE III
Administration

§ 90-7. Building permits required.

Building permits shall be required before any construction or development is undertaken wholly within or partially within any identified floodplain area of the township.

§ 90-8. Issuance of building permit.

A. The Code Official shall issue a building permit only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of this and all other applicable codes and ordinances.

B. Prior to the issuance of any building permit, the Code Official shall review the application for permit to determine if all other necessary governmental permits, such as those required by state and federal laws, have been obtained, including those required by Act 537, the Pennsylvania Sewage Facilities Act, the Water Obstruction Act of 1913, and the Federal Water Pollution Control Act Amendments of 1972, Section 404, 33 U.S.C. § 1334. No permit shall be issued until this determination has been made.

§ 90-9. Application procedures.

A. Application for such a building permit shall be made, in writing, to the Code Official on forms supplied by the township. Such application shall contain at least the following:

1. The name and address of applicant.

2. The name and address of the owner of the land on which the proposed construction is to occur.

3. The site location.

4. A listing of other permits required.

5. The proposed lowest floor and basement elevations in relation to mean sea level, i.e., the National Geodetic Vertical Datum of 1929.

6. A brief description of the proposed work and estimated cost.

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

8. A plan which accurately delineates the identified flood-prone area, the location of the proposed construction, the location of any adjacent flood-prone development or structures and the location of any existing or proposed subdivision and land development in order to assure that:

   a. All such proposals are consistent with the need to minimize flood damage;

   b. All utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage; and

   c. Adequate drainage is provided so as to reduce exposure to flood hazards.

9. Such plan shall also include existing and proposed contours; information concerning one-hundred-year-flood elevations, velocities and other applicable information, such as pressures, impact and uplift forces, associated with the one-hundred-year flood; size of structures, location and elevations of streets; water supply and sanitary sewage facilities; soil types; and floodproofing measures.

10. A document, certified by a registered professional engineer or architect, which states that the proposed construction has been adequately designed to withstand the one-hundred-year-flood elevations, pressures, velocities, impact and uplift forces and other hydrostatic, hydrodynamic and buoyancy factors associated with the one-hundred-year flood. Such statement shall include a description of the type and extent of floodproofing measures which have been incorporated into the design of the structure.

11. Such statement shall include a certification that the proposed construction is in compliance with this chapter.

12. A soil erosion control plan and narrative.

B. Applications for development.

1. Applications for a subdivision and land development shall be made in accordance with established township procedures. For subdivisions and land developments wholly within or partially within an identified flood-prone area, the application shall be reviewed to assure that all such proposals are consistent with the requirements of this chapter. Noncompliance with this chapter shall be sufficient justification for subdivision or land development plan disapproval.

2. The subdivision or land development application shall provide sufficient engineering data to allow the above required evaluation during the preliminary plan stage or, if none, during final plan stage.

3. The flood data presented for subdivision and land development review must include but not be limited to five copies of the following:

a. All data required for each building permit application, as listed in § 90-9A; and

b. Delineation of the limits and elevation of the one-hundred-year flood.

§ 90-10. Review of application by County Conservation District.

A copy of all applications and plans for any proposed construction or development in any identified floodplain area to be considered for approval shall be submitted by the Code Official to the County Conservation District for review and comment prior to the issuance of a building permit. The recommendations of the Conservation District shall be considered by the Code Official for possible incorporation into the proposed plan.

§ 90-11. Review of application by others.

A copy of all plans and applications for any proposed construction or development in any identified floodplain area to be considered for approval may be submitted by the Code Official to any other appropriate agencies and/or individuals (e.g., Planning Commission, Municipal Engineer, etc.) for review and comment.

§ 90-12. Changes.

After the issuance of a building permit by the Code Official, 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 or approval of the Code Official.

§ 90-13. Placards.

In addition to the building permit, the Code Official 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 building permit and the date of its issuance and shall be signed by the Code Official.

§ 90-14. Start of construction.

Work on the proposed construction shall begin within six months after the date of issuance of the building permit or the permit shall expire, unless a time extension is granted, in writing, by the Code Official. Construction shall be considered to have started with the first placement of permanent construction of a structure on the site, such as the pouring of slabs or footings or any work beyond the stage of excavation. For a structure without a basement or poured footings, the start of construction includes the first permanent framing or assembly of the structure or any part thereof on its pilings or foundation or the affixing of any prefabricated structure or mobile home to its permanent site. Permanent construction does not include land preparation, land clearing, grading, filling, excavation for basement, footings, piers or foundations, erection of temporary forms, installation of piling under proposed subsurface footings or installation of sewer, gas and water pipes or electrical or other service lines from the street.

§ 90-15. Inspection; revocation of permit.

During the construction period, the Code Official or other authorized official may inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable township laws and ordinances. In the event that the Code Official 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 Code Official shall revoke the building permit and report such fact to the Lower Saucon Township Council for whatever action it considers necessary.

§ 90-16. Fees.

Applications for a building permit or subdivision or land development plan approval shall be accompanied by a fee, payable to the township. Such fee shall be in the amount specified by Township Council resolution or ordinance.

§ 90-17. Enforcement.

A. Notices. Whenever the Code Official or other authorized municipal representative determines that there are reasonable grounds to believe that there has been a violation of any provisions of this chapter or of any regulation adopted pursuant thereto, such authority shall give notice to 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 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 this state; and

5. Contain an outline of remedial action which, if taken, will effect compliance with the provisions of this chapter or any part thereof and with the regulations adopted pursuant thereto.

B. Hearings. Any person affected by any notice which has been issued in connection with the enforcement of any provision of this chapter or of any regulation adopted pursuant thereto may request and shall be granted a hearing on the matter before the Lower Saucon Township Council, provided that such person shall file with the Township Secretary a written petition requesting such hearing and setting forth a brief statement of the grounds therefor within 10 days after the notice was served. The filing of the request for a hearing shall operate as a stay of the notice and the suspension. Upon receipt of such petition, the Township Secretary shall set a time and place for such hearing and shall give the petitioner written notice thereof. At such hearing, the petitioner shall be given an opportunity to be heard and to show why such notice shall be modified or withdrawn. The hearing shall be commenced not later than 10 days after the day on which the petition was filed, provided that upon application of the petitioner, the Township Secretary may postpone the date of the hearing for a reasonable time beyond such ten-day period when, in his judgment, the petitioner has submitted good and sufficient reasons for such postponement.

C. Findings and order. After such hearing, the Lower Saucon Township Council shall make findings as to compliance with the provisions of this chapter and regulations issued thereunder and shall issue an order, in writing, sustaining, modifying or withdrawing the notice which shall be served as provided in Subsection A of this section.

D. Record and appeals. The proceedings at such a hearing, including the findings and decision of the Lower Saucon Township Council and together with a copy of every notice and order related thereto, shall be entered as a matter of public record in the township, but the transcript of the proceedings need not be transcribed unless judicial review of the decision is sought as provided by this section. Any person aggrieved by a decision of the township may seek relief therefrom in any court of competent jurisdiction, as provided by the laws of this commonwealth.

E. Violations and penalties.

1. Any person who fails to voluntarily pay within 10 days to the township the penalty imposed for violation of this chapter shall be subject to a civil enforcement proceeding. Any person who violates or permits a violation of this chapter, upon being found liable therefor in a civil enforcement proceeding, shall pay a fine of not more than $600, plus all court costs, including reasonable attorney's fees, incurred by the township in the enforcement of this chapter. No judgment shall be imposed until the date of the determination of the violation by the District Justice and/or Court. 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 a violation exists shall constitute a separate offense. Further, the appropriate officers or agents of the township are hereby authorized to seek equitable relief, including injunction, to enforce compliance herewith.

2. 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 structure or building constructed, reconstructed, enlarged, altered or relocated in noncompliance with this chapter may be declared by the Lower Saucon Township Council to be a public nuisance and abatable as such.

F. Failure to comply with the provisions of this Ordinance is a violation of the Lower Saucon Township Zoning Ordinance and Lower Saucon Township may proceed with Court Action and/or issue a declaration of violation, under Section 1316 of the National Flood Insurance Act of 1968 to the Federal Emergency Management Agency to deny flood insurance on the property in violation. The effects of having a Section 1316 violation are non-availability of flood insurance for any buildings, possible reduction of market value, risk of damage without compensation, possible mortgage foreclosure, and denial of disaster assistance for repair of structural damage.

§ 90-18. Appeals.

A. Any person aggrieved by an action or decision of the Code Official or by any of the requirements of this chapter may appeal to the Lower Saucon Township Council. Such appeal must be filed, in writing, within 30 days after the decision or action of the Code Official. Upon receipt of such appeal, the Lower Saucon Township Council shall set a time and place, within not less than 10 days nor more than 30 days, for the purpose of hearing the appeal. Notice of the time and place of the hearing of the appeal shall be given to all parties, at which time they may appear and be heard.

B. Any person aggrieved by any decision of the Lower Saucon Township Council may seek relief therefrom in any court of competent jurisdiction, as provided by the laws of this commonwealth.

ARTICLE IV
Identification of Floodplain Areas

§ 90-19. Establishment of Floodplain Areas

A. The identified floodplain area shall be those areas of Lower Saucon Township which are subject to the one hundred (100) year flood as identified in the Flood Insurance Study (FIS) and the accompanying Flood Insurance Rate Maps (FIRM) prepared for Lower Saucon Township by the Federal Emergency Management Agency (FEMA) or other sources and studies found acceptable by Lower Saucon Township. The referenced Flood Insurance Study is declared to be part of this Ordinance and shall be kept at the Lower Saucon Township offices.

B. The Flood Hazard District shall consist of the following specific areas:

1. The Floodway Area (FW) – The areas identified as "Floodway" in the AE Zone in the Flood Insurance Study prepared by FEMA. The term shall also include floodway areas which have been identified in other available studies or sources of information for those floodplain areas where no floodway has been identified in the Flood Insurance

Study. Such studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by Lower Saucon Township.

2. The Flood-Fringe Area (FF) – The portion of the AE Zone not included in the Floodway. The basis for the outermost boundary of this area shall be the base flood elevations shown in the flood profiles contained in the Flood Insurance Study.

3. The General Floodplain Area (FA) – The areas identified as A Zone in the Flood Insurance Study for which no base flood elevations have been provided or areas subject to flooding defined by one (1) of the following methods:

   a. Soils identified as "Floodplain Soils" in the Township Zoning Ordinance, as described and mapped by the United States Department of Agriculture or the Natural Resource Conservation Service.

   b. Hydrologic and hydraulic analyses undertaken only by professional Engineers or others of demonstrated qualifications, who shall certify that the technical methods reflect accepted technical concepts. Such studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by Lower Saucon Township.

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§ 90-21. Changes in Identification of Floodplain Areas

The delineation of the Flood Hazard District may be revised by Lower Saucon Township where natural or man-made changes have occurred and/or where more detailed studies have been conducted or undertaken by FEMA, U. S. Army Corps of Engineers or other qualified agency, or an individual. However, prior to any such change, approval must be obtained from FEMA.

§ 90-22. Disputes

An initial determination shall be made by the Zoning Officer should a dispute concerning any District boundary arise. Any party aggrieved by this decision may appeal to the Zoning Hearing Board under the provisions of this Ordinance. The burden of proof is on the appellant.

ARTICLE V
Flood Hazard District Regulations

§ 90-23. General Regulations

A. No encroachment, land development, improvement, or reconstruction of any kind shall be made to any watercourse until all adjacent municipalities which may be affected by such action have been notified by Lower Saucon Township, and until all required permits or approvals have been first obtained from the Department of Environmental Protection Regional Office. In addition, the Federal Emergency Management Agency and the Pennsylvania Department of Community and Economic Development (DCED) shall be notified prior to any alteration or relocation of any watercourse.

B. Any new construction, uses, activities or land development occurring within the Flood Hazard District shall be undertaken only in strict compliance with the provisions of this Ordinance and with all other applicable codes, Ordinances and regulations including the Lower Saucon Township Building Code, as amended and Lower Saucon Township Subdivision and Land Development Ordinance.

C. Under no circumstances shall any new construction, uses, activity and/or land development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch, or any other drainage facility or system.

D. Any new construction and/or land development, with the exception of redevelopment projects, that would cause any increase in the base flood elevation shall be prohibited.

E. New construction, development, or redevelopment in the FW area is prohibited.

§ 90-24. Permitted Uses and Development in the Flood Hazard District

A. In the Flood Hazard District, the following uses and activities are permitted in the FF or FA areas provided they are in compliance with the provisions of the underlying District and are not prohibited by any other Ordinance:

1. Agriculture, horticulture, and forestry that:

   a. Do not include any structures.

   b. Do not require grading which would cause any increase in flood heights or frequency.

   c. Are conducted in accord with recognized soil conservation and water quality practices.

2. Public and private recreational uses and activities, limited to parks, day camps, picnic grounds, boat launching and swimming areas, hiking and horseback riding trails, wildlife and nature preserves, game farms, fish hatcheries, and hunting and fishing areas.

3. Uses accessory to those permitted in the underlying Zoning District, including yard areas, gardens, play areas and parking areas, provided that no structures are erected, and no impervious surfaces are created.

4. Redevelopment projects that:

   a. Do not include residential structures or critical facilities.

   b. Do not include prohibited uses listed in Section 90-25.

   c. Are consistent with the goals and objectives of the Lower Saucon Township Comprehensive Plan.

   d. Are permitted in the applicable underlying Zoning District.

e. Are elevated to Flood Protection Elevation (FPE) and in full compliance with the floodproofing requirements in the Lower Saucon Township Building Code as amended.

5. The repair or expansion of riparian buffers.

6. Floodproofing to protect only lawfully existing non-conforming structures and lawfully existing non-conforming uses within structures.

7. Fences and temporary protective fencing that do not impede floodwaters.

8. Dams, culverts, bridges, and altered or relocated watercourses with permits and/or approvals from the PA Department of Environmental Protection, PA Public Utility Commission, and/or US Army Corps of Engineers. Furthermore, notification of such actions shall be provided to all affected adjoining municipalities, FEMA and the Pennsylvania DCED. The approval of a permit by any of the preceding State or Federal agencies for one (1) of the uses allowed in the Flood Hazard District shall in no way affect or conflict with the requirements imposed upon the use under the regulations of the Flood Hazard District.

9. Public utility facilities under the exclusive jurisdiction of the Pennsylvania Public Utility Commission.

10. Lower Saucon Township or Lower Saucon Township Authority uses, facilities, or structures deemed necessary by Lower Saucon Township to be located within the Flood Hazard District.

11. Sewage facilities necessary to abate existing public nuisances or malfunctions only when elevated to Flood Protection Elevation (FPE) and deemed by Lower Saucon Council to be the only reasonable means of correction a public health hazard.

§ 90-25. Prohibited Uses and Development in the Flood Hazard District

A. The following uses are prohibited from locating within the Flood Hazard District.

1. All uses prohibited in the underlying Zoning District.

2. New construction, development or redevelopment in the FW area.

3. All structures, with the exception of those specifically allowed in Section 90-24.

4. The production, storage, or use of any amount of radioactive substances.

5. The production, storage, or use of a substance or material, underground or aboveground, that is buoyant, flammable, explosive, or injurious to property, water quality or human, animal, plant, fish or aquatic life including but not limited to the following:

a. Acetone
b. Ammonia
c. Benzene
d. Calcium carbide
e. Carbon disulfide
f. Celluloid
g. Chlorine
h. Hydrochloric acid
i. Hydrocyanic acid
j. Magnesium
k. Mercury
l. Nitric acid and oxides of nitrogen
m. Petroleum products (gasoline, fuel oil, etc.)
n. Phosphorus
o. Polychlorinated Biphenyls (PCBs)
p. Potassium
q. Sodium
r. Sulfur and sulfur products
s. Pesticides (including insecticides, fungicides, and rodenticides)
r. Radioactive substances, insofar as such substances are not otherwise regulated.

6. The production, storage, or use of explosives.

7. The storage or disposal of materials used for snow and ice control including sand, salt, and other deicing chemicals.

8. Sanitary landfills, dumps, junk and salvage yards, and outdoor storage of vehicles and/or materials.

9. The storage or disposal of any soil, loam, peat, sand, gravel, rock, or other mineral substance, refuse, trash, rubbish, debris, or dredged/excavated spoil.

10. Draining, excavation, or dredging, or removal or relocation of loam, peat, sand, gravel, soil, rock, or other mineral substance, except as accessory to work permitted as of right or by special permit.

11. Manure storage facilities and manure stockpiles.

12. Improvements to existing manufactured home parks and subdivisions.

13. Sewage disposal facilities except as provided for in Section 90-25.

14. Other than required to meet the requirements of Section 90-23.B and Section 90-24, fill is prohibited in the Flood Hazard District.

ARTICLE VI
Existing Structures

§ 90-26. Existing Structures in Flood Hazard Districts

A. No improvement or reconstruction of an existing structure shall be allowed within any FW area as identified by the Flood Insurance Study prepared by FEMA or other available studies or sources of information found acceptable by Lower Saucon Township and approved by FEMA.

B. No improvement of an existing structure shall be allowed within any FF or FA area that would, together with all other existing and anticipated development, increase the base flood elevation more than one foot (1') at any point.

C. The improvement or reconstruction of existing structures that store materials that are buoyant, flammable, explosive, or injurious to property, water quality or human, animal, plant, fish or aquatic life shall be prohibited in the Flood Hazard District.

D. Existing structures in the FF and FA areas are defined and regulated as follows:

1. Intact Structures

   Any improvement to an existing intact structure is permitted only to an extent ten (10) percent or more of its market value and shall be undertaken only in full compliance with the floodproofing requirements in the Lower Saucon Township Building Code as amended.

2. Partially Damaged Structures

   Any improvement or reconstruction to an existing partially damaged structure shall be undertaken only in full compliance with the floodproofing requirements in the Lower Saucon Township Building Code as amended.

3. Substantially Damaged Structures

   Any improvement or reconstruction to a substantially damaged structure shall be in full compliance with the floodproofing requirements in the (Lower Saucon Township) Building Code as amended, and shall have the lowest floor, including basement, elevated to Flood Protection Elevation.

4. Repetitive Loss Structures

   An improvement to a repetitive loss structure to an extent ten (10) percent or more of its market value of the intact structure shall be prohibited. Any permitted improvement to a repetitive loss structure shall be in full compliance with the floodproofing requirements of the Lower Saucon Township Building Code as amended, and shall have the lowest floor, including basement, elevated to Flood Protection Elevation.

The reconstruction of a repetitive loss structure shall be in full compliance with the Lower Saucon Township Building Code, as amended, and shall have the lowest floor, including basement, elevated to Flood Protection Elevation.

5. Severe Repetitive Loss Structures

An improvement to a severe repetitive loss structure to an extent five (5) percent or more of its market value as an intact structure shall be prohibited. Any permitted improvement to a severe repetitive loss structure shall be in full compliance with the floodproofing requirements of the Lower Saucon Township Building Code as amended, and shall have the lowest floor, including basement, elevated to Flood Protection Elevation.

The reconstruction of a severe repetitive loss structure shall be a) in full compliance with the Lower Saucon Building Code, as amended; shall b) have the lowest floor, including basement, elevated to Flood Protection Elevation and c) the applicant shall provide documentation from Lower Saucon Township, the State of Pennsylvania and the Federal Emergency Management Agency that states Lower Saucon Township, the State of Pennsylvania or FEMA will not acquire the property for the purposes of flood mitigation prior to the reconstruction of the structure.

E. The cost of improvements or reconstruction commenced since the adoption of this Ordinance must be calculated at today's current cost.

F. It is the responsibility of the applicant to supply the information necessary (e.g. appraisals, construction costs, estimates, etc.) to make the determination that the market value is reasonably accurate and that the cost estimate reasonably reflects the actual costs of the improvements to the structure.

G. Acceptable estimates of market value shall be determined from one (1) of the following methods:

1. Independent appraisals by a State Licensed Real Estate Appraiser.

2. The value of the building taken from NFIP claims data.

H. Acceptable estimates of cost of improvement shall be determined from one (1) of the following methods:

1. Itemized estimates made by Ordinances licensed to work in Lower Saucon Township.

2. Building code valuation tables.

I. The Zoning Hearing Board shall have the right to waive, as a special exception, any of the requirements of this Section for any structure listed on a National, State, or Local Register of Historic Places; provided, however, that the provisions of Section 90-27 shall be applied in such a case.

ARTICLE VII
Variances

§ 90-27. Variances within Flood Hazard Districts

A. General – If compliance with any of the requirements of this Ordinance would result in an exceptional hardship for a prospective builder, developer, or landowner, the Zoning Hearing Board and Building Code Appeals Board (Boards) may, upon request, grant relief from the strict application of the requirements.

B. Variance Procedures and Requirements – Requests for variances shall be considered by the Boards in accordance with this Ordinance and with the following:

1. No variance shall be granted for any construction, development, use, or activity within any floodplain or floodway area that would cause any increase in the base flood elevation.

2. No variance shall be granted for any of the prohibited uses or activities in Section 90-25 to locate in the Flood Hazard District.

3. If granted, a variance shall involve only the least modification necessary to provide relief.

4. In granting any variance, the Boards shall attach whatever reasonable conditions and safeguards they consider necessary in order to protect the public health, safety, and welfare and to achieve the objectives of this Ordinance.

5. Whenever a variance is granted, the Boards shall notify the applicant in writing that:

   a. The granting of the variance may result in increased premium rates for flood insurance.

   b. Such variances may increase the risks to life and property.

6. In reviewing any request for a variance, the Boards shall consider, but not be limited to the following:

   a. There is good and sufficient cause for the variance.

   b. Failure to grant the variance would result in exceptional hardship to the applicant.

   c. The granting of the variance will not result in an unacceptable or prohibited increase in flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with any other applicable State or Local Ordinance regulations.

   d. The review factors listed in Section 90-27.C, below.

e. A complete record of all variance requests and related actions shall be maintained by the Boards. In addition, a report of all variances granted during the year shall be included in the annual report to the Federal Emergency Management Agency.

C. Review Factors - In reviewing applications for a variance, the Boards shall consider all relevant factors and procedures specified in other Articles of this Ordinance and:

1. The danger to life and property due to increased flood heights or velocities caused by encroachments.

2. The danger that materials may be swept on to other lands or downstream to the injury of others.

3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.

4. The susceptibility of the proposed use and its contents to flood damage and the effect of such damage on the individual owners.

5. The importance of the services provided by the proposed use to the community.

6. The requirements of the use for a waterfront location.

7. The availability of alternative locations not subject to flooding for the proposed use.

8. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

9. The relationship of the proposed use to the Lower Saucon Township Comprehensive Plan and the Lower Saucon Township stormwater management objectives and regulations.

10. The safety of access to the property in times of flood of ordinary and emergency vehicles.

11. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.

12. The requirements of the National Flood Insurance Program Regulations, Part 59: General Provisions, and Part 60: Criteria for Land Management and Use.

13. Such other factors which are relevant to the purposes of this Ordinance.

D. Supplemental Technical Review – The Boards may refer any application and accompanying documentation pertaining to any request for a variance to the Township Engineer or other qualified person or agency for:

1. Technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for protection and other related matters.

2. All 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 Lower Saucon Township and the Pennsylvania Department of Community and Economic Development.

SECTION 2. REPEALER / INTERPRETATION

The former Chapter 90 is deleted and replaced with the language set forth above. If any other ordinances or parts of ordinances may be inconsistent herewith, they are hereby repealed.

SECTION 3. 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 other remaining provisions, sentences, clauses, sections, or parts of this ordinance. It is hereby declared as the intent of the Council of Lower Saucon Township that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

SECTION 4. EFFECTIVE DATE

This ordinance will become effective five (5) days after its enactment.

ENACTED AND ORDAINED this 20th day of August, 2008, at a regularly scheduled public meeting.

ATTEST:

LOWER SAUCON TOWNSHIP

Glenn C. Kern
Council President