

ORDINANCE NO. 286

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE TOWNSHIP OF LOWER POTTS GROVE, MONTGOMERY COUNTY, PENNSYLVANIA AMENDING PART 4: GENERAL REGULATIONS, AND ADDING APPENDIX A TO THE LOWER POTTS GROVE TOWNSHIP ZONING ORDINANCE

WHEREAS, the Township created The Code of Ordinances of the Township of Lower Pottsgrove by Ordinance 192 adopted 3/23/1995 which has been amended from time to time (the “Code of Ordinances”); and

WHEREAS, it is the intention of the Board of Commissioners (the “Board”) that all references to any provision within the Code of Ordinances shall include the Ordinances adopted by the Board pursuant to which such provision became part of the Code of Ordinances; and

WHEREAS, the Lower Pottsgrove Township Zoning Ordinance, as originally enacted and amended from time to time is contained in Chapter 27 of the Code of Ordinances (the “Zoning Ordinance”); and

WHEREAS, the Board has determined that it is in the best interests of the Township to amend the Zoning Ordinance to provide for the maintenance and continued operation of sustainable building measures; and

NOW THEREFORE, BE IT ORDAINED AND ENACTED AND IT IS HEREBY ORDAINED AND ENACTED by the Board of Commissioners of Lower Pottsgrove Township, Montgomery County, Pennsylvania as follows:

Section 1. Intent. It is the intent of this Ordinance to add §428. Sustainable Building Measures Maintenance and Operation Plan Requirements to Part 4: General Regulations, of the Zoning Ordinance, which shall read as follows:

§428. Sustainable Building Measures Maintenance and Operation Plan Requirements

1. General requirements.

- A. No building permits shall be issued for projects within Lower Pottsgrove Township until the Township approves a Sustainable Building Measures Maintenance and Operation Plan which describes how the permanent (e.g. post-construction) sustainable building measures will be properly operated and maintained.
- B. The following items shall be included in the Sustainable Building Measures Operations and Maintenance Plan:
 - 1) Technical construction details for the project.
 - 2) A description of how each sustainable building measure will be operated and maintained and the identity of the person(s) responsible for operations and maintenance.

- 3) The name of the project site, the name and address of the owner of the property, and the name of the individual or firm preparing the Plan, and
- 4) A statement signed by the landowner and/or responsible party acknowledging the sustainable building measures are fixtures that can only be altered or removed by approval of the Township.

2. Responsibilities for operation and maintenance of sustainable building measures.

- A. The sustainable building measure operations and maintenance plan for the project site shall establish responsibilities for the continuing operation and maintenance of all permanent sustainable building measures.
- B. The Township shall make the final determination on the continuing operations and maintenance responsibilities.

3. Township review of sustainable building measures operations and maintenance plan.

- A. The Township shall review the sustainable building measures operations and maintenance plan for consistency with the purposes and requirements of Township ordinances, and any permits issued by the Pennsylvania Department of Environmental Protection.
- B. The Township shall notify the Applicant in writing whether the sustainable building measures operation and maintenance plan is approved.
- C. The Township may require an as-built survey of all sustainable building measures and an explanation of discrepancies with the operations and maintenance plan.

4. Adherence to approved sustainable building measures operation and maintenance plan.

It shall be unlawful to alter or remove any permanent sustainable building measure required by an approved sustainable building measure operations and maintenance plan, or to allow the property to remain in a condition that does not conform to an approved sustainable building measures operations and maintenance plan, unless an exception is granted by the Township.

5. Maintenance and operation agreement.

- A. The property owner shall sign an operations and maintenance agreement with the Township covering all privately owned sustainable building measures. The agreement shall be substantially the same as the form agreement in Appendix A of the Zoning Ordinance; however, the Township reserves the right to amend the terms of the agreement from time to time as may be recommended by the Solicitor. Such amendment may be by resolution or affirmative vote of the Board of Commissioners at a public meeting and shall not require amendment of either the Zoning Ordinance nor Subdivision and Land Development Ordinance.
- B. Other items may be included in the agreement where determined necessary by the Township to guarantee the satisfactory operation and maintenance of all permanent sustainable building measures.

6. Sustainable building measures easements.

Easements are required by the property owner for (1) access for inspections and maintenance, or (2) preservation of sustainable building measures by persons other than the property owner. The purpose of this easement shall be specified in any agreement under §428.5.

7. Recording of approved maintenance and operation plan and related agreements.
- A. The owner of any land upon which sustainable building measures will be placed, constructed, or implemented, as described in the sustainable building measures operations and maintenance plan, shall record the following documents in the Office of the Recorder of Deeds, within fifteen (15) days of approval of the Plan by the Township.
1. The operations and maintenance plan, or summary thereof.
 2. Operations and maintenance agreements under section §428.5.
 3. Easements under §428.6.
- B. The Township may suspend or revoke any approvals and/or permits granted for the project site upon discovery of the failure of the owner to comply with this Section.

Section 2. Appendix A. It is the intent of this Ordinance to add Appendix A: Sustainable Building Measures Operations and Maintenance Agreement, as an Appendix to the Zoning Ordinance, which shall read as follows:

**SUSTAINABLE BUILDING MEASURES
OPERATIONS AND MAINTENANCE AGREEMENT**

THIS AGREEMENT, made and entered into this _____ day of _____ 20____, by and between _____ (hereinafter the “Landowner”), and Lower Pottsgrove Township, Montgomery County, Pennsylvania, (hereinafter “Township”);

WITNESSETH

WHEREAS, the Landowner is the owner of certain real property as recorded by deed in the land records of Montgomery County, Pennsylvania, Deed Book _____ at Page _____, (herein after “Property”).

WHEREAS, the Landowner is proceeding to build and develop the Property; and

WHEREAS, the Sustainable Building Measures Operations and Maintenance Plan approved by the Township (hereinafter referred to as “Plan”) for the property identified herein, which is attached hereto as Appendix A and made part hereof, as approved by the Township, provides for management of sustainable building measures within the confines of the Property through the use of acceptable management practices; and

WHEREAS, the Township and Landowner, his successors and assigns, agree that the health, safety and welfare of the residents of the Township and the projection and maintenance of an acceptable quality of life for occupants of the Property and Township residents require that sustainable building measures be constructed and maintained on the Property; and

WHEREAS, the Township requires, through the implementation of the Plan, that sustainable building measures as required by said Plan and the Township’s Zoning Ordinance be

constructed and adequately operated and maintained by the Landowner, his successors and assigns; and

NOW, THEREFORE, in consideration of the foregoing promises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The sustainable building measures shall be constructed by the Landowner on the Property in accordance with the plans and specifications in the Plan.
2. The Landowner shall operate and maintain the sustainable building measures as shown on the Plan in good working order acceptable to the Township and in accordance with the specific maintenance requirements noted on the Plan.
3. The Landowner hereby grants permission to the Township, its authorized agents and employees, to enter upon the Property, at reasonable times and upon presentation of proper identification, to inspect the sustainable building measures whenever it deems necessary. Whenever possible, the Township shall notify the Landowner prior to entering the Property.
4. In the event the Landowner fails to operate and maintain the sustainable building measures as shown on the Plan in good working order acceptable to the Township, the Township or its representatives may enter upon the Property and take whatever action is deemed necessary to maintain said sustainable building measures. This provision shall not be construed to allow the Township to erect any permanent structure on the Property of the Landowner. It is expressly understood and agreed that the Township is under no obligation to maintain or repair said measures, and in no event shall this Agreement be construed to impose any such obligation on the Township.
5. In the event the Township, pursuant to this Agreement, expends any funds to enforce the provisions of this Agreement, including but not limited to, the performance of said work for labor, use of equipment, supplies, materials, and the reasonable fees of attorneys and other professional consultants hired by the Township, then the Landowner shall reimburse the Township for all expenses (direct and indirect) incurred within ten (10) days of receipt of invoice from the Township.
6. The Landowner, its executors, administrators, assigns, and other successors in interests, shall release and indemnify the Township and the Township's employees and designated representatives from all damages, accidents, casualties, occurrences or claims which might arise or be asserted against said employees and representatives from the construction, presence, existence, or maintenance of the sustainable building measures by the Landowner or Township. In the event that a claim is asserted against the Township, its designated representatives or employees, the Township shall promptly notify the Landowner and the Landowner shall defend, at its own expense, any suit based on the claim and shall indemnify the Township and its employees and designated representatives from and against any cost or expense, including attorneys' fees. If any judgment or claim against the Township or the Township's employees or designated representatives shall be allowed, the Landowner shall pay all costs and expenses, including attorneys' fees regarding said judgment or claim.

7. The Township shall have the right, but not the obligation, to inspect the sustainable building measures every three (3) years to ensure their continued functioning.
8. This Agreement shall be recorded in the Office of the Recorder of Deeds of Montgomery County, Pennsylvania, and shall constitute a covenant running with the Property and/or equitable servitude, and shall be binding on the Landowner, his administrators, executors, assigns, heirs and any other successors in interest, in perpetuity.
9. This Agreement is the entire understanding between the parties regarding the subject hereof, and may only be amended in writing and signed by all of the parties.

ATTEST:

**LOWER POTTS GROVE TOWNSHIP
BOARD OF COMMISSIONERS**

NAME, President

WITNESS:

LANDOWNER

NAME, TITLE

SAMPLE NOTARY BLOCK

COMMONWEALTH OF PENNSYLVANIA:

SS:

COUNTY OF MONTGOMERY:

On this _____ day of _____, 20____, before me, a Notary Public,
the

undersigned officer, personally appeared _____, who
name

acknowledged himself/herself to be a _____
title

of _____, which is the owner of the
company

Property, and that he/she as _____, being authorized to do
title

so, executed the Agreement with the intention that this Agreement be recorded according to law.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal.

Notary Public
My commission expires: _____

Section 3. Severability. The invalidity of any section or provision of this Ordinance shall not invalidate other sections or provisions thereof.

Section 4. Savings and Repealer. The remaining provisions of the Lower Pottsgrove Township Zoning Ordinance in force immediately before the enactment of this Ordinance are intended to be continued and, to the extent not inconsistent herewith, are hereby re-enacted and re-ordained; any provisions inconsistent with this Ordinance are hereby repealed as referenced.

Section 5. Effective Date. This Ordinance shall become effective immediately upon enactment.

ENACTED AND ORDAINED, this 1st day of December, A.D. 2008 by the Board of Commissioners of Lower Pottsgrove Township, Montgomery County, Pennsylvania.

**LOWER POTTS GROVE TOWNSHIP
BOARD OF COMMISSIONERS**

BY: _____
Bruce L. Foltz, President

ATTEST: _____
Michele M. Cappelletti, Secretary