

ORDINANCE NO. 2009-144

**AN ORDINANCE OF Honey Brook TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA, ENACTED PURSUANT TO THE TERMS OF THE INTERGOVERNMENTAL COOPERATION ACT, 53 Pa.C.S.A. SECTION 2301, ET SEQ., AUTHORIZING ITS BOARD OF SUPERVISORS TO ENTER INTO AN INTERGOVERNMENTAL COOPERATION AGREEMENT**

WHEREAS, Atglen Borough, Caln Township, East Brandywine Township, East Caln Township, East Fallowfield Township, Honey Brook Borough, Honey Brook Township, Modena Borough, Newlin Township, Sadsbury Township, South Coatesville Borough, Valley Township, West Bradford Township, West Caln Township, West Fallowfield Township, West Grove Borough, West Nantmeal Township and West Pikeland Township (hereinafter "Members") have authorized their formation of and participation in a multi-municipal regional board of appeals to hear matters under the Uniform Construction Code, as set forth in 34 Pa. Code §403.121(d).

WHEREAS, the Members now desire to enter into an Intergovernmental Cooperation Agreement to create a board to be known as the "Western Chester County Regional UCC Board of Appeals" (hereinafter "Board of Appeals") which will memorialize the Members' responsibilities and obligations thereof; and

WHEREAS, pursuant to the Intergovernmental Cooperation Act of 1996, 53 Pa.C.S.A. §2301 *et seq.*, the Members may enter into agreements with other municipalities and government agencies to perform governmental powers and duties upon the passage of an ordinance by the governing body; and

WHEREAS, this Ordinance is enacted, pursuant to 34 Pa. Code §403.121(d), to authorize the Board of Supervisors to enter into the Intergovernmental Cooperation Agreement to create the Western Chester County Regional UCC Board of Appeals, which is attached hereto as Exhibit "A" and is incorporated herein by reference (hereinafter "Agreement").

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Supervisors as follows:

**SECTION 1. Authorization.** The Chairman of the Board of Supervisors is hereby authorized to enter into the Agreement in accordance with the terms and conditions authorized by this Ordinance and set forth in the Agreement, a copy of which is attached hereto as Exhibit "A" and is incorporated herein by reference. Furthermore, the appropriate officers of the Township are hereby authorized to do whatever is necessary and appropriate to carry out the provisions of the Agreement and this Ordinance, and to comply with the purposes and intent of the Agreement and this Ordinance.

**SECTION 2. Conditions of Agreement.** The Agreement is conditioned upon each Member's governing body enacting an ordinance which authorizes such Member to participate in the Board of Appeals and to execute the Agreement.

**SECTION 3. Duration and Term of Agreement.** The Board of Appeals shall be created for and the Agreement shall have an initial term of 5 years, which term shall commence on the Effective Date of the Agreement (as defined in paragraph 17 of the Agreement). At the expiration of the initial 5-year term, the Agreement and the Board of Appeals shall automatically renew for successive 1-year terms unless a majority of the Members, acting through their representatives, vote to terminate the Agreement.

**SECTION 4. Purpose and Objectives of the Agreement.** The purposes and objectives of the Board of Appeals include, but are not limited to, the following:

- A. To establish a body for the joint administration and enforcement of the Pennsylvania Construction Code Act, 35 P.S. §7210.101-1103.
- B. To establish a procedure for the appointment of a hearing board of appeals to hear requests for variances or extensions of time and appeals from Code administrator decisions under the Pennsylvania Construction Code Act, 35 P.S. §7210.101-1103.
- C. To schedule meetings and provide public notice of meetings in accordance with the Sunshine Act, 65 Pa.C.S. §701-716.
- D. To perform such other activities as the Members may mutually agree may be undertaken through the Board of Appeals which are related to the objectives identified above.

**SECTION 5. Organizational Structure Necessary to Implement the Agreement.**

- A. The Board of Appeals shall be governed by its Members and shall consist of one representative and an alternate representative from each Member. The representative and alternate representative shall be appointed by the governing body of each Member. The representative and alternate representative need not be an elected official of the Member.
- B. Within 30 days after the Effective Date of the Agreement, the Members shall conduct an organizational meeting. At the organizational meeting the Members shall elect an Executive Committee consisting of the officers of President, Vice-President, Secretary, Treasurer and two other Officers at-large and adopt By-Laws which shall govern the day-to-day affairs of the Board of Appeals. The President shall not have the right to vote on any matter before the Executive Committee except where needed to break a tie vote of the Executive Committee.

- C. Each Member shall be entitled to 1 vote in the Board of Appeals which vote shall be cast by the representative in attendance at the meetings.

**SECTION 6. Manner and Extent of Financing for the Agreement.**

- A. At the organizational meeting of the Board of Appeals, the Executive Committee or Treasurer shall establish an annual budget or authorize the prompt creation of an annual budget for the Board of Appeals. Thereafter, the Executive Committee or Treasurer shall present the proposed annual budget to the Members on or before September 30 of each year and the governing body of each Member shall vote to approve or reject the budget on or before October 31 of the same year. In the event that the proposed annual budget is not approved by the majority of the Members' governing bodies, the Executive Committee or Treasurer shall revise said budget in accordance with the comments from the Members. Until the new budget is approved by the majority of the Members' governing bodies, the prior year's budget shall remain in effect.
- B. Each Member shall be responsible to make an initial contribution to the Board of Appeals of \$600.00, which contribution shall be due on or before July 31, 2009 and which shall be deposited into an account established for the Board of Appeals and administered by the Solicitor and Treasurer. Thereafter, each Member shall pay an annual fee which shall be due on or before January 15<sup>th</sup> of each year. The annual fee shall be determined by a resolution of the Executive Committee during the 3<sup>rd</sup> Quarter of each year.
- C. In the event that the Board of Appeals undertakes a specific program or activity that does not involve all of the Members, only the Members who participate in such program or activity shall be liable for the expenses related to such program or activity.

**SECTION 7. Manner In Which Real or Personal Property Shall Be Acquired, Managed, Licensed or Disposed Of.** The Board of Appeals is not authorized by the Agreement to purchase real property. If the Board of Appeals purchases personal property, it shall take title to such personal property in the name of Board of Appeals, unless otherwise agreed to by the Members. Upon termination of the Agreement, any personal property owned by the Board of Appeals shall be distributed to the Members or sold and the proceeds distributed to the Members, as determined by the Members. All other matters pertaining to the acquisition, management, licensing or disposal of personal property by the Board of Appeals shall be decided by a majority vote of the Members.

**SECTION 8. Authority to Enter Into Contracts or Policies of Group Insurance and Employee Benefits.** The Board of Appeals is empowered to enter into contracts for policies of group insurance and employee benefits including Social Security for any employees of the Board of Appeals. No such employees are anticipated by the

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Members and a majority of the Members must first vote to hire any such employees and approve any such contracts.

**SECTION 9. 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 of the remaining provisions, sentences, clauses, sections, or parts hereof. It is hereby declared as the intent of the Board of Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

**SECTION 10. Repealer.** All ordinances or parts of ordinances conflicting with any provisions of this ordinance are hereby repealed as far as the same affects this ordinance.

**SECTION 11. Effective Date.** This Ordinance shall become effective upon enactment as by law provided.

ENACTED AND ORDAINED this 10<sup>th</sup> day of June, 2009.

BOARD OF SUPERVISORS  
Honey Brook TOWNSHIP

Gregory de Cary

R. M. Weith

Don Johnson

ATTEST:

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**INTERGOVERNMENTAL COOPERATION AGREEMENT TO CREATE  
WESTERN CHESTER COUNTY REGIONAL UCC BOARD OF APPEALS**

THIS INTERGOVERNMENTAL COOPERATION AGREEMENT (Agreement") is entered into this 10<sup>th</sup> day of June 2009, by and between the following political subdivisions organized under the laws of the Commonwealth of Pennsylvania (individually "Member" or collectively "Members"):

Atglen Borough	POB 250, Atglen, PA 19310-0250
Caln Township	POB 72149, Thorndale, PA 19372
East Brandywine Township	1214 Horseshoe Pike, Downingtown, PA 19335
East Caln Township	110 Bell Tavern Lane, Downingtown, PA 19335
East Fallowfield Township	2264 Strasburg Road, East Fallowfield, PA 19320
Honey Brook Borough	71 Pequea Avenue, POB 249, Honey Brook, PA 19341
Honey Brook Township	POB 1281, Honey Brook, PA 19344
Modena Borough	16 Union Street, POB 116, Modena, PA 19356
Newlin Township	1572 Embreeville Road, Coatesville, PA 19320
Sadsbury Township	PO Box 261, Sadsburyville, PA 19369
South Coatesville Borough	136 Modena Road, Coatesville, PA 19320
Valley Township	POB 467, Coatesville, PA 19320-0897
West Bradford Township	1385 Campus Drive, Downingtown, PA 19335
West Caln Township	721 W. Kings Highway, POB 175, Wagontown, PA 19376
West Fallowfield Township	3095 Limestone Rd., Ste. 1, Cochranville, PA 19330
West Grove Borough	POB 61, West Grove, PA 19390-0061
West Nantmeal Township	Box 234, Elverson, PA 19520
West Pikeland Township	1645 Art School Road, POB 6, Chester Springs, PA 19425

**BACKGROUND:**

WHEREAS, Article 9, Section 5 of the Pennsylvania Constitution and the Intergovernmental Cooperation Act of 1996, P.L. 1158, No. 177 (53 Pa.C.S.A. §§2301 *et seq.*) authorizes local governments to jointly cooperate in the exercise or performance of their respective governmental functions, powers and responsibilities; and

WHEREAS, pursuant to the foregoing authority, the Members desire to enter into this Agreement to form an intergovernmental regional board of appeals, known as the Western Chester County Regional UCC Board of Appeals ("Board of Appeals") and to establish the framework, organizational structure and governing regulations under which the Board of Appeals shall operate:

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NOW THEREFORE, the Members hereto, intending to be legally bound, agree as follows:

**1. Formation of the Board of Appeals.** Pursuant to the authority granted in the Pennsylvania Constitution and the Intergovernmental Cooperation Act, and the authority granted in the Construction Code Act, 35 P.S. §7210.501(c)(1), the Members hereby form an intermunicipal regional board of appeals to be known as the "Western Chester County Regional UCC Board of Appeals." The municipalities identified above shall constitute the original members of the Board of Appeals subject to the right of additional municipalities to join the Board of Appeals pursuant to the procedure in paragraph 9 herein and the By-Laws to be adopted by the Board of Appeals.

**2. Purposes and Objectives.** The purposes and objectives of the Board of Appeals include, but are not limited to the following:

A. To establish a body for the joint administration and enforcement of the Pennsylvania Construction Code Act, 35 P.S. §7210.101-1103.

B. To establish a procedure for the appointment of a hearing board of appeals to hear requests for variances or extensions of time and appeals from Code administrator decisions under the Pennsylvania Construction Code Act, 35 P.S. §7210.101-1103.

C. To schedule meetings and provide public notice of meetings in accordance with the Sunshine Act, 65 Pa.C.S. §§701-716.

D. To perform such other activities as the Members may mutually agree may be undertaken through the Board of Appeals which are related to the objectives identified above.

**3. Organizational Structure/Membership/Officers/Voting.**

A. The Board of Appeals shall be governed by its Members and shall consist of one representative and an alternate representative from each Member. The representative and alternate representative shall be appointed by the governing body of the respective Member. Representatives and alternate representatives need not be elected officials of the Member.

B. Within 30 days after the Effective Date of the Agreement, the Members shall conduct an organizational meeting. At the organizational meeting the Members shall elect an Executive Committee consisting of the officers of President, Vice-President, Secretary, Treasurer and two other Officers at-large and adopt By-Laws which shall govern the day-to-day affairs of the Board of Appeals. The President shall not have the right to vote on any matter before the Executive Committee except where needed to break a tie vote of the Executive Committee.

C. Each Member shall be entitled to 1 vote in the Board of Appeals which vote shall be cast by the representative in attendance at the meetings.

4. **Term.** This Agreement and the Board of Appeals shall be created for an initial term of 5 years, which term shall commence on the Effective Date of this Agreement (as defined in paragraph 16). At the expiration of the initial 5-year term, this Agreement and the Board of Appeals shall automatically renew for successive 1-year terms, unless a majority of the Members, acting through their representatives, vote to terminate this Agreement and the Board of Appeals. Such vote to terminate the Board of Appeals must be made at least 30 days prior to the expiration of the then-current term of this Agreement.

5. **Membership Termination.** Notwithstanding the provisions in paragraph 4 above, any Member may withdraw from the Board of Appeals at any time for any reason with thirty (30) days advanced written notice to the Board of Appeals. The withdrawing Member shall not be entitled to a refund of any portion of any fees paid to the Board of Appeals, and shall remain liable for its share of any costs, expenses or fees incurred and/or assessed prior to the date of withdrawal. Further, any Member may be removed from the Board of Appeals upon the vote of at least two-thirds ( $\frac{2}{3}$ ) of the Members for failure to pay any fees or for other good cause. Any Member removed from the Board of Appeals shall not be entitled to a refund of any portion of any fees paid to the Board of Appeals, and shall remain liable for its share of any costs, expenses or fees incurred and/or assessed prior to the date of removal.

6. **Powers and Scope of Authority.**

A. The Board of Appeals is comprised of the Members that are parties to this Agreement and any other municipalities in the Chester County area that join the Agreement in the future pursuant to the procedures in paragraph 9 herein and the By-Laws to be adopted by the Board of Appeals. The municipality is the Member who shall act through its representative or alternate representative.

B. The Members shall have the authority to act on behalf of the Board of Appeals and take any and all actions on behalf of the Board of Appeals provided that such actions further the objectives of the Board of Appeals and are approved by a majority vote of the Members.

7. **Financing/Budget.**

A. At the organizational meeting of the Board of Appeals, the Executive Committee or Treasurer shall establish an annual budget for the Board of Appeals or authorize the prompt creation of an annual budget for the Board of Appeals. Thereafter, the Executive Committee or Treasurer shall present the proposed annual budget to the Members on or before September 30 of each year and the governing

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body of each Member shall vote to approve or reject the budget on or before October 31 of the same year. In the event that the proposed annual budget is not approved by the majority of the Member's governing bodies, the Executive Committee or Treasurer shall revise said budget in accordance with the comments from the Members. Until the new budget is approved by the majority of the Members, the prior year's budget shall remain in effect.

B. Each Member shall be responsible to make an initial contribution to the Board of Appeals of \$600.00, which contribution shall be due on or before July 31, 2009 and which shall be deposited into an account established for the Board of Appeals and administered by the Solicitor and Treasurer. Thereafter, each Member shall pay an annual fee which shall be due on or before January 15<sup>th</sup> of each year. The annual fee shall be determined by a resolution of the Executive Committee during the 3<sup>rd</sup> Quarter of each year.

C. In the event that the Board of Appeals undertakes a specific program or activity that does not involve all of the Members, only the Members who participate in such program or activity shall be liable for the expenses related to such program or activity.

**8. Manner In Which Real or Personal Property Shall Be Acquired, Managed, Licensed or Disposed Of.** The Board of Appeals is not authorized by the Agreement to purchase real property. If the Board of Appeals purchases personal property, it shall take title to such personal property in the name of Board of Appeals, unless otherwise agreed to by the Members. Upon termination of the Agreement, any personal property owned by the Board of Appeals shall be distributed to the Members or sold and the proceeds distributed to the Members, as determined by the Members. All other matters pertaining to the acquisition, management, licensing or disposal of personal property by the Board of Appeals shall be decided by a majority vote of the Members.

**9. Additional Members.** Other municipalities in the Chester County area may join the Board of Appeals provided that the governing body of such municipality enacts an ordinance approving the municipality's participation in the Board of Appeals and provided such additional municipality enters into this Intergovernmental Agreement, as amended, and agrees to be bound by any By-Laws adopted for the Board of Appeals.

**10. Notices.** Whenever a notice is required to be given to any party to this Agreement, the addresses listed above shall be used, unless a different address is specifically designated by such party. The notices shall be addressed to the Member's representative, with a copy to the Member's manager. Notices given by certified mail will be considered to have been given 2 business days after being deposited in the United States mail. Notices given by personal delivery shall be considered to have been given on the date of delivery. Notices given by overnight courier shall be



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considered to have been given on the first business day after the date deposited with such overnight courier. Notices given by facsimile shall be deemed given upon completion of transmission as evidenced by the confirmation sheet generated by the sending facsimile machine. Notices may be given on behalf of any party by its counsel.

**11. Indemnification.** The Members agree to indemnify, save, defend, and hold harmless the Board of Appeals and its Executive Committee from any and all claims, demands, suits, and actions, including counsel fees and court costs connected therewith, brought against the Board of Appeals and its Executive Committee arising as a result of any direct or indirect negligent act or omission.

**12. Governing Law.** This Agreement shall be interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

**13. Severability.** Should any paragraph, term or provision of this Agreement hereafter be declared to be invalid or unenforceable for any reason, such declaration shall not affect or impair the validity or enforceability of the remainder of this Agreement, it being the intention of the parties hereto that this Agreement would have been made and entered into had not such illegal or invalid provision been incorporated herein.

**14. Waiver.** The failure of any party hereto to insist upon strict performance of this Agreement of any of the terms or conditions shall not be construed as a waiver of any of its rights hereunder to thereafter require strict performance.

**15. Entire Agreement.** This writing constitutes the entire agreement among the parties. No modification of the terms of this Agreement shall be effective as to any party unless approved in writing by such party in a signed addendum to this Agreement.

**16. Counterparts.** This Agreement may be executed in any number of counterparts each of which when executed, shall be deemed to be an original but all such counterparts shall constitute one and the same instrument.

**17. Effective Date.** This Agreement shall be effective on the date that the governing body of each Member has adopted an ordinance authorizing the Member to enter this Agreement and join the Board of Appeals ("Effective Date").

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IN WITNESS WHEREOF, the parties have caused these presents to be duly executed and attested with the seal of the respective parties as of the date first mentioned hereinabove.

ATTEST:

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Atglen Borough

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Caln Township

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East Brandywine Township

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East Caln Township

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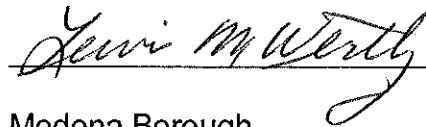
East Fallowfield Township

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South Coatesville Borough

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West Caln Township

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