

NESCOPECK TOWNSHIP

LUZERNE COUNTY, PENNSYLVANIA

ORDINANCE NO. _____

DETERIORATED PROPERTIES AND DANGEROUS CONDITIONS

AN ORDINANCE OF NESCOPECK TOWNSHIP, LUZERNE COUNTY, PENNSYLVANIA, PROVIDING FOR THE VACATING, REMOVAL, REPAIR, DEMOLITION OR ABATEMENT OF ANY DETERIORATED PROPERTIES AND/OR DANGEROUS CONDITIONS TO PROTECT THE HEALTH, SAFETY, OR GENERAL WELFARE OF TOWNSHIP CITIZENS AND THE GENERAL PUBLIC; FOR THE ASSESSMENT OF THE ASSOCIATED COST AS A MUNICIPAL LIEN OR ASSESSMENT AGAINST SUCH PROPERTIES; FOR THE RECOVERY OF SUCH COSTS IN AN ACTION AT LAW; FOR THE WITHHOLDING OF CERTAIN TOWNSHIP PERMITS AND APPROVALS; AND FOR PRESCRIBING PENALTIES FOR THE VIOLATION OF THE ORDINANCE.

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WHEREAS, in Nescopeck Township, Luzerne County, Pennsylvania, there are, or may be in the future, conditions and/or structures or buildings that are deteriorated, dilapidated, unsafe, dangerous, unsanitary, or any combination thereof; and,

WHEREAS, such conditions, structures or buildings constitute a menace to the health, safety, and/or general welfare of Township citizens and the general public; and,

WHEREAS, such conditions, structures or buildings constitute a public nuisance and may also have an impact on crime or constitute a fire menace.

NOW, THEREFORE, it is hereby enacted and ordained by the Nescopeck Township Board of Supervisors, as follows:

SECTION 1 - SHORT TITLE

This ordinance shall be known as and may be cited as *Nescopeck Township Deteriorated Properties and Dangerous Conditions Ordinance*.

SECTION 2 - AUTHORITY AND APPLICATION

201. Authority.

This Ordinance is ordained and enacted under the authority granted by Section 1529, Section 1533 and Section 1601 of the Pennsylvania Second Class Township Code, as amended, and the Pennsylvania Neighborhood Blight Reclamation and Revitalization Act of 2010, as amended.

202. Application.

This ordinance shall apply uniformly to all persons, business organizations, nonprofit organizations, and all other legal entities; and, it shall apply uniformly to all property and all property owners within the Township.

SECTION 3 - WORD USAGE AND DEFINITIONS

301. Word Usage.

- A. Unless otherwise specifically defined below, words or phrases used herein shall be interpreted so as to have the same meaning as in common usage and so as to give the ordinance its most reasonable application consistent with its intent.

- B. The word *shall* is always mandatory and not merely directory.
- C. Words used in the present tense include the future and past, words in the plural number include the singular, words in the singular number include the words in the plural, and words either in the feminine, masculine or neuter shall include words of the other two genders.

302. DEFINITIONS.

- A. Board - The Board of Supervisors of the Township of Nescopeck
- B. Building - A residential, agricultural, institutional, commercial, industrial or other building or structure and the land appurtenant to it.
- C. Code - A building, housing, property maintenance, fire, health or other public safety ordinance enacted by the Township. The term does not include a subdivision and land development ordinance or a zoning ordinance enacted by a municipality.
- D. Deteriorated Structures and/or Dangerous Conditions - All the structures or buildings and/or conditions which have any or all of the following defects:
 - 1. Those which have been damaged by fire, wind or other cause so as to fail utterly to provide the amenities essential to decent living and are unfit for human habitation.
 - 2. Those which have been damaged by fire, wind or other cause so as to have become dangerous to the life, safety, or the general health and welfare of the occupants or the citizens of the Township.
 - 3. Those which have become or are so dilapidated, decayed, unsafe, unsanitary or which so utterly fail to provide the amenities essential to decent living so that they are unfit for human habitation.
 - 4. Those which have become or are so dilapidated, decayed, unsafe, unsanitary or which so utterly fail to provide the amenities essential to decent living and are likely to cause accidents, sickness, or disease, so as to work injury to the health, safety, or general welfare of those living therein as well as other citizens of the Township;
 - 5. Those which have parts thereof which are so attached that they might fall and injure members of the public or adjoining property.
 - 6. Those which because of their general condition are unsafe, unsanitary or dangerous to the health, safety or general welfare of the citizens of the Township.
- E. Emergency Case - A violation which poses an imminent threat to the public health, safety or welfare and which requires immediate action to eliminate such imminent threat.
- F. Owner - A holder of the title to residential, commercial or industrial real estate, other than a mortgage lender, who possesses and controls the real estate. The term includes, but is not limited to, heirs, assigns, beneficiaries and lessees, provided this ownership interest is a matter of public record.
- G. Premises - A residential, agricultural, institutional, commercial, industrial or other building or structure and the land appurtenant to it.

- H. Public Nuisance - Property which, because of its physical condition or use, is regarded as a public nuisance at common law or has been declared by the appropriate official a public nuisance in accord with a Township code or ordinance.
- I. Serious Violation - A violation of a State law or a code that poses an imminent threat to the health and safety of a dwelling occupant, occupants in surrounding structures or passersby
- J. State Law - A statute of the Commonwealth or a regulation of an agency charged with the administration and enforcement of Commonwealth law.
- K. Substantial Step - An affirmative action as determined by an enforcement officer, a property code official or officer of the court on the part of a property owner or managing agent to remedy a serious violation of a State law or Township code, including, but not limited to, physical improvements or repairs to the property, which affirmative action is subject to appeal in accord with applicable law
- L. Township - The Township of Nescopeck, County of Luzerne, Commonwealth of Pennsylvania
- M. Township Permits - Privileges relating to real property granted by the Township, including, but not limited to, building permits, zoning permits and occupancy permits. The term includes approvals pursuant to zoning, subdivision and land development, floodplain and other land use ordinances other than decisions on the substantive validity of a zoning ordinance or map or the acceptance of a curative amendment.

SECTION 4 - NUISANCES DECLARED; RESPONSIBILITY; VIOLATION

401. Nuisances Declared.

All *deteriorated structures and/or dangerous conditions* are hereby declared to be public nuisances and shall be repaired, vacated, demolished or abated.

402. Responsibility.

It shall be the responsibility of the property owner of the premises upon which any public nuisance is situated and/or occurring to provide for the repair, vacation, demolition or abatement of such public nuisance.

403. Violation.

- A. Any owner of property upon which a public nuisance is situated and/or occurring shall be deemed to be in violation of this Ordinance, and shall be subject to the penalties and remedies prescribed herein.
- B. Each day a nuisance continues after notice is given that said nuisance is to be repaired, vacated, demolished or abated shall constitute a separate offense in violation of this ordinance.

SECTION 5 - ENFORCEMENT OFFICER

The Board of Supervisors shall appoint one or more individuals, agencies or firms to serve as the Enforcement Officer(s), who shall be responsible for enforcing the terms of this Ordinance.

SECTION 6 - ENFORCEMENT PROCEDURE

601. Report to Board of Supervisors; Action.

- A. Report to Board of Supervisors - Whenever it shall be reported or come to the attention of the Enforcement Officer that any structure, completed or in the process of construction, or any portion thereof, is deteriorated

or that a dangerous condition exists on property located in the Township, the Enforcement Officer shall report the same to the Board of Supervisors. The report to the Board of Supervisors shall be written and include:

1. The location of the property.
 2. The name of the property owner.
 3. The nature of the dangerous structure/condition.
- B. Action - The Board may, at its discretion, direct the Enforcement Officer to investigate and examine each such structure/condition.

602. Investigation.

- A. Inspections - The Enforcement Officer, and any other agent so authorized by the Board of Supervisors, may inspect any premises to determine whether any violations of this ordinance exist.
- B. Permission - Prior to entering upon any property to conduct an inspection, the Enforcement Officer shall obtain the permission of the owner or occupant for the same. If after due diligence, the Enforcement Officer is unable to obtain such permission, the Enforcement Officer shall have the authority to conduct the necessary inspection upon the issuance of a search warrant. The defendant named in the warrant shall reimburse the Board of Supervisors for cost and reasonable attorney fees expended to obtain the warrant.
- C. Consultation - The Enforcement Officer may, upon authorization of the Board of Supervisors, consult with the Township Engineer, Building Inspector or any other qualified person, in making the determination regarding a violation.

603. Report.

If such investigation finds such premises to be in violation of this Ordinance, a written report of such investigation shall be provided to the Board of Supervisors specifying:

- A. The exact condition of such premises which constitutes the violation.
- B. The actions necessary to abate the nuisance which may include repair, removal, demolition or vacation.

604. Notice.

Whenever an inspection discloses that a violation exists, the Enforcement Officer shall, upon authorization by the Board of Supervisors, issue a notice to the owner of the premises, or failing to find any owner, then such occupant, mortgagee, lessee, agent, or any other person with an interest in said deteriorated structure or dangerous property who may be located. The notice shall:

- A. Be in writing.
- B. Identify the premises and include a statement of the reasons it is being issued.
- C. State a reasonable time to rectify the conditions constituting the violation, and may contain an outline of remedial action which, if taken, will effect compliance with the provisions of this Ordinance.
- D. Inform the owner that he has a right to a hearing in accord with Section 8 and that the notice shall automatically become an order if a written request for a hearing is not filed with the Board of Supervisors within thirty (30)

days after such notice is served.

- E. Inform the owner that failure to comply with the notice may result in additional enforcement proceedings before a Magisterial District Judge and/or the Court of Common Pleas of Luzerne County and assessment of any and all costs, expenses (including, but not limited to, constable, attorney, engineering and consulting fees), and penalties incurred against the land on which the violation is located.

605. Service of Notice.

Except in emergency cases, the order shall be sent by registered mail or by certificate of mailing, or personally delivered to the owner of the premises. Where the owner is absent from the Township, all orders shall be deemed to be properly served upon the owner if:

- A. A copy of the notice is served upon the owner personally; or,
- B. A copy of the notice is sent by registered mail or by certificate of mailing to the last known address of the owner, regardless of receipt, and is posted in a conspicuous place on or about the premises affected by the notice; or,
- C. The owner is served with such notice by any other method authorized under the laws of the Commonwealth.

606. Placard.

The Enforcement Officer shall cause to be placed on all premises subject to a notice a placard reading substantially as follows:

This property or building has been found to be a deteriorated building or dangerous condition by the Nescopeck Township Board of Supervisors, Luzerne County, Pennsylvania. This notice is to remain on this property or building until it is repaired, vacated or demolished in accordance with the notice which has been given to the owner, occupant, lessee, mortgagee, or agent of the premises. It is unlawful to remove this placard until compliance is made under the terms contained in the notice served on the above named party.

607. Hearing Appearance.

The Enforcement Officer shall appear at all hearings conducted in accord with Section 8 and testify as to the violation.

SECTION 7 - STANDARDS FOR REPAIR, IMPROVEMENT, VACATION OR DEMOLITION

The following standards shall be followed by the Enforcement Officer in ordering repair, improvement, vacation or demolition:

701. Repair/Improve.

If the dangerous premises can reasonably be repaired or improved so that it will no longer exist in violation of this Ordinance, it shall be ordered to be repaired or improved.

702. Vacate.

If the deteriorated or dangerous premises is in such condition as to make it dangerous to the health, safety or general welfare of its occupants or the public, and is so placarded, it shall be ordered to be vacated within such length of time, not exceeding thirty (30) days, as is reasonable.

703. Habitation.

No premises which has been placarded as unfit for human habitation shall again be used for human habitation until written approval is secured from, and such placard is removed by, the Enforcement Officer. The Enforcement Officer shall remove such placard whenever the defect or defects upon which the placarding action were based have been

eliminated.

704. Demolition.

If a deteriorated building is so damaged or decayed, or deteriorated from its original condition so that it cannot be repaired to no longer violate the terms of this Ordinance; or if a deteriorated building is a fire hazard existing or erected in violation of the terms of this Ordinance or any other local or state regulations, it shall be ordered to be demolished.

705. Disposal.

All demolition waste shall be disposed of in accord with all applicable Township, state and federal regulations.

SECTION 8 - HEARINGS

The Board of Supervisors shall conduct hearings in accord with the Pennsylvania Local Agency Act, as amended, and the following.

801. Failure to Request Hearing.

Any notice served pursuant to this Ordinance shall automatically become an order if a written request for a hearing is not filed with the Board of Supervisors within thirty (30) days after such notice is served.

802. Hearing Request.

- A. Any person affected by any notice which has been issued in connection with the enforcement of any provision of this Ordinance, may request and shall be granted a hearing on the matter before the Board; provided, that such person shall file with the Board in writing a request for a hearing setting forth a brief statement of the grounds therefore within thirty (30) days after the day the notice was served in accord with Section 603.
- B. Upon receipt of such request, a time and place for such hearing shall be scheduled and advertised in accord with the Pennsylvania Sunshine Law. The Board shall commence the hearing not later than sixty (60) days after the day on which the request was received in the Township office.

803. Board Action.

- A. At such hearing the person requesting the hearing shall be given an opportunity to be heard and to show cause why the public nuisance(s) described in the notice should not be abated. Township representatives shall also offer testimony and evidence related to the notice.
- B. Within thirty (30) days of such hearing, the Board will make written findings of fact from the testimony and evidence offered at the hearing and issue a decision to:
 - 1. Sustain the notice;
 - 2. Modify the directives which are the subject of the notice and attach conditions; or,
 - 3. Withdraw the notice.

If the Board sustains or modifies such notice, it shall be deemed to be an order.

804. Appeal.

Any aggrieved party may appeal the final order to the Court of Common Pleas of Luzerne County in accordance with the provisions of the Pennsylvania Local Agency Law, as amended.

805. Fee.

The person requesting the hearing shall pay the fee for such hearing as may be established by resolution of the Board of Supervisors.

SECTION 9 - VIOLATIONS; ENFORCEMENT REMEDIES; ACTION TO ABATE NUISANCE**901. Violations.**

Failure to comply with any provision of this Ordinance, removing a notice placard, and/or failure to comply with an order to abate a nuisance, shall be violations of this Ordinance.

902. Judgement; Placard Removal.

- A. Judgement - Any person who has violated or permitted the violation of any provisions of this Ordinance shall upon judgment thereof by any Magisterial District Judge be sentenced to pay a fine of not more than one thousand dollars (\$1,000.00) per day of violation, together with the costs of suit, ; and, in default of payment of the fine and cost shall be subject to imprisonment for a period not exceeding thirty (30) days. Each day of violation shall constitute a separate offense, for which a summary conviction may be sought. All judgments, costs, interest and reasonable attorney fees collected for the violation of this Ordinance, shall be paid over to the Township.
- B. Placard Removal - Any person removing the notice placard provided for in Section 605 shall, upon conviction before a Magisterial District Judge, be subject to a fine not exceeding one hundred (\$100.00) dollars; and, in default of payment of the fine and cost shall be subject to imprisonment for a period not exceeding fifteen (15) days.

903. Legal Actions.

In addition to any other remedy available at law or in equity, the Township may institute the following actions against the owner of any real property that is in serious violation of a code or for failure to correct a condition which causes the property to be regarded as a public nuisance:

- A. Personam Action - An in personam action may be initiated for a continuing violation for which the owner takes no substantial step to correct within six (6) months following receipt of an order to correct the violation, unless the order is subject to a pending appeal before the administrative agency or court.
- B. Recovery of Costs - Notwithstanding any law limiting the form of action for the recovery of penalties by the Township for the violation of a code, the Township may recover, in a single action under this Ordinance, an amount equal to any penalties imposed against the owner and any costs of remediation lawfully incurred by, or on behalf of, the Township to remedy any code violation.
- C. Asset Attachment
1. General Rule - A lien may be placed against the assets of an owner of real property that is in serious violation of a code or is regarded as a public nuisance after a judgment, decree or order is entered by a court of competent jurisdiction against the owner of the property for an adjudication under Section 903.
 2. Association or Trust - Nothing in this Ordinance shall be construed to authorize, in the case of an owner that is an association or trust, a lien on the individual assets of the general partner or trustee, except as otherwise allowed by law, limited partner, shareholder, member or beneficiary of the association or trust.

904. Out-of-State Owners of Real Estate.

A person who lives or has a principal place of residence outside this Commonwealth, who owns property in this Commonwealth against which code violations have been cited and the person is charged under 18 Pa.C.S. (relating to crimes and offenses), and who has been properly notified of the violations may be extradited to this Commonwealth to face criminal prosecution to the full extent allowed and in the manner authorized by 42 Pa.C.S. Ch. 91 (relating to detainers and extradition).

905. Association and Trust Owners.

Where, after reasonable efforts, service of process for a notice or citation for any code violation for any real property owned by an association or trust cannot be accomplished by handing a copy of the notice or citation to an executive officer, partner or trustee of the association or trust or to the manager, trustee or clerk in charge of the property, the delivery of the notice or citation may occur by registered, certified or United States Express mail, accompanied by a delivery confirmation:

- A. To the registered office of the association or trust.
- B. Where the association or trust does not have a registered office, to the mailing address used for real estate tax collection purposes, if accompanied by the posting of a conspicuous notice to the property and by handing a copy of the notice or citation to the person in charge of the property at that time.

906. Abatement by Township and Recovery of Costs.

In addition to the other fines, penalties and costs which may be imposed by this Section 9, if the owner or person in control of any deteriorated or dangerous premises or condition constituting a violation of this Ordinance, fails to respond to a notice of violation directing the removal or abatement of the public nuisance or correction of the violation within the time limit prescribed by the notice, or fails to appeal to the Board of Supervisors, or fails to comply with the determination of the appeal made by the Board of Supervisors, the Enforcement Officer and/or the Board of Supervisors shall be empowered to cause such work of abatement to be commenced and/or completed by the Township, the Township may enter a municipal lien upon the premises to recover the cost and expense thereof, together with a penalty of ten (10) percent .

907. Other Remedies.

In addition to the fines, judgments, and/or imprisonment remedies of this Section 9, the Board of Supervisors reserves the right to pursue independent and cumulative remedies at law or equity, including, but not limited to, reimbursement of all costs and reasonable attorney fees.

SECTION 10 - TOWNSHIP DENIAL OF PERMIT AND APPROVALS**1001. Denial.**

- A. Serious Violation - The Township or a Township board under Section 1003 may deny issuing to an applicant a Township permit, if the applicant owns real property in the Township for which there exists on the real property a serious violation of State law or a code and the owner has taken no substantial steps to correct the violation within six (6) months following notification of the violation and for which fines or other penalties or a judgment to abate or correct were imposed by a magisterial district judge or municipal court, or a judgment at law or in equity was imposed by a court of common pleas.
- B. Stay of Supersedeas - No permit or approval shall be denied in the case of a property for which the judgment, order or decree is subject to a stay or supersedeas by an order of a court of competent jurisdiction or automatically allowed by statute or rule of court until the stay or supersedeas is lifted by the court or a higher court or the stay or supersedeas expires as otherwise provided by law. Where a stay or supersedeas is in effect,

the property owner shall so advise the Township seeking to deny a Township permit.

- C. Exceptions to Denial - The Township or Township board shall not deny a Township permit to an applicant if the Township permit is necessary to correct a violation of State law, a code or an ordinance.
- D. Notice Information - In issuing a denial of a permit based on an applicant's failure to abate a serious violation of State law or a code on real property that the applicant owns in this Commonwealth, the Township or Township board shall indicate the street address, municipal corporation and county in which the property is located and the court and docket number for each parcel cited as a basis for the denial. The denial shall also state that the applicant may request a letter of compliance from the appropriate State agency or Township, in a form specified by such entity as provided in this Section 10.

1002. Proof of Compliance.

- A. Letter - All Township permits denied in accord with this subsection may be withheld until an applicant obtains a letter from the appropriate State agency or Township indicating the following:
 - 1. The property in question is now in State law and code compliance; or
 - 2. The owner of the property has presented and the appropriate State agency or Township has accepted a plan to begin remediation of a serious violation of State law or a code. Acceptance of the plan may be contingent on:
 - a. Beginning the remediation plan within no fewer than thirty (30) days following acceptance of the plan or sooner, if mutually agreeable to both the property owner and the Township.
 - b. Completing the remediation plan within no fewer than ninety (90) days following commencement of the plan or sooner, if mutually agreeable to both the property owner and the Township.
- B. Failure to Act - In the event that the appropriate State agency or the Township fails to issue a letter indicating State law or code compliance or noncompliance, as the case may be, within forty-five (45) days of the request, the property in question shall be deemed to be in compliance for the purpose of this Section 10.
- C. Form of Letter - The applicable State agency or the Township shall specify the form in which the request for a compliance letter shall be made.
- D. Letter Verification - Letters required under this section shall be verified by the appropriate Township officials before issuing to the applicant a Township permit.

1003. Municipal Boards.

- A. Jurisdiction - Township permits may be denied by a board in accord with the requirements of this Section 10 to the extent that approval of the Township permit is within the jurisdiction of the board. For purposes of this section, "board" shall mean a zoning hearing board or other body granted jurisdiction to render decisions in accord with the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code.
- B. Township Appearance - In any proceeding before a board other than the Board of Supervisors, the Township may appear to present evidence that the applicant is subject to a denial by the board in accordance with this Section 10.

C. Non-owner Applicants - For purposes of this subsection, a Township permit may only be denied to an applicant other than an owner if:

1. The applicant is acting under the direction, or with the permission, of an owner; and,
2. The owner owns real property satisfying the conditions of Section 1003.C.1.

1004. Applicability of Other Law.

A denial of a permit shall be subject to the provisions of 2 Pa.C.S. Chs. 5 Subch. B (relating to practice and procedure of local agencies) and 7 Subch. B (relating to judicial review of local agency action) or the Pennsylvania Municipalities Planning Code, for denials subject to the act.

SECTION 11 - CONFLICT WITH OTHER LAW

In the event of a conflict between the requirements of this Ordinance and federal requirements applicable to demolition, disposition or redevelopment of buildings, structures or land owned by or held in trust for the Government of the United States and regulated pursuant to the United States Housing Act of 1937 (50 Stat. 888, 42 U.S.C. § 1437 et seq.) and the regulations promulgated thereunder, the Federal requirements shall prevail.

SECTION 12 - RELIEF FOR INHERITED PROPERTY

Where property is inherited by will or intestacy, the devisee or heir shall be given the opportunity to make payments on reasonable terms to correct code violations or to enter into a remediation agreement under Section 1002.A.2 (relating to Township permit denial) with a municipality to avoid subjecting the devisee's or heir's other properties to asset attachment or denial of permits and approvals on other properties owned by the devisee or heir.

SECTION 13 - EMERGENCY CASES

Whenever the Board of Supervisors determines that an emergency exists which requires immediate action to protect the public health, welfare or safety, the Board may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as is necessary to correct the violation and eliminate the emergency. Notwithstanding the other provisions of this Ordinance, such order shall be effective immediately. The costs of such emergency correction shall be collected in the same manner as provided in Section 903.B.

SECTION 14 - 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 of this Ordinance. It is hereby declared as the intent of Nescopeck Township that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 15 - REPEALER

All Ordinances or parts of Ordinances which are inconsistent herewith are hereby repealed.

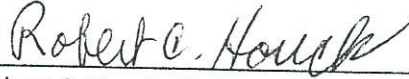
SECTION 16 - MUNICIPAL LIABILITY

Nescopeck Township, and its agents, officials and representatives shall not under any circumstances be liable or legally responsible for activities or conditions which constitute a public nuisance under the terms of this Ordinance. Any liability or damages resulting from activities or conditions constituting a public nuisance are the sole responsibility of the owner of the property, or the person or persons responsible for said activity or condition. The failure to enforce the terms of this Ordinance shall not constitute a cause of action against Nescopeck Township or its agents, officials or representatives.

SECTION 17 - EFFECTIVE DATE

This Ordinance shall become effective five (5) days after the adoption thereof.

ENACTED AND ORDAINED into law by the Board of Supervisors of Nescopeck Township, Luzerne County, Pennsylvania, this 12 day of December of 2013.



Robert C. Houck, Chairman

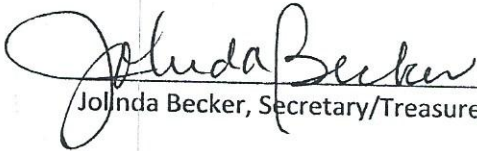


Douglas Brown, Vice-Chairman



Michael Winder, Supervisor

ATTEST:



Jolinda Becker, Secretary/Treasurer