

**ORDINANCE NO. 3-2018**

AN ORDINANCE OF THE TOWNSHIP OF CENTER, BEAVER COUNTY, PENNSYLVANIA, REPEALING ORDINANCE 275 AND REPLACING WITH AN ORDINANCE REGULATING THE DESIGN, CONSTRUCTION, USE, LOCATION, MAINTENANCE, AND ALTERATION OF EXCAVATION, FILLING AND GRADING OF LAND SITUATE IN THE TOWNSHIP OF CENTER; REQUIRING APPLICATION FOR PERMISSION TO PERFORM SUCH WORK AND AUTHORIZING PERMITS THEREFORE; PRESCRIBING FEES FOR THE ISSUANCE OF SUCH PERMITS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF.

BE IT ENACTED AND ORDAINED by the Board of Supervisors of the TOWNSHIP OF CENTER, a municipal corporation under The Second Class Township Code situate within the County of Beaver in the Commonwealth of Pennsylvania, AND IT IS HEREBY ENACTED AND ORDAINED.

SECTION 1. TITLE

This ordinance shall be known and may be cited as the “Grading Ordinance of the Township of Center”.

SECTION 2. PURPOSE

This Ordinance repeals in its entirety Ordinance 275 which was adopted September 1, 1975. The purpose of this Ordinance is to regulate the design, construction, use, location, maintenance, and alteration of excavation, filling, and grading of land situate within the Township of Center; it is the intent of this Ordinance to provide minimum standards to safeguard persons and property from hazard and loss resulting from erosion, rock and soil slippage, sediment production, and other soil and water management problems inherent in unregulated excavation, filling, and grading operations.

### SECTION 3. DEFINITIONS

Wherever used in this Ordinance the following words shall have the meaning ascribed below unless the context clearly indicates a different meaning. The singular shall include the plural and the masculine shall include the feminine.

(a) Bedrock shall mean natural rocklayer, whether hard or soft, in place at ground surface or beneath unconsolidated surficial deposits.

(b) Earth Material shall mean any rock, sand, gravel, natural soil or other similar material.

(c) Erosion shall mean the detachment or movement of earth material from premises by water, wind, ice or gravity and shall include such processes as gravitational creep.

(d) Excavation shall mean the mechanical removal, uncovering, displacement or relocation of earth material and shall include conditions resulting from excavation.

(e) Fill shall mean the mechanical deposit of earth material to a new location and shall include conditions resulting from filling.

(f) Grading shall mean the excavation and/or fill of earth materials and shall include conditions resulting from grading.

(g) Hazard shall mean a danger or potential danger to person or property and shall include any adverse effect to the safety, use or stability of land, streams, water supply, public ways, structures, utilities, storm and sanitary sewers.

(h) Person shall mean any natural person, association, corporation, partnership, utility, local agency (as defined in Section 2 of the Local Agency Law, 53 P. S. § 11302 (b)), administrative agency (as defined in Section 2 of the Administrative Agency Law, 71 P. S. § 1710.2 (b)), or authority (as defined in Section 2 of the Municipality Authorities Act or 1945, 53 P. S. § 302 (a)), any agent or agency thereof, and any combination of the foregoing.

(i) Site shall mean any lot, parcel, or tract of land or adjoining combinations thereof, situate within the Township of Center, Beaver County, Pennsylvania.

(j) Solid Waste shall mean ashes, garbage, refuse, radioactive material, demolition materials, yard waste, deleterious materials and industrial wastes.

(k) Township Engineer – The consulting professional engineers licensed by the Commonwealth of Pennsylvania to practice engineering, knowledgeable in the branch of civil engineering, who have been retained by the Board of Supervisors of the said Township of Center.

(l) Grading Permit Administrator – The Township Engineer or other duly authorized representative of the Township.

#### SECTION 4. PERMITS

Except as specifically exempted in Section 6, no site shall be excavated, filled and/or graded, except under the conditions, restrictions and regulations as prescribed herein and set forth in permits granted by the Township Engineer for such purpose.

#### SECTION 5. EMERGENCY REPAIRS

Except for the emergency repairs necessary for the safety of persons and/or property, no person shall undertake to excavate, fill and/or grade any site except pursuant to a permit applied for and issued in advance of the undertaking of such work. Where emergency repairs are necessitated, an application for permit as described in Section Eight hereof shall be made within five (5) days following the completion of such work. Such application shall be accompanied by the fees prescribed in Section Fifteen hereof and thereafter the remaining sections of this Ordinance shall apply as if no such work was undertaken or prosecuted prior to the grant of permit.

## SECTION 6. EXCEPTIONS

A grading permit will not be required for any of the following situations provided landslide prone soils are not present. Landslide- prone soils must be evaluated by a professional engineer and the conclusions provided to the Township with the grading permit application:

(1) Grading which is limited to mining, quarrying or stockpiling of coal, rock, sand, aggregate or clay that satisfy requirements of regulations of the Commonwealth of Pennsylvania and/or the Pennsylvania Department of Environmental Protection.

(2) Grading which is limited to solid waste disposal areas or sanitary landfills operated in accordance with the requirements and rules of the Pennsylvania Department of Environmental Protection and the Commonwealth of Pennsylvania.

(3) Excavation which does not exceed five (5) feet in vertical depth, does not result in a cut or fill slope steeper than three (3) horizontal to one (1) vertical and does not exceed an area of five thousand (5,000) square feet in areas of soils.

(4) Fill which does not exceed five (5) feet in vertical depth at its deepest point measured from the top of such fill to the natural ground surface, does not exceed five thousand (5,000) square feet in area, and the slope of fill is not steeper than three (3) horizontal to one (1) vertical.

(5) Grading authorized by a building permit properly issued by the Zoning Officer. Grading under the authorization of a building permit must follow the standards and requirements of this Ordinance.

(6) Soil excavated under the authorization of a building permit properly issued by the Zoning Officer which is temporarily stockpiled on the same site as excavation; provided, however, that if the material from such excavation is thereafter to be used for fill purposes for which a grading permit is required, such permit must be obtained prior to such use in accordance with the requirements of this Ordinance. In addition, if excavated material

is stockpiled on a site for a period of longer than one hundred twenty (120) days, then a permit hereunder shall be required prior to making use of the fill on said site.

## SECTION 7. HAZARDOUS CONDITIONS

Whenever the Board of Supervisors, upon the recommendation of its Township Engineer, determines that any existing excavation, embankment, or fill has become a hazard as defined in Section 3 hereof, the owner of the property upon which the excavation, embankment or fill is located, or other person or agent in control of said property, upon receipt of notice in writing from the Township Engineer, shall within the reasonable period specified therein, repair, reconstruct or remove such excavation, embankment, or fill so as to eliminate the hazard.

If, after such notification, the property owner has not made the necessary repairs within the time adopted, then the governing body may direct government employees to make the required repairs and the cost thereof plus twenty percent (20%) shall be paid by the applicant/property owner; and such cost shall be recovered by using the performance bond, by action in assumpsit, or by filing a lien against the property as provided by law.

## SECTION 8. APPLICATION PROCEDURES

Every person shall be required to submit application in writing for such permit upon a form prescribed by the Township of Center. All applications shall be submitted in triplicate to the Township. Such applications shall identify the name and address of the applicant, the owner of the site, the application shall include a brief written description of the site, the nature and location of the work proposed to be undertaken therein, and such other information as the Township or Township Engineer may further require.

The following shall be attached to and made part of each application required to be submitted hereunder, as prepared, signed and sealed by a registered professional engineer, surveyor, geologist or landscape architect:

(a) A plot plan showing the site, the area within the site where work of excavation, filling and/or grading is intended to be undertaken and for which permission is sought, boundary lines and adjoinders, abutting streets and easements, surface and subsurface utilities and waterways, and structures erected upon the site and adjoining sites;

(b) a contour map at a scale of 1" = 100' or less showing the present contours at a two foot interval, of the site and the proposed contours which will govern the work intended to be undertaken and for which permission is sought;

(c) a plan showing cross sections of the proposed cut and/or fill, with 1" = 10' scale, horizontal and vertical;

(d) a plan showing the method of benching proposed to be employed in proposed operations of cutting and/or filling, the details and location of proposed surface and subsurface drainage facilities; mulching and soil treatments, seeding locations and schedules, debris basins and diversion channels;

(e) a plan showing all structures to be utilized in the proposed operations, describing location, structural design, method of construction, structural materials, and backfilling operations;

(f) a complete documentation of soil tests, and core borings illustrating locations and elevations of tests, borings, and results of aforementioned tests. A geotechnical report must be submitted for all earth disturbance activities greater than 250 cubic yards, or as otherwise required by the Township Engineer. The geotechnical report shall include a detailed on-site subsurface investigation prepared to the satisfaction of the grading administrator, signed and sealed by a registered professional engineer licensed in the Commonwealth of Pennsylvania and experienced in geological sciences and erosion control. The professional shall certify that he has inspected the site and reviewed the subsurface investigation data. The professional shall provide a statement and certification that it is his professional opinion that

the proposed slope will have sufficient stability and that the construction will not result in injury to persons, adjacent property, utilities, streets, alleys, or structures or, when complete and stabilized, be subject to accelerated erosion. The report which shall include specific findings and recommendations including, but not limited to, core boring methods of construction, benching, minimum compaction rates, surface and subsurface drainage and erosion control measures. During construction, the geotechnical engineer shall be required to conduct site inspections, conduct or observe compaction tests, and otherwise attempt to ensure that the construction is proceeding in accordance with his/her recommendations and good engineering and construction practices. At the conclusion of construction, and prior to release of the bond or financial security provided in connection with the permit, the geotechnical engineer shall provide a written report including compaction test results and a signed and sealed certification stating that he has inspected the construction of the fill slope(s) and that it is his professional opinion that the slope(s) was/were constructed in accordance with his recommendations and sound engineering and construction practices.

(g) an estimated date of beginning the proposed work and time of completion.

## SECTION 9. COMPLETION AND PERFORMANCE GUARANTEE

Before issuance of a grading permit, the applicant shall post a bond with corporate surety, or other approved security, in the amount of one hundred ten percent (110%) of the anticipated cost of the complete scope of work needed to be performed by the applicant to comply with this Ordinance. The cost as reviewed by the Township Engineer shall include, but not be limited to, the grading work, stormwater management and erosion control facilities to guarantee completion of said work and facilities in strict compliance with the requirements of this Ordinance and to the approval of the Township Engineer. When all requirements of this permit have been met and the work has been completed in a satisfactory manner, the full amount of security shall be returned to the person posting said security.

No security shall be required if security is posted for construction and/or site improvements which already covers the cost of grading and other control facilities. Applicants seeking issuance of a grading permit for work associated with a Land Development Plan shall supply surety in the form of a Performance Guarantee, per Section 311 of the Township Subdivision and Land Development Ordinance No. 1-2003, prior to issuance of a grading permit.

#### SECTION 10. ISSUANCE OF PERMIT

The Township Engineer shall issue a permit only after it has been determined that the proposed work will be in conformance with all applicable requirements and regulations.

The Township may attach conditions to a grading permit as reasonably necessary to prevent danger to property, including any sewer, street, storm drain, or watercourse, or to prevent work from being conducted in a manner hazardous to property, or in a manner likely to create a nuisance. After the actual work begins, the Township or the Township Engineer may require additional or revised controls from time to time in the event the grading administrator and/or Township Engineer determines that the originally approved controls are inadequate.

Issuance of the Grading Permit authorizes commencement only of the excavation, earthwork and/or grading and associated erosion and sedimentation controls as depicted on the Approved Grading plans. Construction of any other improvements is prohibited until Land Development approval is granted by the Board of Supervisors and all conditions of approval have been met.

#### SECTION 11. PERMIT CHANGES

After the issuance of a permit by the Township Engineer, 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 Township Engineer.

## SECTION 12. PLACARDS

In addition to the permit, the Township Engineer shall issue a placard to be signed by the Township Engineer and which shall set forth the number of the permit and the date of its issuance; the owner shall cause the placard to be prominently displayed on the premises during the time the work is in progress. The failure or neglect of the applicant to prominently post the placard and maintain the same throughout the duration of the permitted work shall be a violation of this Ordinance. Duplicate placards shall be issued by the Township Engineer without additional charge. Loss, destruction or disfacement of any posted placard must be reported to the Township Secretary within 24 hours after such event or casualty, Sundays and holidays excluded.

## SECTION 13. EXPIRATION OF PERMITS

All permits shall expire upon completion of the work authorized therein to be done or within one year from the issuance thereof, whichever event shall first occur. Permits may be issued by the Township Engineer for period in excess of one year upon cause shown. Any provisions hereof to the contrary notwithstanding, a permit shall expire if the work authorized therein to be done is not commenced within 180 day from the date the permit shall be issued.

## SECTION 14. INSPECTION AND REVOCATION

The permittee, or his agent, shall notify the Township Engineer in writing of the start and completion of the permitted work at least two working days before the commencement or completion of such work. During the permitted work period the Township Engineer, 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 municipal laws and ordinances. In the event the Township Engineer discovers that the work does not comply with the permit application and/or other applicable laws and ordinances, or that there has been a false statement or misrepresentation by any applicant, the Township

Engineer shall revoke the permit and report such fact to the Board of Supervisors for remedial and punitive action as provided in or allowed by this Ordinance.

## SECTION 15. FEES

Applications for a permit shall be accompanied by a basic fee, payable to the Township, based upon the estimated cost of the proposed work as approved by the Township Engineer at the following rates:

<u>Estimated Costs</u>	<u>Basic Fee</u>
\$100.00 to \$5,000.00	\$125.00
\$5,001.00 to \$10,000.00	\$200.00
\$10,001.00 or more	\$250.00 plus \$10.00 per \$1,000.00 or fraction thereof in excess of \$10,001.00.*

\*Provided, however that the basic fee shall not exceed \$3,000.

In addition to the Basic Fee, as set forth above, the applicant shall reimburse the Township for all fees and expenses incurred by the Township related to an application and/or grading permit under this Chapter including, but not limited to, the reasonable and necessary charges of the Township's professional consultants, the Township Engineer, and the Township Solicitor for review and report on an application and/or grading permit under this Chapter and the inspection of improvements and/or work related thereto. Such additional charge, to be paid by the Applicant as a Supplemental Fee, shall in no event exceed the actual cost which the Township shall incur for such services. Upon filing an application, the applicant agrees to pay costs actually incurred by the Township, regardless of whether the work related thereto is ever initiated or completed.

## SECTION 16. DENIAL OF PERMIT

When in the opinion of the Township Engineer the work proposed by the Applicant is likely to endanger any person or property, or any street or alley, or is likely to create hazardous conditions, the permit shall be denied. In determining whether the proposed work is likely to endanger persons or property, streets or alleys, or create hazardous conditions, the Township Engineer shall give due consideration to possible saturation by rains, earth movements, run-off surface waters, and subsurface conditions such as the stratification and faulting of rock, aquifers, springs and the nature and type of the soil or rock.

## SECTION 17. APPEALS

The Board of Supervisors shall entertain appeals from the provisions of these regulations or the denial of permit by the Township Engineer. Any applicant or permit holder shall have the right to appeal to any Court of competent jurisdiction from any decision of the Board of Supervisors. Such appeal must be in writing and filed with the Board of Supervisors of the Township within thirty (30) days after the determination by the Township Engineer. The Board of Supervisors shall set a time and place, not less than ten (10) nor more than thirty (30) days following receipt of such appeal, for the purpose of hearing the appeal. Notice of the time and place of the hearing shall be given to all parties. The right of appeal from the adjudication made by the Board of Supervisors shall be controlled by the provision of the Local Agency Law.

## SECTION 18. MAINTENANCE

(1) The owner of any property on which an excavation or fill has been made shall maintain in good condition and repair the excavation or fill permitted, and also all retaining walls, cribbing, drainage structures, fences, ground cover, and any other protective devices as may be a part of the permit requirements.

(2) If, at any time subsequent to the completion of the grading work, the cut face or fill slope shall evidence signs of deterioration, erosion, or other evidence which might be detrimental to the properties above and below the grading site, the Board of Supervisors, upon the recommendation of its Township Engineer, may direct the property owner to take necessary remedial steps in accordance with sound engineering practice to restore the grading to a safe condition, and to do so in a reasonable period of time.

#### SECTION 19. DISCLAIMER OF LIABILITY

Neither the issuance of a permit under the provisions of this Ordinance, nor the compliance with the provisions hereof, or with any condition imposed by the Township Engineer, shall relieve any person from responsibility as may be determined by law for damage to persons or property resulting from permitted operations nor impose any liability upon the Township Engineer, the Township of Center, its governing board, agents, officers or employers, for injury to persons or property.

#### SECTION 20. PENALTIES

Any person who fails to comply with the provisions and requirements of this Ordinance, or who shall fail or refuse to comply with any notice, order or direction of the Township Engineer or other authorized official, shall, upon conviction thereof before a District Magistrate, be sentenced to pay a fine of not less than \$250.00 nor more than \$1,00.00 for each offense and costs of prosecution, and in the default of the payment of said fine and costs, to undergo imprisonment for a period not exceeding thirty (30) days. Each day during which any violation of this Ordinance constitutes shall constitute a separate offense. In addition to the above penalties all other actions are hereby reserved by the Board of Supervisors, including without limitation an action in equity for the proper enforcement of this Ordinance. The imposition of a fine or penalty for any violation of, or non-compliance with, this Ordinance shall not excuse the violation or non-compliance or permit it to continue. The Board of Supervisors shall have the right, and does hereby reserve the right, to compel strict performance with the provisions of this Ordinance and/or the conditions, regulations and

restrictions of any permit issued hereunder by action at law or in equity. Any excavation, filling and/or grading in non-compliance with this Ordinance may be declared by the Board of Supervisors to be a public nuisance and abatable as such.

**SECTION 21. SEVERABILITY**

The provisions of this Ordinance are severable. If any sentence, clause or section 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 or sections of this Ordinance. It is hereby declared to be the intent of the Board of Supervisors of the Township of Center that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause or section not been included herein.

**SECTION 22. EFFECTIVE DATE**

This Ordinance shall be effective upon passage thereof.

**SECTION 23. STANDARDS**

The standards contained in the appendix to this Ordinance, the same by reference made a part hereof, are hereby established as the standards and criteria governing issuance of permits by the Township Engineer.

ENACTED AND ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_ 2018.

TOWNSHIP OF CENTER

(SEAL)

by \_\_\_\_\_

Chairman of the Board of  
Supervisors

ATTEST:

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Secretary

## APPENDIX

Standards governing issuance of permits by the Township Engineer:

### SECTION 100. STANDARDS FOR EXCAVATION

#### 100.1

Maximum slope steepness of a cut should be 3 horizontal to 1 vertical for minimizing erosion and landslide hazard.

#### 100.2

Soils which are not or have a low probability of being landslide-prone, shall have a slope no steeper than 2 horizontal to 1 vertical.

#### 100.3

Cut slopes which are steeper than those specified above may be allowed provided one or both of the following is satisfied:

(a) The material in which the excavation is made is sufficiently stable to sustain a slope steeper than the slope specified above for recognized soil conditions on the site. A written statement, signed and sealed by a professional engineer, stating that the steeper slope will have sufficient stability and that risk of creating a hazard will be slight, must be submitted to the Township Engineer.

(b) A retaining wall or other approved support, designed by a professional engineer and approved by the Township Engineer is provided to support the face of excavation.

100.4

The top or bottom edge of slopes shall generally be set back from adjacent property lines or street right-of-way lines in order to permit the normal rounding of the edge without encroaching on the abutting property or street.

## SECTION 200. STANDARDS FOR FILLS

200.1

No fill should be placed over trees, stumps or other material which could create a hazard. Limbs can be chipped and mixed with the topsoil.

200.2

All fills should be compacted to provide stability of fill material and to prevent undesirable settlement or slippage.

200.3

Clean soil or earth should be placed over the top and exposed surfaces of the fill to a depth sufficient to conceal all materials used in the fill other than clean soil or earth. If the filling operation is intermittent, the top and exposed surfaces of the fill should be covered at the completion of each lift.

200.4

The top or bottom edge of slopes should generally be set back from adjacent property lines or street right-of-way lines in order to permit the normal rounding of the edge without encroaching on the abutting property or street.

SECTION 300. STANDARDS FOR MINIMIZING EROSION AND SEDIMENT

300.1

An erosion and sedimentation control plan shall be prepared in accordance with the provisions of Pennsylvania Title 25, Environmental Resources, Chapter 102, Erosion and Sediment Control, as amended, prior to commencement of any grading or other earth disturbance activity. For all applications proposing an earth disturbance of 5,000 square feet or greater, documentation that the erosion and sedimentation control plan has been reviewed and deemed adequate by the Beaver County Conservation District (BCCD) must be provided prior to issuance of the Grading Permit. Documentation of issuance of a National Pollutant Discharge Elimination System (NPDES) Permit for Stormwater Discharges Associated with Construction Activities must be provided for all applications proposing earth disturbances of one acre or greater.

300.2

The permittee shall be responsible for the installation, maintenance, and, if deemed necessary by the grading administrator, the replacement of BMPs to control erosion and sedimentation at all times. This shall include the placement of silt fences, sedimentation basins, permanent and temporary rock-lined ditches, and piping so as to prevent sedimentation from occurring and leaving the work site.

SECTION 400. STANDARDS FOR RETAINING WALLS

400.1

Definition of Retaining Wall. A structure composed of concrete, steel or other approved building material constructed for the purpose of supporting a cut or filled embankment which would otherwise not comply with the requirements of the standards set forth in this Ordinance, and which is more than 4 feet in height as measured on the exposed vertical surface of the wall.

400.2

If a retaining wall is constructed to satisfy the requirements of this Ordinance, a building permit, as provided for by other municipal regulation shall not be required. The grading permit will apply to the retaining wall, and the requirements for inspection, etc. as stated herein will be complied with.

400.3

Retaining walls must be constructed in accordance with sound engineering practice. The design and construction plans for retaining walls shall be prepared by and bear the seal of a professional engineer registered to practice in the Commonwealth of Pennsylvania. A Geotechnical Report, prepared by and bearing the seal of a professional engineer shall be submitted with the design and construction plans for all retaining walls.

400.4

The backfilling of retaining walls and the insertion of subterranean drainage facilities shall be done strictly in accordance with the provisions of this Ordinance and the specifications of the permit.

400.5

In general, where a wall is replacing an exposed slope, the vertical face of the wall shall be 5 feet back from the adjoining property. This requirement may be set aside when the proposed retaining wall is a joint venture between adjacent property owners, and appropriate documents so stating are filed with the application for the permit.

400.6

A fence not less than four feet in height, of a design approved by the Township and meeting the requirements of the Zoning Ordinance shall be placed at the top of all retaining walls.

SECTION 500. STANDARDS FOR DRAINAGE PROVISIONS

500.1

Adequate provisions shall be made to prevent any surface or subsurface water from damaging:

- (a) the cut face of an excavation;
- (b) the sloping surface of a fill; and
- (c) adjacent property affected by the change in the existing natural runoff pattern.

No grading work shall commence, nor shall a grading permit be issued prior to submission and approval of a stormwater management plan in conformance with the requirements of the Center Township Stormwater Management Ordinance No. 7-2014, as amended.