

HARBORCREEK TOWNSHIP

ORDINANCE NO. 81-89

BLUFF SET BACK ORDINANCE



ORDINANCE NO. 81-89

A. WHEREAS, the Board of Supervisors are required by Act of May 13, 1980, P.L. (32 P.S. 5201 et seq.) to adopt a bluff setback ordinance for Designated bluff recession hazard area, said ordinance is deemed necessary for the promotion of safety and the general welfare of residents of Harborcreek Township.

Section 1. Purpose and Policy.

The policy and purpose of this ordinance is to:

1. Encourage planning and development in bluff areas which is consistent with sound land use practices.
2. Protect people and property in bluff areas from danger and damages associated with the inevitable recession of bluffs.
3. Prevent and eliminate urban and rural blight which results from the damages of bluff erosion and recession.
4. Minimize the expenditure of public and private funds for shoreline protection and bluff stabilization structures and activities.

Section 2. Scope.

In any designated bluff recession hazard area, no person shall construct, install or engage in substantial improvement to any structure, or any utility facility such as but not limited to water, electric, gas, oil, or telephone facilities, in violation of the bluff setback requirements established by this ordinance.

Section 3. Definitions.

Bluff - A high or bold headland with a broad precipitous cliff face overlooking a lake.

Bluff Line - the edge or crest of the bluff.

Bluff Recession - The loss of material along the bluff face caused by the direct or indirect action by one or a combination of groundwater seepage, water currents, wind generated water waves, or high water levels.

Bluff Recession Hazard Area - An area or zone where the rate of progressive bluff recession creates a substantial threat to the safety or stability of nearby existing or future structures or utility facilities.

Department - The Department of Environmental Resources of the Commonwealth.

Development -

(i) The improvement of one lot or two or more contiguous lots, tracts, or parcels of land for any purpose including but not limited to:

(A) a group of two or more buildings; and

(B) the division or allocation of land or space between or among two or more existing or prospective occupants by means of or for the purpose of streets, common areas, leaseholds, condominiums, building groups, or other features; or

(ii) A subdivision of land.

High Bank - A bank over five feet high.

Market Value - The value of a structure determined by a certified appraisal or by determining the assessed value of a structure and applying the assessment ratio of Erie County in which the structure is located.

Minimum Bluff Setback Distances - The shortest horizontal distance from a point on the bluff line to a point on a structure.

Persons - An individual, partnership, public or private association or corporation, firm, trust estate, municipality, governmental unit, public utility or other legal entity which is recognized by law as the subject of right and duties. When used in a section prescribing or imposing a penalty, the term shall include members of a partnership; officers, members, servants, and agents of an association; and officers, agents, or servants of a corporation but shall exclude any department, board, bureau or agency of the Commonwealth.

Parcel - A piece of ground that existed as an independent tax lot on the records of the county prior to its conclusion in a municipality's designated bluff recession hazard areas.

Plat - A map, drawing, or print accurately drawn to scale showing the proposed or existing location of all structures.

Structure - A man-made object having an ascertainable stationary location on or in land whether or not affixed to the land; structures are classified into three categories: residential, commercial, and light and heavy industrial.

(i) Residential structures are defined as a place providing the habitation for an individual or group of individuals. Structures in this category include but are not limited to single family homes, duplexes, and summer cottages as well as any secondary structure associated with residential structure. 50'

(ii) Commercial structures are defined as a place where commodities are exchanged, bought, or sold. Structures in this category include but are not limited to grocery stores, hardware stores, clothing shops, and pharmacies as well as any secondary structure that is associated with the commercial structure. 75'

(iii) Light and heavy industrial structures are defined as a place where 100'

materials are refined, produced, or fabricated and stored prior to shipment to commercial establishments. Structures in this category include but are not limited to factories, power plants, and warehouses as well as a secondary structure that is associated with the industrial structure. Hospitals, nursing homes, schools, and other public service facilities - because of the dangers inherent in bluff recession - will for purposes of setback requirements be considered light and heavy industrial structures.

Structure Life Span - The useful life of the structure considering both economic and physical factors.

Substantial Improvement -

(i) A repair, reconstruction, or improvement of a structure the cost of which equals or exceeds 50% of the market value of the structure either:

(A) before the improvement or repair is started; or

(B) if the structure has been damaged and is being restored, before the damage occurred; or

(ii) Repair, reconstruction, or improvement of a structure occurring over a five-year period, the aggregate cost of which equals or exceeds 50% of the market value of the structure either;

(A) before the first improvement or repair is started; or

(B) if the structure has been damaged and is being restored, before the damage occurred.

(iii) Substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structure part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include any project for improvement of a structure to comply with existing State or local health, sanitary, or safety specifications which are solely necessary to assure safe living

Within 50' setback

- Appraisal
- Construction cost
is determined if
its substantial
improvement.

Outside 50'

Just
Pictures before &
after

Outside 100'
Nothing

~~within~~

conditions or any alteration of a structure listed on the National Register of Historic Places or a State inventory of historic places.

Section 4. Permits-General Regulations

No person shall construct, install, or engage in substantial improvement to any structure or utility facility such as but not limited to water, sewage, electric, gas, oil, or telephone in a designated bluff recession hazard area without first obtaining a written permit from the Code Enforcement Officer of Harborcreek Township.

1. The location and boundaries of the designated bluff recession hazard area shall be defined in Section 3 hereof and shall inland a horizontal distance of 100 feet from the bluff line.
2. There is hereby established a minimum bluff setback distance from the top of the bluff. The minimum bluff setback distance is 50 feet for residential structures, 75 feet for commercial structures, and 100 feet for industrial structures. It should be noted that the foregoing are minimum distances and because of variation in local bluff recession rates cannot guarantee that a structure located in a bluff recession hazard area will not be endangered by bluff recession within its useful life span.
3. Except as provided in Section 5 hereof, no permit shall be granted under this ordinance for the construction, installation, or substantial improvement of structures or utility facilities within the minimum bluff setback distance established by Section 4(2) hereof. Substantial improvement does not include any project for improvement of a structure to comply with existing State or local health, sanitary, or safety specifications which are solely necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places or a State inventory of

historic places.

4. A permit may be transferred only upon application to and written approval by the Code Enforcement Officer. No permit shall be transferred if a violation of this chapter exists at the time of application for transfer will expedite correction of the violation.

Section 5. Variances.

A request for a variance to the permit requirements of Section 4 thereof, may be granted only in the following cases:

1. When a parcel, established prior to a bluff recession hazard area designation, does not have adequate depth considering the minimum bluff setback requirements to provide for any reasonable use of the land. The variance may be granted only when each of the following criteria are met.
 - a. The structure and all associated structures and utility facilities shall be located on the property as far landward of the bluff line as allowed by other municipal ordinances.
 - b. The structure shall be designed and constructed as a moveable structure with proper engineering standards applicable to the subject area. Review and approval of the design shall be conducted by the Code Enforcement Officer and Building Inspector.
 - c. All construction materials, including foundations, shall be removed or disposed of as part of the moving operation. Access to and from the structure site shall be of sufficient width and acceptable grade to allow for moving of the structure.
2. When the proposed structure or utility facilities require access to the body of water and there is no feasible alternative for obtaining such access. A variance may be granted only for the discharge and withdrawal lines (infrastructure) that provide lake water for operating purposes and only when each of the following criteria are met:

- a. During the construction, the applicant or persons engaged in the actual placement of the infrastructure must utilize sound land use practices which will reduce disruption of the bluff edge and bluff face. These sound land use practices include but are not limited to methods to minimize: storm water run-off, increased soil erosion, changes to local drainage patterns, and changes to protective vegetative cover.
- b. The infrastructure providing the utility facility or structure access to the lake will be designed and constructed so that it is adequate protection of the bluff, the construction of the infrastructure will occur in a manner that minimized potential adverse or long-term disruption of the bluff face and in conformance with the provisions of Title 25, Chapter 102, Erosion Control.

Section 6. Monitoring.

The Code Enforcement Officer, prior to issuing a building permit for an improvement to a structure or utility facility within a bluff setback distance, shall:

1. Determine the cost of the proposed improvement.
2. Calculate the market value of the structure or utility facility in the manner prescribed by this ordinance.
3. Review the municipal building permit records to determine if previous permits for improvements have been issued during the previous five-year period for this structure or utility facility.
4. Determine whether this proposed improvement will be a substantial improvement of the structure or utility facility.

The Code Enforcement Officer will periodically inspect all permitted activities in the bluff recession hazard area to ensure that all building

activities are being conducted in conformance with the provisions of this ordinance.

Section 7. Administration.

The Code Enforcement Officer shall maintain, in a permanent file, all correspondence, requests for variance, applications for permits, and issuance or denial of such permits.

Section 8. Inspections.

An agent or employee of the municipality shall have the power to, upon presentation of proper credentials:

1. Enter any land for the purpose of surveying bluff recession hazard areas.
2. Enter any land in a bluff recession hazard area for the purpose of ascertaining the location of structure or structures.
3. Enter land or any structure located in a bluff recession hazard area for the purpose of ascertaining the compliance or non-compliance with this bluff setback ordinance.

When an agent or employee has been refused access to property for the purposes of conducting a survey or inspection as authorized by this section or reasonably requires access to such property without prior notice to the owner, such agent or employee may apply for an inspection warrant to any Commonwealth official authorized by law to issue a search or inspection warrant to enable him or her to have access and inspect such property. It shall be sufficient probable cause to issue an inspection warrant that the inspection is necessary to properly enforce the provisions of this ordinance.

Section 9. Violations.

1. Criminal penalties.
 - a. Any person other than the officers of a municipality, county,

or governmental unit who violates the requirements of this ordinance, is guilty of a summary offense and, upon conviction, shall be sentenced to pay a fine of not less than \$100 nor more than \$1,000 for each separate offense, and in default of the payment of such fine, to imprisonment for a period of not more than 60 days. All summary proceedings under this ordinance may be brought before any district magistrate of the county when the violation occurred, and jurisdiction is hereby conferred upon said district magistrates subject to appeal by either party in the manner provided by law for appeals from summary conviction, it shall be the duty of the district attorney of the county to represent the interests of the Commonwealth.

b. Any person who, within two years after a conviction is a summary proceeding as provided in Subsection (a), violates the requirements of this ordinance is guilty of a misdemeanor of the third degree and, upon conviction, shall be sentenced to pay a fine of not less than \$500 nor more than \$5,000 for each separate offense or to imprisonment for a period of not more than one year, or both.

c. Each day of continued violation of any provision of this ordinance shall constitute a separate offense under Subsections (a) and (b).

2. Civil Remedies.

a. Any activity conducted in violation of this ordinance is declared to be a public nuisance.

b. Suits to restrain, prevent or abate violations of this ordinance adopted may be instituted in equity or a law by any affected county or municipality, or any aggrieved person. Such proceedings may be prosecuted in the Commonwealth Court, or in the court of common pleas of the county where the activity has taken place, the condition exists, or the public affected, and

to that end jurisdiction is hereby conferred in law and equity upon such courts. Except in cases of emergency where, in the opinion of the court, the circumstances of the case require immediate abatement of the unlawful conduct, the court may, in its decree, fix a reasonable time during which the person responsible for the unlawful conduct shall correct or abate the same. The expense of such proceedings shall be recoverable from the violator in such manner as may now or hereafter be provided by law.

Section 10. Appeals.

1. The following procedures shall be used by the municipality:
 - a. Appeals from the decision of the Code Enforcement Officer may be made to the Zoning Hearing Board by any person aggrieved by any decision of the Code Enforcement Officer. Such appeal shall be taken within reasonable time as provided by the Rules of the Board, by filing with the Code Enforcement Officer and with the Board a notice of appeal specifying the grounds thereof. The Code Enforcement Officer shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken.
 - b. The Board shall hear and decide appeals and review any order, requirement, decision, or determination made by the Code Enforcement Officer in the enforcement or application of this ordinance, and upon such appeal may, in accordance with the provisions of this ordinance, reverse or affirm, wholly or in part, or modify any such order, requirement, decision or determination.

- c. If after a permit has been authorized by the Board, and such permit is not lifted from the office of the Code Enforcement Officer within a period of six (6) months from the date of authorization, then such authorization shall be null and void and no permit shall be issued thereunder.
 - d. The Board shall fix a reasonable time for the hearing of an appeal, shall give notice thereof as well as due notice, at least six (6) days prior to the hearing, in the press and by mail to the parties in interest at the address filed with the appeal, and shall decide the same within 45 days from the Code Enforcement Officer's decision. Upon the hearing of such appeal, any party may appear in person or be represented by Agent or Attorney.
2. An appeal of any action under this ordinance shall not act as a supersedeas. A supersedeas may be granted upon a showing by the petitioner:
- a. That irreparable harm to the petitioner or other interested parties will result if supersedeas is denied;
 - b. That there is a likelihood of the petitioner's success on the merits; and
 - c. That the grant of a supersedeas will not result in irreparable harm to the Commonwealth, the court of competent jurisdiction may grant such a supersedeas subject to such security as it may deem proper.

Section 11. Amendments.

This ordinance may be amended pursuant to public notice in a manner provided by the municipal planning code.

Section 12. Repealer and Savings Clause.

1. All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.
2. The provisions of this ordinance shall not affect any suit or prosecution pending or to be instituted to enforce any right or penalty or punish any offense under the authority of any ordinance or part hereof repealed by this ordinance.

Section 13. Effective Date.

This ordinance shall take effect on Wednesday, October 14th, 1981.

ORDINANCE #81-89-1

An Ordinance to amend Ordinance 81-89, known as the Harborcreek Township Bluff Set Back Ordinance by inserting the word "bank" into the definition of bluff.

Whereas, the Harborcreek Township Supervisors are required by Act of May 13, 1980, P.L. (32P.S. 5201 et seq) to adopt a bluff set back ordinance for designated bluff recession hazard area, said ordinance and amendment is deemed necessary for the promotion of safety and the general welfare of residence of Harborcreek Township.

Be It Enacted by the Supervisors of Harborcreek Township, Erie County, PA that Ordinance 81-89, known as Bluff Set Back Ordinance, be and the same is hereby amended as follows:

Section 1.

The definition of "Bluff" within Section 3 is deleted.

Section 2.

A new definition of Bluff shall be inserted into Section 3 to read:

Bluff - a high bank or bold headland with a broad precipitous cliff face overlooking a lake.

Section 3.

If any section, subsection, sentence, clause, phrase or portion of its application to any person or circumstances if for any reason is held invalid or unconstitutional by any court, such holdings shall not be construed to affect the validity of any of the remaining provisions. It is hereby declared that the legislative intent that this ordinance would have been adopted had such invalid or unconstitutional provision of its application not been included herein.

Section 4.

All Ordinances of parts of any Ordinance inconsistent herewith are hereby repealed.

BE IT ENACTED this 21 day of December, 1988.

HARBORCREEK TOWNSHIP SUPERVISORS

James L. Arney
Thomas L. Minick
Marion H. Deitz

ATTEST:

Cleanor L. Newgrave

I hereby certify that the foregoing ordinance was advertised in the Erie Morning News on December 5, 1988, a newspaper of general circulation in the municipality and was duly enacted and approved as set forth at a regular meeting of the Harborcreek Township Board of Supervisors held on December 14, 1988.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

In the second section, the author outlines the various methods used to collect and analyze the data. This includes both primary and secondary data collection techniques. The primary data was gathered through direct observation and interviews with key stakeholders. Secondary data was obtained from existing reports and databases.

The analysis of the data revealed several key trends and patterns. One of the most significant findings was the correlation between certain variables, which suggests a causal relationship. This insight is crucial for understanding the underlying factors that influence the outcomes.

Based on the findings, the author proposes several recommendations for improving the current processes. These include implementing more robust data management systems and enhancing the training of staff involved in data collection.

Finally, the document concludes by highlighting the need for ongoing monitoring and evaluation. The proposed changes should be implemented in a phased manner, with regular assessments to ensure their effectiveness.