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Blaine Township Corporate Land Development Ordinance

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Blaine Township
 Washington County, Pennsylvania
 Ordinance No. 2006-

AN ORDINANCE OF BLAINE TOWNSHIP, WASHINGTON COUNTY, PENNSYLVANIA, PROHIBITING PERSONS FROM USING CERTAIN CORPORATIONS OR SYNDICATES FOR LAND DEVELOPMENT; PROVIDING FOR CERTAIN LIMITED EXCEPTIONS TO THE PROHIBITION ON PERSONS USING CERTAIN CORPORATIONS OR SYNDICATES FOR LAND DEVELOPMENT; AND PROVIDING FOR ENFORCEMENT AND PENALTIES FOR VIOLATION OF THE ORDINANCE.

Section 1. Name. The name of this Ordinance shall be the "Blaine Township Corporate Land Development Ordinance."

Section 2. Authority. This Ordinance is enacted pursuant to the inherent, inalienable, and fundamental right of the citizens of the Township of Blaine to self-government, and by authority granted to the municipal government of Blaine Township by all relevant Federal and State laws and their corresponding regulations, including, without limitation, the following:

The Declaration of Independence, which declares that the people of Blaine Township are born with "certain unalienable rights" and that governments are instituted among people to secure those rights;

The Pennsylvania Constitution, Article 1, Section 2, which declares that "all power is inherent in the people and all free governments are instituted for their peace, safety, and happiness;"

The Pennsylvania Constitution, Article 1, Section 26, which declares that "neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right;"

The Pennsylvania Constitution, Article I, Section 27, which provides for the "preservation of the natural, scenic, historic, and esthetic values of the environment;"

The provisions of The Second Class Township Code, as codified at 53 P.S. § 65101 et seq., which authorizes the Board of Supervisors of Blaine Township to provide for the protection and preservation of natural and human resources, to promote, protect, and facilitate public health, safety, and general welfare, and to preserve and protect farmland, woodland, and the recreational uses of land within the Township;

The provisions of The Second Class Township Code, Article XV, as codified at 53 P.S. § 66506, which authorizes the Board of Supervisors of Blaine Township to enact ordinances necessary for the proper management, care, and control of the township and its finances and the maintenance of peace, good government, health, and welfare of the township and its citizens, trade, commerce, and manufacturers;

The provisions of The Second Class Township Code, Article XV, as codified at 53 P.S. § 66527, which empowers the Board of Supervisors of Blaine Township to adopt ordinances to secure the safety of persons or property within the township; and

The provisions of The Second Class Township Code, Article XV, as codified at 53 P.S. § 66529, which empowers the Board of Supervisors of Blaine Township to prohibit nuisances on private and public property and the carrying on of any offensive manufacture or business.

Pennsylvania Statutes, Tit. 53, Municipal and Quasi-Municipal Corporations, §66506, which authorizes the people of Blaine Township to enact ordinances necessary for the proper management, care, and control of the Township and its finances and the maintenance of peace, good government, health, and welfare of the Township and its citizens, trade, commerce, and manufacturers.

Section 3. Purpose. The general purpose of this Ordinance is to acknowledge that the use of certain corporations for land development within the Township of Blaine is unsustainable, due to the ability of certain development corporations to create market pressures that favor sprawling land development projects. Those pressures, resulting from the accumulated capital within those corporations, then preclude other development entities from fostering sustainable land use in the Township. It is a specific finding of this Ordinance that the Township recognizes that certain development corporations, due to their size and capitalization, have less reason to cooperate with the Township community to achieve its vision of sustainable land use within the Township. The Township also recognizes that the existence and viability of family-owned and controlled development entities are incompatible with land development corporations owned and promoted by a small number of persons who run the land development corporations that currently control a major percentage of land development within Blaine Township. The Township recognizes that state preemptions of local land use decisions have been masked by a system of regulations and permits, and that zoning and the provisions of the Municipalities Planning Code create the illusion of community self determination while extending privileges to certain development corporations, thus violating the rights of people, communities and ecosystems. The Township further recognizes that ownership and control of land development by families and individuals will promote community cohesion and public accountability, and that allowing absentee control over land development will do the opposite. The Township recognizes its responsibility to promote the health, safety and welfare of the community and its residents, and it finds certain types of corporate land development to be antithetical to these ends. The purpose of this Ordinance is to eliminate corporate land development, which benefits the few, and replace it with land development pursued by individual and family owned and controlled businesses, which will benefit the many residents of Blaine Township. This Ordinance furthers that goal by preventing persons from using non-family owned corporations to engage in land development within the Township.

Section 4. Interpretation. Anyone interpreting, implementing, or applying this Ordinance, shall give priority to the findings and purposes stated in §3 of this Ordinance over such accounting and business terms characterized as "economy," "efficiency," and "scheduling factors."

Section 5. Statements of Law.

Section 5.1: It shall be unlawful for any person, corporation, or other entity to use a corporation or syndicate to engage in land development within the Township.

Section 5.2: It shall be unlawful for any person to assist a corporation to engage in land development within the Township.

Section 5.3: It shall be unlawful for any director, officer, owner, or manager of a corporation to use a corporation to engage in land development within the Township.

Section 5.4: No corporation doing business within Blaine Township shall be recognized as a "person" under the United States or Pennsylvania Constitutions, or laws of the United States or Pennsylvania; and no corporation shall be afforded the protections of the Contracts Clause or Commerce Clause of the United States Constitution, or similar provisions found within the Pennsylvania Constitution, within Blaine Township.

Section 5.5: The Township of Blaine is not a municipal "corporation," but shall be acknowledged to be a governing authority responsible to and governed by the residents of the Township.

Section 5.6: Natural communities and ecosystems possess inalienable and fundamental rights to exist and flourish within Blaine Township. It shall be unlawful for any corporation or its directors, officers, owners, or managers to interfere with the existence and flourishing of natural communities or ecosystems, or to cause damage to those natural communities and

ecosystems. The Township of Blaine, along with any resident of the Township, shall have standing to seek declaratory, injunctive, and compensatory relief for damages caused to natural communities and ecosystems within the Township, regardless of the relation of those natural communities and ecosystems to Township residents or the Township itself. Township residents, natural communities, and ecosystems shall be considered to be "persons" for purposes of the enforcement of the civil rights of those residents, natural communities, and ecosystems.

Section 5.7: All residents of Blaine Township possess a fundamental and inalienable right to a healthy environment, which includes the right to unpolluted air, water, soils, flora, and fauna. All residents of the Township possess a fundamental and inalienable right to the integrity of their bodies, and thus have a right to be free from unwanted invasions of their bodies by pollutants.

Section 5.8: Persons violating §4 or any of its subsections in this Ordinance shall be personally liable for damages resulting from that violation, and for penalties assessed for that violation. Any corporation engaging in land development in violation of §4 or any of its subsections in this Ordinance shall not possess limited liability within the Township of Tamaqua for the purposes of the enforcement of this Ordinance.

Section 5.9: Persons using corporations to engage in land development in a neighboring municipality shall be strictly liable for all harms caused to the health, safety, and welfare of the residents of Blaine Township from those activities, and for all harms caused to the natural environment within Blaine Township.

Section 5.10: No permit, license, privilege or charter issued by any Regulatory Agency, Commission or Board to any person or any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, which would violate the provisions of this Ordinance or deprive any Township resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Pennsylvania Constitution, the United States Constitution, or other laws, shall be recognized as valid. Additionally, any employee, agent or representative of any Regulatory Agency, Commission or Board who issues a permit, license, privilege or charter to any person or any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, which would violate the provisions of this Ordinance or deprive any Township resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Pennsylvania Constitution, the United States Constitution, or other laws shall be liable to the party injured and shall be responsible for payment of compensatory and punitive damages and all costs of litigation, including, without limitation, expert and attorney's fees. Compensatory and punitive damages paid to remedy the violation of the rights of natural communities and ecosystems shall be paid to the Township of Blaine for restoration of those natural communities and ecosystems.

Section 6. Definitions.

The following terms shall have the meanings defined in this section wherever they are used in this Ordinance:

"Corporation" - any corporation organized under the laws of any state of the United States or any country, and any organization recognized under state law as possessing limited liability attributes. The Township is not included under this definition.

"Family Land Development Corporation or Syndicate" - a corporation or syndicate engaged in land development, in which ninety-five percent (95%) of the partnership interests, shares, stock, or other ownership interests are held by members of a family or a trust created for the benefit of a member of that family.

"Family" - natural persons related to one another within the fourth degree of kinship according to civil law, or their spouses.

"Land development" - any actions taken to construct a group of two or more residential buildings, whether proposed initially or cumulatively; or any actions taken to construct a single nonresidential building on a lot or lots regardless of the number of occupants or tenure.

"Ordinance" – The Blaine Township Corporate Land Development Ordinance.

"Person" - a natural person.

"Regulatory Agency, Commission or Board" - for purposes of enforcement of this Ordinance, any licensing or permitting body constituted by federal, state or municipal governments.

"Syndicate" - any limited partnership, limited liability partnership, business trust, or limited liability company organized under the laws of any state of the United States or any country. A syndicate does not include general partnerships, except general partnerships in which non-family syndicates or non-family corporations are partners.

"Township" – Blaine Township in Washington County, Pennsylvania is the governing authority responsible to and governed by the residents of the Township.

Section 7. Exceptions. The restrictions in §5.1, §5.2 and §5.3 of this Ordinance do not apply to: Persons using a family land development corporation or syndicate to engage in land development. In order to qualify for this exception, at least one of the family members in a family land development corporation or syndicate shall be actively engaged in the day-to-day labor and management of land development within the Township of Blaine. Day-to-day labor and management shall require both daily and routine substantial physical exertion and administration. None of the corporation's or syndicate's partners, members, or

stockholders may be nonresident aliens, or other corporations or syndicates, unless all of the stockholders, members, or partners of such entities are persons related within the fourth degree of kinship to the majority of partners, members, or stockholders in the family land development corporation or syndicate.

Section 8. Disqualification. If a family development corporation or family land development syndicate that has qualified under all the requirements of a family land development corporation or family land development syndicate ceases to meet the defined criteria, it has three (3) months (if the ownership of the majority of the stock of such corporation, or the majority of the ownership interest of such a syndicate, continues to be held by persons related to one another within the fourth degree of kinship or their spouses), to either requalify as a family land development corporation or family land development syndicate, or dissolve and return to non-corporate ownership.

Section 9. Enforcement.

Section 9.1: Any corporation or syndicate that engages in land development is required to report information necessary for the enforcement of this Ordinance to either the Township's Code Enforcement Officer or to the Township Supervisors, on a monthly basis, on forms provided by the Township pursuant to this Ordinance. The Township shall monitor such reports and notify the Code Enforcement Officer of any possible violations, and any resident of the Township may also notify the Township of any possible violations. Any violation of this Ordinance shall be considered a criminal summary offense. The Board of Supervisors authorizes a fine of up to \$1,000.00 per violation. Each day of non-compliance shall be considered a separate violation of this Ordinance. The Township may also file an action in equity in the Court of Common Pleas of Washington County, Pennsylvania, or any other Court of competent jurisdiction to abate any violation defined in Section 4 of this Ordinance. If the Township fails to bring an action to enforce this Ordinance, any resident of the Township has standing in those Courts to enforce this Ordinance.

Section 9.2: Any person, corporation, or other entity that violates, or is convicted of violating this Ordinance, two or more times shall be permanently prohibited from engaging in land development in Blaine Township. This prohibition applies to that person's, corporation's, or other entity's parent, sister, and successor companies, subsidiaries, and alter egos, and to any person, corporation, or other entity substantially owned or controlled by the person, corporation, or other entity (including its officers, directors, or owners) that twice violates this Ordinance, and to any person, corporation, or other entity that substantially owns or controls the person, corporation, or other entity that twice violates this Ordinance.

Section 9.3: Blaine Township shall enforce this Ordinance by an action brought before a district justice in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure.

Section 9.4: Any person, corporation, or other entity that violates any provision of this Ordinance shall be guilty of a summary offense and, upon conviction thereof by a district justice, shall be sentenced to pay a fine of \$750 for first-time violations, \$1000 for second-time violations, and \$1000 for each subsequent violation, and shall be imprisoned to the extent allowed by law for the punishment of summary offenses.

Section 9.5: A separate offense shall arise for each day or portion thereof in which a violation occurs and for each section of this Ordinance that is found to be violated.

Section 9.6: Blaine Township may also enforce this Ordinance through an action in equity brought in the Court of Common Pleas of Washington County. In such an action, Blaine Township shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

Section 9.7: All monies collected for violation of this Ordinance shall be paid to the Treasurer of Blaine Township.

Section 9.8: Any Township resident shall have the authority to enforce this Ordinance through an action in equity brought in the Court of Common Pleas of Washington County. In such an action, the resident shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

Section 10. Civil Rights Enforcement

Section 10.1: Any person acting under the authority of a permit issued by the Department of Environmental Protection, any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, who deprives any Township resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Pennsylvania Constitution, the United States Constitution, or other laws, shall be liable to the party injured and shall be responsible for payment of compensatory and punitive damages and all costs of litigation, including, without limitation, expert and attorney's fees. Compensatory and punitive damages paid to remedy the violation of the rights of natural communities and ecosystems shall be paid to Blaine Township for restoration of those natural communities and ecosystems.

Section 10.2: Any Township resident shall have standing and authority to bring an action under this Ordinance's civil rights provisions, or under state and federal civil rights laws, for violations of the rights of natural communities, ecosystems, and

Township residents, as recognized by sections 5.6 and 5.7 of this Ordinance.

Section 11. People's Right to Self-Government The foundation for the making and adoption of this law is the people's fundamental and inalienable right to govern themselves, and thereby secure their rights to life, liberty, and pursuit of happiness. Any attempts to use other units and levels of government to preempt, amend, alter, or overturn this Ordinance, or parts of this Ordinance, shall require the Township Board of Supervisors to hold public meetings that explore the adoption of other measures that expand local control and the ability of residents to protect their fundamental and inalienable right to self-government. It is declared that those other measures may legitimately include the partial or complete separation of the Township from the other units and levels of government that attempt to preempt, amend, alter, or overturn this Ordinance.

Section 12. Severability. The provisions of this Ordinance are severable, and if any section, clause, sentence, part, or provision thereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Supervisors that this Ordinance would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence, part, or provision had not been included herein.

Section 13. Effect. This Ordinance shall be effective immediately upon its enactment.

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