

INDIAN LAKE BOROUGH
ORDINANCE NO. 165

AN ORDINANCE OF THE BOROUGH OF INDIAN LAKE, SOMERSET COUNTY, PENNSYLVANIA, AUTHORIZING THE FILINGS OF DECLARATIONS OF TAKING TO ENLARGE EXISTING FLOWAGE EASEMENTS REQUIRED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR THE IMPLEMENTATION OF IMPROVEMENTS TO THE BREAST OF INDIAN LAKE.

WHEREAS, Indian Lake Borough has a municipal body of water generally used for recreational purposes known as Indian Lake that is impounded upon lands of the Borough of Indian Lake by an earthen dam constructed in the early 1960s; and,

WHEREAS, when said earthen dam was constructed by the original owner of Indian Lake, Allegheny Mountain Lakes, a flowage easement, i.e., the right to occasionally flow water upon lakefront properties, was created on each waterfront property to an elevation of 2290 feet; and

WHEREAS, the Borough has over a number of years been required by the Department of Environmental Protection ("DEP") to make major improvements to the earthen breast of Indian Lake; and,

WHEREAS, the DEP based on present regulations is requiring the Borough to make additional improvements to the earthen breast to control a probable maximum flood (PMF) of 30" of rainfall in a 12-hour period; and,

WHEREAS, while the present normal pool level of Indian Lake is at 2280 feet and the present flowage easements were adequate to meet the previous standard of withholding water before overtopping the breast of the dam to an elevation of 2290 feet raising the breast of the dam 3-1/2 feet as provided below will require the expansion of the easements on waterfront properties; and,

WHEREAS, Borough Council has considered three (3) options to meet said PMF; first to construct a secondary spillway at an estimated cost of between \$2 million to \$3 million likely requiring a voter referendum to raise the debt limit and an anticipated increase in taxes of 2 to 3 mills; or second, raise the height of the dam breast 3-1/2 feet at a construction cost of approximately \$500,000 with no increase in debt, but would require, to meet DEP regulations, flowage easements for all waterfront property owners be raised to an elevation of 2295.5 feet; or third, lower the natural pool level which in the opinion of Borough Council would have a serious detrimental effect upon market value of waterfront properties; and,

WHEREAS, Borough Council has selected the second option of raising the breast of the dam by 3-1/2 feet and obtaining flowage easements on all waterfront properties as mandated by DEP as the least cost alternative, with no expected affect upon the market value of the affected properties; and,

WHEREAS, Borough Council has prepared Deeds of Flowage Easements for Occasional Flooding which increases the size of the easement for the rise and fall of the water at Indian Lake to an elevation of 2295.5 feet and has obtained and recorded 518 consensual expansions of the Deeds of Flowage Easement for Occasional Flooding; and,

WHEREAS, the Borough has also agreed by recorded document to modify the recorded Deeds of Flowage Easement for Occasional Flooding to remove the construction restriction language as it pertains to the increase in elevation of the flowage easement; and,

WHEREAS, the Borough through its authorized agents have been unable to acquire 47 Deeds of Flowage Easement for Occasional Flooding that are necessary, and a list of the property owners and properties upon which the easements are still required is attached hereto, made a part hereof and marked **Exhibit A**; and,

WHEREAS, the Borough is empowered by 26 Pa.C.S.A. § 302, et seq. (Eminent Domain Code) as well as the Borough Code, including but not limited to general provisions relating to eminent domain, 53 P.S. § 46501, 53 P.S. § 47201-204 and 53 P.S. § 47501, to exercise the power of eminent domain for the purposes therein expressed which include, *inter alia*, for the property management, care, control, safety and welfare of the Borough; and,

WHEREAS, the Borough wishes to exercise the forgoing powers by filing a Declaration of Taking on certain waterfront properties whose owners have not consented to a flowage easement as identified in **Exhibit A** expanding the existing flowage easements on such properties to a level of 2295.5 feet of elevation; and,

WHEREAS, the Borough wishes to authorize the officers of said Borough to make, execute and deliver a bond of the Borough for the use and benefit of the owners of the easements hereby condemned and/or other parties of interest as may be determined, with the amount of such bond to cover the damages as said owner or other party shall be entitled to receive after the same shall have been agreed upon or addressed in the manner prescribed by law and to authorize and direct the officers of the Borough and its Solicitor to institute and file such legal proceedings as may be necessary or proper to make this action effective and to obtain possession of the flowage easements to the elevation of 2295.5 feet without delay.

NOW THEREFORE, UNDER THE AUTHORITY OF THE BOROUGH CODE AND THE PENNSYLVANIA EMINENT DOMAIN CODE, 53 P.S. § 45101, et seq., and 26 Pa.C.S.A. § 101, et seq., IT IS HEREBY ENACTED and ORDAINED as follows:

Section 1. The Borough officials are authorized to take, appropriate and condemn flowage easements for occasional flooding by the filing of a Declaration of Taking and related documents required by law, in order to comply with the DEP's regulations for the raising of the height of the breast of the dam of Indian Lake, one of its recreational waterways and facilities, said flowage easement to be consistent with the consented easements already obtained and recorded for said expansion by other waterfront property owners.

Section 2. The officers of said Borough are hereby authorized to make, execute and deliver the bond of the Borough for the use and benefit of the owners of the easements hereby condemned and/or other parties in interest as may be determined with the amount of such bond to cover the damages as said owner or other party shall be entitled to receive after the same shall have been agreed upon or addressed in the manner prescribed by law, and the officers of the Borough and its Solicitor are further hereby authorized and directed to institute and file such legal proceedings and documents and take such action as may be necessary or proper to make this Ordinance effective and to obtain possession of said flowage easements to the elevation of 2295.5 feet without delay.

Section 3. This Ordinance shall be effective immediately after the passage of this Ordinance.

ENACTED and ORDAINED this 27th day of MARCH, 2013, by the Borough Council of Indian Lake in public session duly assembled.

BOROUGH COUNCIL OF INDIAN LAKE
BOROUGH, SOMERSET COUNTY,
PENNSYLVANIA

Attest:

Thomas G. Keyant
Borough Secretary

(Seal)

Patricia A. Dewar
President
Charles McLean
[Signature]
[Signature]
[Signature]
[Signature]
Paul M. Correy

APPROVED this 27th day of MARCH, 2013

[Signature]
Mayor

EXHIBIT A

List of Property Owners Where Easement is Necessary and Has Not
Been Acquired to Date

	PARCEL MAP#	DBV/RBV	NAME	ADDRESS
1	035-005-00	1269/468	Matthew E. and Matthew G. Cayuela	110 Alonoquin Path, Stoystown, PA 15563
2	035-011-00	2028/492	Peter M. and Janine V. Neilan	356 Hickory Hollow Road, Somerset PA 15501
3	036-011-00	1563/827	Lee W. Nearhoof ET AL	Post Office Box 147, Shanksville, PA 15560
4	036-043-00	1612/300	Gary P. and Shelly L. Bastin	1104 Chaucer Drive. Greensburg, PA 15601
5	036-068-00 036-069-00	1695/658	Karl M. Ocepek and Marcy J. Hessinger	105 Noble Drive, Downingtown, PA 19335
6	036-070-00	1487/760	Thomas A. and Sharon Lynn Harmon	338 Bower Hill Road, Venetia, PA 15367
7	036-106-00	935/500	Joseph J. McAneny, Jr.	163 Gerry Lane, Johnstown, PA 15904
8	036-108-00	726/ 604	Richard R. and Mary Lou Miller	4 Tropicana Drive, Punta Gorda, FL 33950
9	036-115-00	2182/421	Brian J. Bottcher, Scott S. Bottcher, Jeffrey S. Bottcher	3103 Marsh Gate Drive, Johns Island, SC 29455
10	036-167-00	2289/930	Lynn H. and Kathy E. Plesnick	1651 Peninsula Drive, Central City, PA 15926
11	036-178-00	607/229	Alvin C. (deceased) and Dolores K. Couch	1517 Latrobe Street, Latrobe, PA 15650
12	036-181-00	1282/399	Robert P. and Lois H. Campbell	1527 Peninsula Drive, Central City, PA 15926
13	036-190-00	2353/948	Patty J. Supcoe and Donald C. Supcoe, III	100 Woodshire Place, Charleston, WV 25314
14	036-226-00	1732/127	Douglas I. and Deborah L. Miller	846 West Garrett Street, Somerset, PA 15501
15	037-077-00	1977/153	Terry B. and Todd B. Bingaman	37 Mt. Penn Road, Reading, PA 19607
16	037-081-00	1916/1050	Ronald W. and Joyce M. Sevin Matthew A. and Linda Sevin	601 Camp Meeting Road, Sewickley, PA 15143
17	037-084-00	1938/185	David A. Rohrich	2075 St. Andrews Drive, Presto, PA 15142
18	037-089-00	2077/464	Shannon L. and Jill S. Vissman	1241 Turnberry Drive, Upper St. Clair, PA 15241-2945
19	037-090-00	1782/346	Edward J. McClain and Michele Lozito	281 Canterwood Lane, Wexford, PA 15090
20	037-091-00	2141/1093	James A. and Linda DeBlasio	261 Glen Abbey Court, Presto, PA 15142
21	037-169-00 037-170-00	2366/935	Brida's, Inc.	464 Lincoln Highway West, Jeannette, PA 15644
22	040-004-00	1788/820	Frank Duca, Jr.	1622 Menoher Boulevard, Johnstown, PA 15905
23	040-004-01	1579/720	Frank Duca, Jr.	1622 Menoher Boulevard, Johnstown, PA 15905
24	040-009-00	886/167	Frank Duca, Jr.	1622 Menoher Boulevard, Johnstown, PA 15905
25	040-012-00	1232/802	Bonnie L. Marts and Lynne R. Costante	151 Marts Road, Friedens, PA 15541
26	040-021-00	940/744	Joel R. and Norma J. Bowser	129 Brothers Lane, Johnstown, PA 15905
27	040-033-00	1127/858	James H. Lyons, III	3912 Admiral Peary Highway, Ebensburg, PA 15931
28	040-043-00	1253/344	Walter A. and Anna M. Kinash	704 Heinrich Street, Johnstown, PA 15904
29	040-050-00	638/92	Donald E. and Sylvia R. Mueseler	1123 Sunset Drive, Latrobe, PA 15650
30	040-053-00	1718/915	Scott W. Coy	235 Alpha Drive, Suite 30, Pittsburgh, PA 15238
31	040-068-00	1944/548	James T. & Karla E. Schwadron	318 Leslie Road, Valencia, PA 16059
32	040-083-00	1634/318	Logan A. and Connie F. Davis	203 Sunshine Avenue, Central City, PA 15926
33	040-092-00	928/129	Nicholas S. and Elsie Papasoff	15 East 10th Street, Apartment 3B, New York, NY 10003
34	040-106-00	2362/267	Scott T. and Dana S. Bruce	210 Farmington Drive, Venetia, PA 15367
35	040-107-00	1851/798	Joseph and Kathleen Landy	108 Osage Path, Stoystown, PA 15563
36	040-157-00	2273/191	Charles III, & Elizabeth Wyandt	1180 Ridge Road, Hooversville, PA 15936
37	040-159-00	2193/142	Leonard E. Dipaola, Jr.	431 Carson Street, Monongahala, PA 15063
38	041-012-00	1826/940	Michael W. Sigmund Matthew E. Shaffer	118 Lovi Road, Baden, PA 15005
39	041-016-00	1786/994	Donald D. Mateer, III	10 Glencove Road, Greensburg, PA 15601
40	041-019-00	1952/390	David C. and Christine L. Erimias	135 Blaze Court, Wexford, PA 15090

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Been Acquired to Date

41	041-022-00	1175/823	Louis R. and Susan W. Valeo	557 Azalea Lane, Bridgeville, PA 15017
42	041-036-00	2200/462	Lisa Kirkpatrick Swan	113 Point Circle Drive, Central City, PA 15926
43	041-046-00	733/499	Jonnet Development Corporation	4099 William Penn Highway, Suite #905, Monroeville, PA 15146
44	041-054-00	1217/896	Donald L. and Sara Jayne Kuhn	421 Springsdale Drive, Penn Hills, PA 15235
45	041-164-00	1788/583	Bear Development Company	2024 Woodstown Highway, Hollsopple, PA 15935
46	041-184-00	1699/747	John S. and Kristin L. Arnold	1628 Blackburn Heights Road, Sewickley, PA 15143
47	043-001-00	1840/697	Roy Eric and Brian E. Critchfield	200 North Street, Berlin, PA 15530

AFFIDAVIT OF POSTING

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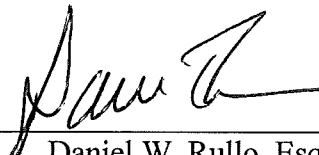
3-21-13

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF SOMERSET :

ss.

BEFORE ME, the undersigned authority, personally appeared, DANIEL W. RULLO, ESQ., Solicitor for Indian Lake Borough, who, being duly sworn according to law, deposes and says that his paralegal, David Barbera, personally posted a full copy of the Indian Lake Borough Zoning Ordinance and Notice that the Indian Lake Borough Council will meet on Wednesday, March 27, 2013, at 7:00 p.m., at the Indian Lake Borough Office, 1301 Causeway Drive, Indian Lake, Central City, Pennsylvania, 15926, and will consider authorizing the filings of declarations of taking to enlarge existing flowage easements required by the Department of Environmental Protection for the implementation of improvements to the breast of Indian Lake. Said ordinance is identified as Ordinance No. 165.

The Ordinance was posted in a conspicuous place on Tuesday, March 19, 2013, at the County Law Library.




Daniel W. Rullo, Esq.

SWORN TO and **SUBSCRIBED** before me
this day of , 2013.

CERTIFICATION OF ORDINANCE

The undersigned Secretary of the Indian Lake Borough, Somerset County, Pennsylvania, hereby certifies that the foregoing and attached Ordinance is a true and correct copy of an Ordinance adopted by the Borough Council of the Indian Lake Borough, Somerset County, Commonwealth of Pennsylvania, at a duly advertised public meeting held on the 27th day of March, 2013, and that said Ordinance has not been amended, repealed or rescinded and is still in full force and effect, and is properly recorded in the ordinance book of Somerset County.

IN WITNESS WHEREOF, I have hereunder set my hand and affixed the seal of the Indian Lake Borough, Somerset County, Commonwealth of Pennsylvania, this 27th day of March, 2013.



Theresa L. Weyant, Borough Secretary

(Seal)