

GENEVA TOWNSHIP VAN BUREN COUNTY, MICHIGAN
PRIVATE SEWER SYSTEM ORDINANCE NO. #33

Adopted: June 13, 2006

An Ordinance to regulate the installation of "private" or investor-owned wastewater utilities or "community" sewer systems installed pursuant to Act 451 of 1994 and as thereafter amended. The Ordinance repeals all Ordinances or parts of Ordinances in conflict therewith.

THE TOWNSHIP OF GENEVA ORDAINS:

SECTION I TITLE

This Ordinance shall be known and may be cited as the Geneva Township "Private Sewer System Ordinance."

SECTION II PURPOSE & AUTHORITY

In accordance with Act No. 451 of the Public Acts of 1994, as amended, the Michigan Department of Environmental Quality (hereinafter "MDEQ") is authorized to issue permits for on-site sewage disposal systems that service more than one property (referred to herein as a "private sewer system"). In issuing a Part 41 permit, the MDEQ may not require that Geneva Township adopt a resolution stating that the Township will assume responsibility for the operation, maintenance, and, in the event of system failure, clean-up of the proposed system, if the owner fails to do so. Geneva Township recognizes that it cannot be forced to assume responsibilities for a private sewer system, and that a private sewer system may be in the best interests of the health, safety, and welfare of the Township and the residents in some circumstances. Nevertheless the Township requires assurance that should a Part 41 permit be issued, the Township shall be indemnified from any costs or liability in connection with the design, construction, operation, maintenance, repair and/or replacement of that system. This Ordinance is therefore intended to regulate private sewer systems to provide these assurances to the Township.

SECTION III DEFINITIONS

- A. "Act 451" shall mean Act No. 451 of the Michigan Public Acts of 1994, as amended.
- B. "Part 41 permit" shall mean a permit issued in accordance with the provisions of Part 41 of Act 451 of 1994.
- C. "Association," for a condominium development, shall have the same meaning as "association of co-owners" found in Act No. 59 of the Michigan Public Acts of 1978, as amended. For a subdivision or other development, it shall mean an association of homeowners or property owners organized pursuant to deed restrictions and/or restrictive covenants in a particular development.
- D. "Developer" and/or "Subdivider" are intended to be synonymous terms referring to the person or entity holding an ownership interest in land proposed for development and for installation of a private sewer system or system pursuant to Act 451.
- E. "Development" shall include a subdivision as defined by Act No. 288 of the Public Acts of 1967, as amended, a site condominium pursuant to the provisions of Act No. 59 of the Public Acts of 1978, as amended, or any group of dwellings or structures which are proposed to be serviced by a private sewer system.
- F. "Development documents" shall mean (a) for a condominium project, the master deed and bylaws provided by Act No. 59 of the Public Acts of 1978, as amended; and (b) with regard to subdivisions or other developments, deed restrictions and/or restrictive covenants.
- G. "Dwelling" shall mean a structure primarily designed or used for residential purposes.
- H. "Expansion" shall mean any activity whereby additional structures or users shall be added to an existing system.
- I. "Public sanitary sewer system" shall mean a publicly-owned sanitary sewer system.

- J. "MDEQ" shall mean the Michigan Department of Environmental Quality, or its successors.
- K. "Owner" shall mean the owner of a fee simple interest, a land contract purchaser, or owner of a unit in a condominium, of property which is serviced or is proposed to be serviced by a private sewer system.
- L. "Private sewer system" or "system" shall mean a facility for the transportation, collection, processing or treatment of sanitary sewage, which is owned by a non-governmental entity and which services or which is proposed to service more than one structure.
- M. "Sanitary sewer system" shall mean a facility for transportation, collection, processing, or treatment of sanitary sewage.
- N. "Structure" shall mean a building in which toilet, kitchen, laundry, bathing or other facilities which generate water carrying sanitary sewage are used for household, commercial, industrial, or other purposes.
- O. "Township" shall mean the Township of Geneva, Van Buren County, Michigan, acting through its duly elected Township Board.

SECTION IV REGULATIONS

- A. Except as provided in this Ordinance, it shall be unlawful to construct, install, or operate a private sewer system within the Township.
- B. All private sewer systems shall comply with the terms of this Ordinance, applicable standards of the MDEQ, Michigan Department of Public Health, the Van Buren and Cass County District Health Department, and any other applicable laws and regulations of the federal government, the State of Michigan, Van Buren County, and the Township.
- C. No new private sewer system or expansion of an existing system shall be constructed, installed, or operated within the Township unless the plans for the installation and system design as approved by the Van Buren and Cass County District Health Department, the state department of public health, and/or state department of environmental quality (MDEQ) (whichever has jurisdiction) as conforming with their regulations have been approved and a permit issued in accordance therewith.

SECTION V SUBMITTAL OF DOCUMENTS TO TOWNSHIP REQUIRED

- A. Within 30 days of receipt of a Part 41 permit the developer shall submit a copy of the same to the Township together with the following:
 - 1. A certification from the system design engineer indicating that the system as designed and constructed will adequately process sanitary sewage and waste as required by applicable laws and regulations of the federal government, state, county and the Township. At the Township Board's option, said certification may be sent to the Township Engineer for review and recommendation regarding the adequacy of such certification.
 - 2. An executed agreement between the applicant, owner, and/or association (which must be formed and made a party to any agreement executed hereunder), and the county drain commissioner's office, or another operator as determined by the Township, in its sole discretion, to be properly certified and possessing the required ability to operate and manage the system. The agreement shall contain provisions for: (i) operation and maintenance of the system; (ii) collection of charges for connection to, use and replacement of the system; (iii) compliance with all applicable governmental laws, ordinances, regulations, and agreements regarding the system. The agreement shall provide that it may not be terminated without Township approval. At the Township Board's option, such agreement may be sent to the Township Attorney and/or the Township Engineer for review and approval.

3. An executed agreement between the applicant, owner, and/or association, and the Township in a form acceptable to the Township. The agreement shall provide the terms and conditions related to the Township's obligation to oversee the system and shall specify:
 - a. The applicant, owner, and/or association shall be responsible for operation and maintenance of the system.
 - b. The individual or entity responsible for such operation and maintenance on behalf of the applicant, owner, and/or association.
 - c. Standards for operation, maintenance, repair and/or replacement of the system.
 - d. The applicant, owner, and/or association shall jointly and severally indemnify the Township from any and all costs and liability incurred by the Township with respect to operation, maintenance, repair and replacement of the system.
 - e. The applicant, owner, and/or association shall provide a bond or letter of credit in an amount determined by the Township to satisfy all costs relating to the maintenance, operation, repair and/or replacement of the system. Said bond or letter of credit shall be held as escrow for potential costs to the Township relating to sewer system breakdown or failure.
 - f. The applicant, owner, and/or association shall pay an application fee designed to reimburse the Township for all its expenses involved in review of the construction and design of the system, or preparing or reviewing any documents referenced in this article, including review by the Township Engineer and Township Attorney, as required.
 - g. That should the designated individual or entity fail to comply with any requirements listed in subsection c., that the Township, may, with or without notice, enter onto the property, perform any necessary maintenance, repair, replacement and/or operation, with the applicant, owner and/or association reimbursing the Township all such costs resulting from such activity plus a 25 percent administration fee; and that in default of such payment, the Township shall be entitled to withdraw any or all of the escrow account referenced in subsection e. without the consent of the applicant, owner, association or any other person or entity, and additionally undertake whatever collection proceedings are available to it by law including, but not limited to, the addition of any such costs to the tax roll to be collected in the same manner as special assessments are assessed against any real property, or interest therein, serviced by the system.
 - h. The applicant, owner and/or association shall provide for the maintenance of a policy of casualty insurance for the replacement value of the insurable components of the system and a policy of comprehensive general liability insurance with limits acceptable to the Township, naming the Township as an additional insured.
 - i. The Township may, at its sole discretion, require that the private sewer system be abandoned and all properties in the development be connected to any publicly-owned private sewer system which may be constructed in the future abutting the development or in an easement abutting the development.
 - j. The Township shall have the option to purchase for the sum of One Dollar (\$1.00) (1) marketable title to any lands required to be titled in the name of

the Township by governmental or regulatory requirements, or (2) easements reasonably deemed by the Township to be necessary in conjunction with the Township's potential future assumption of responsibility for the private sewer system or future publicly-owned private sewer system.

4. The provisions of the development documentation referenced in the preceding section shall also be included in a separate document, in form approved by the Township Attorney, and included within the condominium disclosure documents for a condominium project, or in a separate recordable document for other developments, and delivered to the prospective purchaser prior to the execution of a purchase agreement for property proposed to be serviced by a private sewer system.
5. The Township shall not be responsible or obligated to perform any needed or desired repairs, maintenance, improvement, and/or replacement of the system or any portion thereof. Any such repairs, maintenance improvement and/or replacement undertaken by the Township shall be in its sole and absolute discretion.
6. The association, individual owners and/or users of the system shall be responsible for all costs involved in the installation, operation, maintenance, repair, replacement and liability associated with the system. The Township may, at its option, elect to collect all costs it may incur in connection with the system pursuant to the other provisions of this Ordinance, or by direct court action against the association, owners and/or users of the system.

SECTION VI ENFORCEMENT AND PENALTIES

- A. The provisions of this Ordinance shall be enforceable through any and all remedies at law or in equity in any court of competent jurisdiction. Any violation of this Ordinance is deemed to constitute a nuisance per se.
- B. Municipal Civil Infraction. A violation of this Ordinance is a municipal civil infraction as defined by Michigan statute and shall be punishable by a civil fine determined in accordance with the following schedule:

	Minimum <u>Fine</u>	Maximum <u>Fine</u>
-1st Offense	\$150.00	\$500.00
-2nd Offense	275.00	500.00
-3rd Offense	375.00	500.00
-4th or More Offense	500.00	500.00

Additionally, the violator shall pay costs which may include all expenses, direct and indirect, which Geneva Township has incurred in connection with the municipal civil infraction. In no case, however, shall costs of less than \$9.00 be ordered.

SECTION VII EFFECTIVE DATE AND REPEAL

This Ordinance shall take effect immediately upon publication after adoption.

Roll Call Vote: Yes: 5 No: 0 Absent: 0

Nancy Ann Whaley Supervisor

Bridgette Gumpert Clerk

M. Jeffery Primmer Treasurer

Norman Funk Trustee

