

ORDINANCE NUMBER 63

Adoption of new general ordinance, *Community Wastewater Utility Systems*, was approved by the Manchester Township Board:

COMMUNITY WASTEWATER UTILITY SYSTEMS

MANCHESTER TOWNSHIP, MICHIGAN

The Township of Manchester, Washtenaw County, Michigan, ordains:

SECTION I - GENERAL

Section 1.1 – Intent and Purpose.

A significant amount of the land area of Manchester Township relies on individual on-site wastewater disposal systems. Although the Township provides public wastewater disposal within designated sewer service areas, it is unlikely that the land area served by the public sewer system will be expanded in any significant manner, if at all, in the foreseeable future.

Pursuant to Act No. 451 of the Public Acts of 1994 (MCL 324.4108), as amended, the Michigan Department of Environmental Quality ("MDEQ") is authorized to issue permits for on-site sewage disposal systems that service more than one property (referred to herein as a "community wastewater utility system"). The Township recognizes that a community wastewater utility system may be in the best interests of the health, safety, and welfare of the Township and the residents in some limited circumstances. However, the Township requires assurance that, any community wastewater utility system will be designed, constructed, operated, maintained, repaired and/or replaced in a manner that best serves and protects the health, safety, and welfare of the Township and its residents. Furthermore, the Township requires that it shall be indemnified by the owner and operator of the community wastewater system from any costs or liability in connection with the design, construction, operation, maintenance, repair and/or replacement of that system.

The Township also recognizes that should the operation of a community wastewater system fail or otherwise not properly function or if the owner or operator of the community wastewater utility system fails or is unable to continue to operate the system, the extension of public sewers will be severely limited based on the location of a development in proximity to designated sewer system areas. In certain circumstances, the Township may be required to take over the operation of the community wastewater utility system in order to protect the health, welfare, and safety of residents of the Township. To this effect, this division is intended to regulate community wastewater utility systems to provide those assurances.

This Ordinance is enacted under the authority of the Township's general police powers to protect the health, safety, and welfare of its residents and under the authority of Act No. 451 of the Public Acts of 1994, as amended.

SECTION II - DEFINITIONS

Section 2.1 – Definitions

- A. **ACT 451** means Act. No. **451** of the Michigan Public Acts of **1994**, as amended.
- B. **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.
- C. **COMMUNITY WASTEWATER UTILITY SYSTEM OR SYSTEMS (“CWUS”)** means a facility which is owned by a non-governmental entity and is designed, constructed, operated, and maintained to transport, collect, process, and treat sanitary sewage from more than one (1) dwelling unit. The system shall include any individual septic tanks, pumps, lines, and appurtenances serving each dwelling unit in addition to facilities, sewers, and appurtenances that serve more than one (1) dwelling unit except the lead from a dwelling unit or structure to the septic tank or other pumping system.
- D. **CWUS OPERATOR** means a legal entity of perpetual duration that is responsible for the day-to-day operation and maintenance of the Community Wastewater Utility System.
- D. **DEVELOPMENT** shall include a subdivision as defined by Act No. 288 of the Public Acts of 1967, as amended, a 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 community wastewater utility system.
- E. **DEVELOPMENT DOCUMENTS** means (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, including deed restrictions required by this Ordinance and (c) the articles of incorporation and bylaws of the Association.

- F. **EXPANSION** shall mean any activity whereby additional structures or users shall be added to an existing system.
- G. **PUBLIC SANITARY SEWER SYSTEM** means a publicly-owned sanitary sewer system.
- H. **MDEQ** means the Michigan Department of Environmental Quality, or its successors.
- I. **OWNER** shall mean the owner of property which is serviced or is proposed to be serviced by a community wastewater utility system. Ownership may include fee simple interest, land contract purchase, or a unit in a condominium.
- J. **TOWNSHIP** means the Township of Manchester, Washtenaw County, Michigan, acting through its duly elected Township Board.

SECTION III – REGULATIONS

Section 3.1 – Regulations

- A. Except as provided in this Ordinance, it shall be unlawful to construct, install, or operate a community wastewater utility system within the Township.
- B. Community wastewater utility systems shall require a special use permit from the Planning Commission in accordance with the procedures and standards set forth in Article 12, *Conditional Uses* and Section 16.22 *Community Wastewater Utility Systems* of the Zoning Ordinance.
- C. Pursuant to the terms of Section 3.6 of this Ordinance, the Township Board shall review and approve or deny the Permit Application only after a special use permit has been conditionally approved and the Board determines that the applicant has met all the standards contained in this Ordinance.

Section 3.2 – Requirements for approval

- A. The design, construction, and operation of the proposed community wastewater utility system shall comply with the terms of this Ordinance, and any federal, state, and local laws and regulations.
- B. No new community wastewater utility system or an expansion of an existing system shall be constructed, installed, or operated within the Township unless the plans for the construction, installation and operation of the system design have been approved by the Township, and all other governmental authorities having jurisdiction over the construction and maintenance of community wastewater

utility systems, including but not limited to the MDEQ, and the Michigan Public Service Commission.

- C. The applicant shall provide the following to the Township before approval for a community wastewater utility system may be granted:
1. A certification from the system design engineer indicating that the system as designed and constructed will adequately process wastewater as required by applicable laws and regulations of the, State of Michigan and/ or Washtenaw County and the Township. The Township engineer shall review and make a recommendation regarding the adequacy of such certification.
 2. An executed agreement between the applicant, owner, and/or association, and the applicable Department of Washtenaw County or another properly certified operator possessing the required ability to operate and manage the system. The agreement shall contain provisions for: (i) operation, maintenance, repair, and replacement of the system; (ii) collection of charges for connection to, and use, operation, maintenance, repair, 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. The Township attorney and Township engineer shall review and make a recommendation regarding the adequacy of such an agreement.
 3. An executed Development Agreement between the applicant, owner, and/ or association, and the Township in a form acceptable to the Township. The agreement shall:
 - a. Provide that the applicant, owner, and/or association are jointly and severally responsible who shall be responsible for operation, inspection maintenance, repair and replacement of the system.
 - b. Identify the operator is responsible for such operation maintenance, repair and replacement on behalf of the applicant, owner, and/or association. The Applicant will provide the proposed standards to the Township for review and approval and such standards shall be included in the Development Documents.
 - c. Specify standards for inspection, monitoring operation, maintenance, repair and/or replacement of the system in accordance with the guidelines recommended by the system

manufacturer and the certified operator and the requirements of the State of Michigan and/or Washtenaw County.

- d. Require indemnification of the Township, including a duty to defend by the applicant, owner, and/or association, jointly and severally, from any and all costs and liability incurred by the Township with respect to the community wastewater treatment utility system, including but not limited to the operation, maintenance, repair and replacement of the system.
- e. The applicant, owner and/or association shall provide a policy of casualty insurance for the replacement value of the insurable components of the system, comprehensive general liability insurance and pollution legal liability insurance with limits acceptable to the Township, naming the Township as an additional insured. All insurance policies shall be issued by an insurer registered/licensed in Michigan and with an A.M. Best Rating acceptable to the Township. No policy of such insurance shall be cancelled or permitted to lapse without 30 days advance written notice to the Township and without securing similar coverage.
- f. Grant the Township authority at its sole discretion, require that the community sewer system be abandoned and all properties in the development be connected to any publicly-owned community sewer system which may be constructed in the future the development.
- g. A statement acknowledging the special assessment district to be established as described below.
- h. Granting the Township the right, but not the obligation, to take over ownership and operation of the CWUS in the event that the CWUS Owner (i) becomes insolvent or goes into bankruptcy or receivership, (ii) fails to maintain the required operating, maintenance, and capital reserves required by this Ordinance within 6 months after written notice from the Township that the reserves do not meet Ordinance requirements, (iii) is unable, unwilling or fails for any reason to operate the CWUS in full compliance with Applicable Sewer Laws where failure to meet such requirements in 6 successive months or in more than 8 months in a 12-month period shall be conclusively determined to be an inability to comply with Applicable Sewer Laws. In the event that the Township assumes ownership of the CWUS, the Township

shall hold and operate the CWUS for the benefit of the Association and Residential Owners. The Township may transfer the facilities, assets, and reserves of the CWUS to a new CWUS Owner on the condition that such facilities, assets, or reserves be used solely for providing sewer services to the Residential Owners.

- i. Grants the Township the right to inspect any part of the community wastewater utility system for compliance with the Development Agreement and all Applicable Sewer Laws, consenting to personal jurisdiction and venue in Washtenaw County or U.S. District Court for the Eastern District of Michigan agreeing that money damages cannot make the Township whole for damages cannot make the Township whole for damages arising out of the breach of the Development Agreement, and agreeing to injunctive remedies in any action brought by the Township to enforce the Development Agreement or enforce compliance with Applicable Sewer Laws.
4. The provisions of the Development Agreement referenced in Section 3.2.C.3 shall also be included in a separate document, in form approved by the Township attorney, and included within the Development documents that run with the land, including but not limited to 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 community wastewater utility system.
5. A permanent and irrevocable easement, in recordable form, shall be granted by the applicant, owner and/or association to the Township and its employees, agents, and assigns authorizing them to enter on the property upon which the system is located for the purpose of inspections. The property on which the system is located shall be maintained so it is accessible at all times, prohibiting any structures or landscaping within such area that would unreasonably interfere with such access.
6. Each community wastewater utility system shall be a general common element of a condominium in which it is located, or part of common areas of any other Development. The system shall be inspected, monitored, operated, maintained, repaired and replaced by the CWUS Owner or Association with the right of the CWUS Owner or Association to assess the Residential Owners for all such costs.

7. Each CWUS Owner shall maintain an escrow account sufficient for five (5) years of monitoring, inspection, operation, maintenance, and repair of the system and an adequate equipment replacement reserves in the amounts equal to _____% of the annual operating budget unless a larger amount is required under federal, state, and local laws and regulations.
 8. A copy of the Articles of Incorporation and Bylaws of the Association and a copy of the form of the restrictive covenant/deed restrictions/or master deed imposing upon residential owners the obligation to pay for all capital and operating costs and reserves associated with the community wastewater utility systems.
 9. Evidence satisfactory to the Township Board that the CWUS Operator employs one or more individuals who have all qualifications and certifications required under Applicable Sewer Laws to operate the system.
- D. No building permit shall be used for any structure or development proposed to be serviced by a community sewer system until the Township Board has approved such system in accordance with terms and provision of this Ordinance.
- E. Anything in this Ordinance to contrary notwithstanding, 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.
- F. The operator and/or association shall furnish quarterly operating and maintenance reports in accordance with the maintenance requirements and schedule. Any such requirements shall be made a part of the Development documents.
- G. After the Township's approval, the Development documents referenced in section 3.2.c.4 and Development Agreement referenced in section 3.2.c.3 shall be recorded at the office of the Washtenaw County Register of Deeds. After approval by the Township, the Development Documents, as they pertain to the system, shall not be changed without Township Board approval. The documents shall display language to that effect.
- H. Prior to recording the Development Documents and sale of any unit, lot or parcel served by a community wastewater utility system, applicant and owner shall establish a special assessment district for the development, the purpose of which shall be to provide for assessment of the units, lots or parcels in each development by the Township for the costs of inspection, monitoring, maintenance, repair, operation or replacement of the community wastewater utility system in the even

the association shall fail to properly perform such work or in the event the Township takes control of the community wastewater utility system.

- I. The association, individual owners and/or users of the system shall be jointly and severally 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 division, or by direct court action against the association, owners, and/or users of the system.

SECTION IV – FEES, PENALTIES AND ENFORCEMENT

Section 4.1 – Fees

Applications for community wastewater utility systems approval under this Ordinance shall be accompanied by a non-refundable administrative application fee in an amount specified from time to time by resolution of the Township Board. In addition, an applicant shall pay an additional escrow fee in an amount determined by resolution of the Township Board for the estimated cost of outside consultant(s) who may be retained by the Township in connection with the review of the application. In the event the cost of the services of the consultant(s) is less than the escrow fee, the applicant shall be refunded the balance. In the event the cost of the services of the consultant(s) exceeds the amount of the escrow fee, the applicant shall pay the deficiency to the Township prior to the issuance of a permit. A denial of an application for a permit shall not affect the applicant's obligation to pay the escrow fee provided for in this Section.

Section 4.2 – Penalties and Enforcement

- A. **Enforcement.** The Enforcement Officer or his/her agent, officer or employee shall have authority under this Ordinance to enter upon privately owned land for the purpose of performing the Township's duties under this ordinance and may take or cause to be made such examinations, surveys or samplings as are deemed necessary.
- B. *Civil remedies.* The provisions of this division shall be enforceable through any and all remedies at law or in equity in any court of competent jurisdiction. Any violation of this division is deemed to be nuisance per se.
 1. **Injunction.** Any activity conducted in violation of this Section is declared to be a nuisance per se, and the Township may commence a civil suit in any court of competent jurisdiction for an order abating or enjoining the violation, and/or requiring restoration of the property as nearly as possible to its condition before the violation.

2. Stop-Work Order. The Township may also issue a stop-work order or withhold issuance of a Certificate of Occupancy, permits or inspection until the provisions of this Ordinance, including any conditions attached to a permit, have been fully met. Failure to obey a stop-work order shall constitute a violation of this Ordinance.
3. Appearance Tickets. In all arrests and prosecutions for violation of this Ordinance, appearance tickets and the appropriate procedures set forth in Act 147, Michigan Public Acts of 1968, as amended, may be used.
 - a. *Criminal remedies.* Any person convicted of a violation of this division, or any person who knowingly makes any false statements, representations or certifications in any application, records, report, plan or other document, filed or required to be maintained pursuant to this division, shall, upon conviction be punished by a fine of not more than \$500.00 or imprisonment in the county jail for a period of time not to exceed 90 days, or both such fine and imprisonment, in the discretion of the court, together with costs of prosecution.

SECTION V – ORDINANCE CONFLICT

Nothing in this Ordinance shall be interpreted to conflict with present or future state statutes in the same subject matter; conflicting provisions of this Ordinance shall be abrogated to, but only to, the extent of the conflict. Moreover, the provisions of this Ordinance shall be construed, if possible, to be consistent with relevant state regulations and statutes. If any part of this Ordinance is found to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision. Such holding shall not affect the validity of the remaining portions thereof, and the remainder of the Ordinance shall remain in force. Rights and duties which have matured, penalties which have been incurred, proceedings which have begun and prosecutions for violations of law occurring before the effective date of this Ordinance are not affected or abated by this Ordinance.

SECTION VI – EFFECTIVE DATE

This Ordinance shall take full force and effect upon March 31, 2007 following final publication of said ordinance.

1. The preceding ordinance was adopted by the Manchester Township Board of Trustees at their regular meeting held on February 13, 2007, and that members Widmayer, Macomber, Bechtel, Huber, Kolon and Mann voted in favor of adoption, none voted against. Absent: Schmitt

2. A summary of the ordinance was published in the *Manchester Enterprise* on March 1, 2007.
3. The effective date of the ordinance is March 31, 2007.

SECTION VII – CERTIFICATION

I, Ann M. Bechtel, Clerk of the Township of Manchester, do hereby certify that the foregoing is a true and correct copy of an ordinance adopted by the Manchester Township Board at a regular meeting on February 13, 2007.

Ann M. Bechtel, Clerk