

TOWNSHIP OF MIDDLESEX
Cumberland County, Pennsylvania

NO. 8 -94

AN ORDINANCE AUTHORIZING THE USE OF RETAINING
TANKS FOR THE COLLECTION OF DOMESTIC
WASTEWATER GENERATED FROM RESIDENTIAL USE,
ESTABLISHING DEFINITIONS, CRITERIA AND
STANDARDS, PROVIDING LIMITATIONS ON THE USE
OF SUCH FACILITIES, ESTABLISHING PENALTIES
AND OTHER ENFORCEMENT REMEDIES FOR VIOLATION.

BE IT HEREBY ORDAINED AND ENACTED and it is hereby ordained
and enacted by the Board of Township Supervisors in and for the
Township of Middlesex, Cumberland County, Pennsylvania, as follows:

SECTION 1. BACKGROUND AND LEGISLATIVE PURPOSE. The Board of
Township Supervisors in and for the Township of Middlesex ("Board")
hereby recognizes and establishes the following background facts
and conditions:

a. The Township of Middlesex is in a state of
transition from an almost entirely rural community to a
community of varying uses and functions, thereby
increasing municipal governmental concerns and
responsibilities.

b. As an indication of such change is the
relatively recent creation of a public water distribution
system and a public sewage collection and disposal
system, both of which systems are designed to enhance the
quality of life and to protect public health and safety;
however, it is fiscally impossible to provide such
services to all areas of the Township.

c. It is recognized that many existing

residential structures are served by on-site water sources (wells) and sewage disposal facilities (septic tanks, sand-mound systems, etc.) in the absence of municipal services, and that said systems sometimes fail and require repair or replacement.

d. It is further recognized that stringent rules have been enacted by the Commonwealth of Pennsylvania to control on-site sewage disposal facilities in the interest of protecting the waters of this Commonwealth and the health of citizens, which rules sometimes virtually prohibit the continued use of traditional sewage disposal facilities thereby depreciating values of property.

e. The Commonwealth of Pennsylvania permits (but does not require) the use of retaining tanks under certain circumstances, but places responsibility for oversight of such tanks on the local municipality. Accordingly, the Board has traditionally refused to allow the use of retaining tanks.

f. In more recent times, the Board has observed the development of more strict rules on traditional sewage disposal systems with consequent hardship on local residential owners. In an effort to provide relief for the latter, but being mindful of the need to protect public health and the quality of the waters of this Commonwealth, the Board has decided to modify its

existing policy by permitting retaining tanks for residential properties where an existing traditional sewage disposal system has failed and cannot be repaired or be replaced by a disposal system. This Ordinance is intended to embody such modified policy.

SECTION 2. DEFINITIONS. The following words and phrases shall have the meanings set forth herein unless the context of the use thereof shall dictate another interpretation:

"Board": the Board of Township Supervisors in and for the Township.

"Collector": a person or entity engaged in the removal, transportation and disposal of Sewage from Retaining Tanks.

"DER": the Pennsylvania Department of Environmental Resources.

"Owner": the person, persons or entity owning the Residential Property. Said term excludes the lessee, tenant or other non-owning occupant of a Residential Unit.

"Residential Premises": a parcel of real estate improved with a building used for human housing. Said term excludes any commercial or industrial use or any other non-residential use of real estate including a combination of residential and non-residential uses.

"Residential Unit": a portion of a Residential Premises occupied by a single family or persons living as a family.

"Retaining Tank": a watertight receptacle which receives and retains sewage and is designed and constructed to facilitate the ultimate disposal of Sewage at another site. Said term shall be synonymous with the term "holding tank".

"S.E.O.": the Sewage Enforcement Officer appointed by the Board.

"Sewage": domestic wastewater originating from a residential use, and does not include industrial waste, hazardous or toxic materials or any other substance not generated from normal residential use.

"Township": the Township of Middlesex, Cumberland County, Pennsylvania.

SECTION 3. RETAINING TANKS PERMITTED. Retaining tanks may be installed, constructed and used only to serve a Residential Premises where an existing on-site sewage disposal facility has failed and cannot be repaired, rehabilitated or replaced by any other means approved under the regulations of DER and where no municipal sewerage system is readily available to serve the Premises, whether by direct connection or reasonable extension. Retaining Tanks are not permitted for any new Residential Premises or for any commercial, industrial or other non-residential premises or use. Retaining Tanks may only be installed, constructed or used in accordance with all the provisions of this Ordinance. All costs and expenses of designing, constructing, installing, repairing and maintaining a Retaining Tank shall be borne by and paid for by the Owner.

SECTION 4. SUPERVISION OF INSTALLING AND CONSTRUCTING RETAINING TANKS. All Retaining Tanks shall be installed and constructed under the supervision of the S.E.O. The S.E.O. is hereby authorized and empowered to administer and enforce the provisions of this Ordinance.

SECTION 5. SPECIFICATIONS OF RETAINING TANKS.

A. Except where greater requirements are imposed by this

Ordinance, all Retaining Tanks must comply with all applicable standards and requirements of DER as now existing or hereafter enacted or amended.

B. The minimum capacity of a Retaining Tank shall be 2,400 gallons for each Residential Unit or a volume equal to the quantity of Sewage generated in three (3) days, whichever is larger.

C. A Retaining Tank shall be equipped with a warning device to indicate when the Tank is filled to within 75% of its capacity. Such device shall consist of two alarms: (a) an audible or visual signal located inside the Residential Unit, and (b) a visual signal located on the Residential Premises so as to be seen from the nearest public road. The Owner shall be responsible for the continuous operation of such device.

D. The specific design of a retaining tank shall be submitted in detail in writing to the S.E.O. for review and approval prior to installation or construction.

SECTION 6. MAINTENANCE OF RETAINING TANKS. The Owner shall be responsible to the Township for the maintenance of each Retaining Tank. Maintenance shall include, but not be limited to, the removal of Sewage from the Retaining Tank, repair of said Tank, assurance of continuous operation of the warning device required under Section 5 hereof, and all other actions required to assure containment of Sewage and to prevent leakage or spillage of Sewage outside said Tank.

SECTION 7. INDEMNIFICATION BY OWNER. Each Owner of a

Residential Premises containing a Retaining Tank installed, constructed or used pursuant to this Ordinance shall, by reason of such installation, construction or use, be deemed to have agreed to indemnify Township and hold it harmless of and from any and all liability, damages, costs, expenses, attorney's fees and any other obligation imposed upon it by reason of such Owner's failure to perform the obligations imposed hereunder or by otherwise violating this Ordinance, and further, shall be deemed to agree to reimburse Township for all costs, expenses and expenditures which it incurs by reason of such Owner's failure to perform the obligations imposed hereunder or in enforcing the provisions of this Ordinance against said Owner.

SECTION 8. MAINTENANCE SECURITY DEPOSIT. As a condition of permitting the installation, construction and/or use of a Retaining Tank, the Owner shall deposit with Township the sum of Three Thousand Five Hundred (\$3,500.00) Dollars in cash for each Residential Unit served by a Retaining Tank as partial security for the Township for reimbursement for any costs or expenses incurred in enforcing the provisions of this Ordinance against said Owner. Said deposit shall be retained by Township in an account to be known as "Retaining Tank Maintenance Security Account", which shall be interest-bearing, which interest shall be retained by Township and may be disbursed annually for general Township purposes including the sum of Twenty (\$20.00) Dollars per year per Retaining Tank for Township's administrative cost in maintaining said account.

The Township shall have the right to use and consume said deposit to reimburse its costs and expenses in the enforcement of this Ordinance to include, but not be limited to the following: removing and disposing of Sewage from the Retaining Tank; repairing the Retaining Tank and/or warning device; inspecting the Retaining Tank; testing Sewage; attorney's fees, court costs and witness fees in any litigation required to enforce this Ordinance.

At any time such deposit falls below the original amount thereof, the Owner shall promptly deposit such additional funds to restore the full amount. Such further deposit shall be made within ten (10) calendar days after the date notice requiring such further deposit is mailed to Owner.

All deposits made hereunder shall be deemed to be in rem and appurtenant to the Residential Premises containing such Retaining Tank. As such, the deposit shall be deemed to relate to the Owner of said Residential Premises at the time any question arises thereto. Said deposit shall be deemed to be transferred from Owner to Owner at each time the ownership of the Residential Premises is transferred.

Township shall return and refund to the then current Owner the Maintenance Security Deposit (or the remaining balance thereof), without interest, upon the occurrence of any of the following events: (i) the Residential Unit is connected to a municipal sewage system, (ii) a DER-approved on-site sewage disposal system is installed to serve the Residential Unit, (iii)

the Residential Unit is discontinued as a dwelling place and the Retaining Tank is discontinued and filled with solid, dry material (i.e. sand, gravel, crushed stone, earth).

SECTION 9. VIOLATIONS CONSTITUTE A NUISANCE. The Owner's failure to comply with the maintenance provisions of this Ordinance (Section 6) shall be deemed to be a public nuisance because of the threat to public health and damage to the waters of this Commonwealth and may be abated by injunctive action. By installing, constructing or using a Retaining Tank pursuant to this Ordinance, the Owner shall be deemed to agree with the foregoing sentence and further acknowledges that the Court of Common Pleas of Cumberland County, Pennsylvania, sitting in equity shall have jurisdiction of the Residential Premises and each Owner and that no adequate remedy at law exists.

SECTION 10. OWNER RESPONSIBLE FOR COLLECTOR. Township shall not provide Sewage removal, transportation or disposal services and does not intend to license, regulate or otherwise control Collectors. The Owner of the Residential Premises requiring the services of a Collector shall be entirely responsible for Collector's services and shall indemnify Township and hold it harmless of and from any and all liability (without limitation or exception) imposed or sought to be imposed against Township by reason of the Collector's activities, including, but not limited to, Township's costs of defending against any such claim, including Township's attorney's fees.

SECTION 11. USE OF RETAINING TANK IS A PRIVILEGE;
REVOCATION OF PRIVILEGE. Township's permission for the installation, construction and/or use of a Retaining Tank is hereby declared to be a privilege (as distinguished from a right) of the Owner of a Residential Premises. Therefore, the Owner's abuse of said privilege by failure to comply with the provisions of this Ordinance may be revoked, in which event, the Residential Unit served by any such Retaining Tank shall be vacated and no further Sewage shall be generated on or discharged from said Residential Unit, without liability to Township.

Township may revoke such privilege upon not less than five (5) days' written notice mailed to the Owner of the Residential Premises and posted conspicuously on each Residential Unit.

SECTION 12. ACCESS TO RESIDENTIAL PREMISES. Each Owner constructing, installing or using a Retaining Tank shall be deemed to have authorized duly authorized officials of Township to enter upon the Residential Premises to inspect the facilities authorized by this Ordinance, to enforce the provisions of this Ordinance, abate any nuisances arising from delinquent maintenance of such facilities, enforce the revocation of the privilege of continued use of such facilities. Any such entry shall not constitute a trespass.

SECTION 13. APPLICATION AND PERMIT REQUIRED. An Owner of a Residential Premises seeking to use a Retaining Tank shall submit an application therefor on a form to be provided by Township, which shall include the following information.

- a. Name(s) and address(es) of each Owner.
- b. Identification of Residential Premises to include (i) the Cumberland County Real Estate Tax Assessor's parcel number, (ii) street address, (iii) copy of current deed or other document whereby the Owner(s) claim(s) title to said Premises.
- c. Description of each Residential Unit to include floor plan, room dimensions and nature of each room.
- d. A plot or map to scale of the Residential Premises accurately showing the location and description of all improvements, significant differences in surface grade or level and the location of the proposed Retaining Tank and exterior warning device.
- e. A detailed drawing and narrative specifications of the proposed Retaining Tank and warning devices sufficient for adequate review by the S.E.O.

The Application shall be accompanied by:

- a. A filing and processing fee of Five Hundred (\$500.00) Dollars.
- b. The Maintenance Security Deposit required under Section 8 hereof.
- c. An Acknowledgment/Agreement signed by each Owner in the following form:

ACKNOWLEDGMENT AND AGREEMENT BY OWNER(S)

The undersigned, being all the Owners of the following Residential Premises: _____

in Middlesex Township, Cumberland County, Pennsylvania, and in consideration of being granted permission by the Township of Middlesex to install, construct and the privilege to use a Retaining Tank to serve the Residential Unit on said Premises known as _____

do hereby acknowledge receipt of a copy of Ordinance No. 94- _____ of the Township of Middlesex and, intending to be legally bound hereby, agree to comply with each and all provisions of said Ordinance and to otherwise be legally bound thereby. We further acknowledge, understand and agree that said Ordinance and this Acknowledgment/Agreement shall be binding upon all successive and future owners of said Residential Premises.

IN WITNESS WHEREOF, I/we, jointly and severally, have hereunto set my/our hand(s) and seal(s) this _____ day of _____, 1994.

Owner (Individual) (SEAL)

Owner (Individual) (SEAL)

Owner (Individual) (SEAL)

Name of Corporate Owner

By _____
ATTEST: President of Corporation

Corporate Secretary
(Corporate Seal)

Name of Partnership Owner
By _____
Partner
By _____
Partner
By _____
Partner

SECTION 14. CIVIL ENFORCEMENT. The S.E.O., with the consent of the Chairman of the Board and Township Solicitor, is hereby authorized to take all appropriate action at law or in equity to abate any violation of this Ordinance where the continued violation is believed to be a threat to the health of the inhabitants of this Township or deleterious to the quality of the waters of this Commonwealth.

SECTION 15. VIOLATIONS; PENALTY. Any Owner who fails to comply with any provision of this Ordinance shall be in violation thereof. Any Owner violating any provision of this Ordinance shall, upon conviction thereof by summary proceedings before a District Justice, be sentenced to pay a fine of not less than Two Hundred Fifty (\$250.00) Dollars nor more than Five Hundred (\$500.00) and the costs of the proceeding; and, in default of payment of such fine and costs, to undergo imprisonment in the Cumberland County Prison for a term not to exceed thirty (30) days.

Each day's violation of this Ordinance shall constitute a separate offense.

SECTION 16. REPEALER. All Ordinances or Resolutions or parts of Ordinances or Resolutions insofar as they are inconsistent herewith, be and the same are hereby repealed.

SECTION 17. SEVERABILITY. If any sentence, clause, phrase or part of this Ordinance is determined by a court of competent jurisdiction to be unconstitutional, unlawful or invalid, such determination shall not affect or impair any of the remaining provisions hereof. It is hereby declared as the intention of the Board that this Ordinance would have been enacted had such unconstitutional, unlawful or invalid portion hereof not been included herein.

SECTION 18. EFFECTIVE DATE. This Ordinance shall become effective in accordance with prevailing law.

ENACTED AND ORDAINED by the Board of Township Supervisors this 3rd day of August, 1994, in public lawful session duly assembled.

TOWNSHIP OF MIDDLESEX

BY Dale H. Hane
VICE-Chairman, Board of Township
Supervisors

ATTEST:

Ruby Jensen
Township Secretary

(SEAL)