

ORDINANCE NO: 95.03

TOWNSHIP OF NAPOLEON

JACKSON COUNTY, MICHIGAN

AN ORDINANCE TO AMEND THE NAPOLEON TOWNSHIP WATER ORDINANCE TO REGULATE THE USE OF GROUNDWATER IN CERTAIN AREAS OF THE TOWNSHIP.

THE TOWNSHIP OF NAPOLEON ORDAINS:

Section 1: Amendment. The water ordinance of the Township of Napoleon, Jackson County, Michigan, being ordinance No. 95-02, as previously amended, is hereby further amended by adding Article II, entitled "Water Well Restriction Ordinance" to read as follows:

ARTICLE II. WATER WELL RESTRICTION ORDINANCE.

SEC. 1. FINDINGS. The Township Board has been informed and hereby finds that petroleum compounds have been detected in an aquifer in an area of the Township. The Township Board has determined that public health, safety and welfare interests would be served and protected by restricting the use of wells to supply water in and from an area in the Township.

SEC. 2. DEFINITIONS. The following definitions shall apply to terms used in this Article:

- (1) "Affected Parcel" means a parcel of land that is identified on Schedule 1.
- (2) "Applicant" means a person who applies or applied for the establishment of a Restricted Zone pursuant to this Article.
- (3) "Impacted Groundwater" means groundwater in which there is present concentrations of materials that exceed drinking water criteria under the Safe Drinking Water Act, 1976 PA 399, as amended, or the residential drinking water criteria established by the MDNRE in operational memoranda or rules promulgated pursuant to Part 201, Environmental Remediation (MCL 324.20101 *et seq.*).
- (4) "MDNRE" means the Michigan Department of Natural Resources and Environment, or its successor agency.
- (5) "Owner" means the holder of record title for a parcel of land and also the occupant of a parcel of land in possession under a land contract or lease.
- (6) "Person" means any individual, partnership, corporation, association, club, joint venture, estate, trust, and any other group or combination acting as a unit, and the individuals constituting such group or unit.
- (7) "Restricted Zone" means an area or areas described within Section 3 of this Ordinance for which the prohibition of Wells and the use of groundwater applies

and includes parcels of land that are legally described on the attached Schedule 1 and that are depicted in the map(s) attached as Schedule 2, as amended from time to time as provided in this Ordinance.

- (8) "Township" means Napoleon Township.
- (9) "Township Property" means any interest in real property owned or held by the Township and shall include but not be limited to the following: (i) Real property owned by the Township; (ii) Real property leased by the Township as Lessee; and (iii) Township streets, alleys or other Township rights-of-way or easements.
- (10) "WB" means the Water Bureau of the MDNRE, or its successor agency.
- (11) "Well" means an opening in the surface of the earth for the purpose of removing fresh water through non-mechanical or mechanical means for any purpose other than a public emergency or conducting response actions that are consistent with the Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended ("NREPA"), the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, or other applicable statute.

SEC. 3. RESTRICTED ZONE. The following described areas in the Township shall be Restricted Zones under this Article. They may be referred to by reference to the names provided in the caption preceding their descriptions. Additional Restricted Zones, along with a map illustrating the Restricted Zone, may be added by amending the Ordinance in accordance with Sections 10 and 11 and all other applicable laws.

- (1) Brooklyn/Napoleon/Cady/Oak Point Restricted Zone – legally described on the attached Schedule 1 and depicted in the map attached as Schedule 2.

SEC. 4. PROHIBITION. Except as provided in Section 5, no person shall install, or allow, permit, or provide for the installation of a Well on any parcel of land within the Restricted Zone. Furthermore, no person shall use or utilize, or allow, permit, or provide for the use or utilization of a Well on any parcel of land within the Restricted Zone, if such parcel of land is able to be connected to the Township water system. Any existing Well at the time of the enactment of a Restricted Zone on any Affected Parcel within that Restricted Zone shall be plugged/abandoned in accordance with applicable laws, regulations and ordinances once such Affected Parcel is connected to the Township water system, unless such existing Well falls within one of the exceptions listed in Section 5.

SEC. 5. EXCEPTIONS. A person may install or utilize, or allow, permit, or provide for the installation or utilization of a Well in any Restricted Zone if any of the following exceptions applies and the requirements of the exception are complied with. The party proposing an exception to the Well prohibition shall conduct all appropriate inquiry and prepare a due care analysis pursuant to Part 201 of NREPA.

- (1) *Proof of No Influence.* If the MDNRE determines based on information provided to it by the person seeking this exception that the use of a Well in a Restricted

Zone will not exacerbate existing groundwater contamination, and that water from the proposed Well will not be affected by Impacted Groundwater, and proof of those determinations is delivered to the Township, the Well may be so used.

- (2) *Groundwater Monitoring/Remediation.* A Well may be used for groundwater monitoring and/or remediation as part of a response activity approved by the MDNRE or the United States Environmental Protection Agency.
- (3) *Construction Dewatering.* A Well may be used for construction dewatering if the following conditions are satisfied: (i) the use of the dewatering Well will not result in unacceptable exposure to Impacted Groundwater, possible cross-contamination between saturated zones, or exacerbation of Impacted Groundwater, as defined in Part 201 of NREPA; and (ii) the water generated by that activity is properly handled and disposed of in compliance with all applicable laws, rules, regulations, permit and license requirements, orders and directives of any governmental entity or agency of competent jurisdiction. Any exacerbation caused by the use of the Well under this exception shall be the responsibility of the person operating the de-watering Well, as provided in Part 201 of NREPA.
- (4) *Processing Activities.* If the MDNRE determines that the use of a Well for non-contact heating, cooling, production, or processing involved in industrial or commercial activities will not cause migration or exacerbation of Impacted Groundwater, and proof of that determination is delivered to the Township, such use of the Well under terms and conditions specified by the MDNRE will be allowed. All information necessary for the MDNRE determination described in this subsection shall be provided by the person seeking this exception.
- (5) *Public Emergencies.* A Well may be used in the event of a public emergency. Notice of such use shall be provided to the MDNRE within a reasonable time thereafter.

SEC. 6. ENFORCEMENT. The Township Supervisor, or his/her designee, shall be the official having the authority to enforce this Ordinance. After the Effective Date of this Ordinance and once the Township water system is available to the Affected Parcels, the enforcement official shall contact all Owners of Affected Parcels, which from the information available to the Township, appear to have Wells prohibited under this Ordinance, giving written notice of the need to cease using and abandon such Wells, or to obtain approval or acknowledgment of an exception under Section 5. The Owner shall immediately take steps so as to comply with the provisions of this Ordinance within sixty (60) days from the date of such notice. Any existing Well in violation of this Ordinance shall then be plugged or abandoned in conformance with applicable legal requirements. Where, upon information available to the enforcement official, it is suspected that a Well is being used on an Affected Parcel in violation of this Ordinance, the enforcement official may inspect such Affected Parcel and serve an appropriate notice and order of such violation requiring that action be taken promptly by the Owner to bring the Affected

Parcel into compliance. If the Owner fails to act in accordance with such order, the enforcement official may seek remedies and penalties as provided in Section 7.

SEC. 7. PENALTY. Any person who violates any provision of this Ordinance shall be liable for a municipal civil infraction under the provisions of Ordinance Number 59. In addition, the Township may seek an order from a court of appropriate jurisdiction requiring compliance with this Ordinance and may also seek collection of costs and attorney fees associated with such enforcement action. Any violation of this Ordinance is a public nuisance, subject to abatement, and any Well in violation of this Ordinance shall be immediately taken out of service and lawfully abandoned in compliance with applicable legal requirements. A court of competent jurisdiction may order any person violating any provision of this Ordinance to properly and lawfully remove or abandon a Well.

SEC. 8. BUILDING AND ZONING PERMITS. No permit for the construction or alteration of a building or structure nor any permit for any zoning approval shall be issued by the Township Building and Zoning Administrator for any improvement on an Affected Parcel which has, or proposes, a water supply from a Well in violation of this Ordinance.

SEC. 9. ADMINISTRATIVE LIABILITY. No officer, agent or employee of the Township or member of the Township Board shall render himself or herself personally liable for any damage which may occur to any person or entity as the result of any act or decision performed in the discharge of his or her duties and responsibilities pursuant to the Ordinance.

SEC. 10. AMENDMENT; REPEAL. The MDNRE, an Applicant, an Owner, or other interested party may request in writing to add parcels to or delete parcels from a Restricted Zone or to establish an additional Restricted Zone or to otherwise amend or repeal this Ordinance, and shall provide advance notice to the MDNRE and any Applicant for such Restricted Zone of any proposed change hereunder, including the reasons supporting such request. The Township on its own motion and upon advance notice to the MDNRE and any Applicant for such Restricted Zone, may also take action to amend or repeal this Ordinance as it deems appropriate. The amendment or repeal of this Ordinance shall be by an appropriate ordinance adopted in the same manner as this Ordinance, and any such action shall be in the sole legislative discretion of the Township Board.

SEC. 11. NOTIFICATION OF LAPSE, OR INTENT TO AMEND OR REPEAL. At least thirty (30) days prior to any action regarding a proposed amendment or repeal in whole or in part of this Ordinance, the Township shall notify the MDNRE and any Applicant of its intent to so act. The Township shall also notify the MDNRE and any Applicant that this Ordinance may lapse at least thirty (30) days prior to the Ordinance being allowed to lapse.

SEC. 12. SEVERABILITY AND CAPTIONS. If any article, section, subsection, sentence, clause, phrase, or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of remaining portions of the Ordinance, it being the intent of the Township that this Ordinance shall be fully

severable. The Township shall promptly notify the MDNRE and any Applicant upon the occurrence of any event described in this section. The captions included at the beginning of each section are for convenience only and shall not be considered a part of this Ordinance.

SEC. 13. REPEAL. All resolutions, ordinances, orders or parts thereof in conflict in whole or in part with any of the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

SEC. 14. EFFECTIVE DATE. This Ordinance shall take effect upon September 16, 2010 ("Effective Date").

This Ordinance is enacted by the Township of Napoleon, County of Jackson, State of Michigan, at a meeting of the Township Board held at 7:00 PM, this 10th day of August, 2010.

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