

TOWNSHIP OF LEELANAU
(LEELANAU COUNTY, MICHIGAN)

TOWNSHIP POLICY CONCERNING
PRIVATE OWNERSHIP OF PUBLIC SANITARY SEWERS

RESOLUTION NO. 3, 2006

WHEREAS, privately owned public sanitary sewer systems, hereinafter referred to as private/public sewer systems, cannot be constructed within the Township without the approval of the Michigan Department of Environmental Quality (MDEQ) which prefers the involved local units of government to assume responsibility for the operation and maintenance of the same should the private system for any reason cease to be properly operated and maintained; and

WHEREAS, under the Court of Appeals decision of Lake Isabella Development, Inc. v Village of Lake Isabella, 259 Mich App 393 (2004), the court determined that the township's assumption of responsibility for such private/public sewer systems is strictly discretionary with the Township Board and if not assumed by the Township, remains the exclusive responsibility of MDEQ for permitting, control and regulation of such private/public sewer systems; and

WHEREAS, by Public Act 241 of 2005, enacted by the state legislature and given immediate effect on November 22, 2005, a township under MCL 324.3109(3) is not rendered responsible or subject to penalties or sanctions for an unauthorized discharge from a private/public sewer system unless the township has accepted responsibility in writing for the same and has also been notified in writing by MDEQ of such responsibility,

NOW, THEREFORE, BE IT HEREBY RESOLVED that it is the policy of the Township Board of Leelanau Township to reject the Township's assumption of responsibility of any private/public sewer system constructed within the Township under permit from MDEQ unless the following requirements are met by an applicant, owner and/or developer of such system.

1. The location of the proposed private/public sewer system is in compliance with the Township's Master Land Use Plan and Zoning Ordinance either in effect at the time of such application to the Township or as amended prior to any construction of such system.

2. The lands and buildings proposed to be connected to and thereby benefited by a private/public sewer system are owned or otherwise under the legal control of the owner-developer

3. The plans and specifications for the proposed system were prepared by a qualified registered professional engineer, reviewed by the Township's engineer, and

determined to be in compliance with all state and local public agency requirements for such system and for the serving of the area proposed to be served by the system.

4. The owner-developer deposits with the Township treasurer an amount of money sufficient to reimburse the Township for all of its costs in having its engineer, attorney and such other professionals as the Township Board may determine necessary to ascertain the sufficiency of the proposed system to serve the area to be benefited by the system, which sum shall be determined by the Township Board following consultation with its engineer, attorney and other professionals and based upon the size and sanitary sewer needs of the area to be served. Such deposit shall be held in escrow by the Township treasurer to be disbursed for the payment of costs incurred by the Township in processing its review and the review of its professional assistants of the proposed project. Additional deposits shall be required where the initial deposit proves insufficient to pay such costs. Any surplus unexpended sums shall be returned to the depositor upon completion of the aforesaid reviews without interest. No final approval of the proposed plans and specifications shall be issued until all costs of the Township have been deposited by the applicant-developer.

5. Following the approval of the plans and specifications, and any necessary amendments or supplements thereto by the Township Board and MDEQ and prior to the commencement of any construction of the proposed system, the following additional requirements shall be furnished.

- A. The applicant-developer shall deposit an additional sum with the Township treasurer to be held in escrow to cover the Township's estimated cost of its engineers monitoring the construction of the system in accordance with the approved plans and specifications and its attorneys charges for drafting and/or editing any necessary agreements and special assessment documents, notices and their publication and mailing required by the within Township policy.
- B. The owner or owners of the area to be benefited by the proposed sanitary sewer system shall sign and file with the Township clerk a proper petition under Michigan Public Act 188 of 1954, as amended, for the creation of a sanitary sewer special assessment district to cover the estimated costs of the operation, maintenance, repair, replacement and future annual special assessment proceedings of and for the sanitary sewer system at such time as it becomes necessary for the Township to assume the responsibility to perform the foregoing obligations as a result of the failure of the owner-developer or other subsequent responsible parties to adequately perform the foregoing obligations in compliance with the requirements of MDEQ and the laws and statutes pertinent to such system. Following receipt of such petition, the Township Board shall proceed under said Act 188 to create the special assessment district so that it

is available when needed to provide authority in the Township to specially assessed benefited properties in the district for all Township assumed and incurred sanitary sewer costs.

- C. The applicant-developer shall file a surety bond or irrevocable letter of credit acceptable to the Township Board with the Township clerk, callable by the Township Board, in such amount as determined by the Township Board to adequately cover the Township's operation, maintenance, repair, replacement and correction of defects in the system and any and all injuries caused thereby for an initial period of two years and for each two year period thereafter with each subsequent two year period to involve either the increase or decrease in the amount to reflect the previous two year costs of operation, maintenance, repairs, replacements and compensation for injuries caused by the system. The filing of such biannual bond or letter of credit shall continue through the two year period following the date the Township is required to assume responsibility of the system under the provisions of the within policy.
- D. The owner-developer shall disclose to the Township adequate financial means to support the maintenance, repair, replacement and operation of the system during the period of the owner-developers ownership and control together with the adequate physical means for the performance of such obligations.
- E. Appropriate easements, bills of sales and other necessary transfer documents transferring to the Township all parts of the sanitary sewer system necessary for the Township's operation and control shall be prepared and executed by the owner-developer and placed in escrow with an escrow agent acceptable to the parties for delivery to the Township at such time as the Township becomes obligated under the within policy to assume responsibility for the operation, maintenance, repair and control of the sanitary sewer system.
- F. All contractor and professional warranties concerning the system shall name the Township as a party entitled to the benefits of such warranties, copies of which shall be filed with the Township clerk.

6. The owner-developer shall certify that the system has been constructed in accordance with the approved plans and specifications and shall furnish the Township with "as constructed plans" disclosing the location of all mains, pumping stations, treatment plants and appurtenances, certified for accuracy by the registered engineer of applicant-developer

7. During operation and maintenance of the system by the owner-developer or its approved assignees, owner-developer or its or their designated operator shall maintain a written record of the costs of such operation and maintenance including the description of the same and furnish a copy to the Township clerk or designee on a periodic basis not less frequently than every four months. The report shall include the name, address and qualifications of the operator as well as any defects in the system and the length of time and methods used to correct the same.

8. The Township shall not be liable or responsible for any defects in the system or any contamination caused by its operation or maintenance while it remains in the control of owner-developer or its approved assignees and prior to the Township's assumption of responsibility and control of the system. The Township shall further not be responsible or liable for any contamination or pollution resulting from the system prior to its assumption of responsibility and control but only subsequently discovered. Owner-developer or its approved assignees shall by written agreement indemnify and agree to hold harmless the Township from any such contamination or pollution, injury or damage and the correction of the same occurring prior to the Township's assumption of responsibility and control of the system.

9. The owner-developer or its approved assignees shall be obligated to operate, maintain and repair the system in a good and workmanlike manner free of any contamination or pollution from the acceptance and discharge of sanitary sewage into and from the system in accordance with all legal requirements of MDEQ and the laws, rules and statutes pertinent to such system.

10. At such time, if any, the Township assumes responsibility for the operation and control of the system pursuant to the within policy, it shall have the right to expand the system to serve additional customers beyond the original designated benefited area if capacity is available for such expansion. At such time, the Township shall further have the authority to charge customers of the system a sewage service charge for its acceptance and treatment of sanitary sewage and the Township's costs and expenses in connection therewith.

11. Any lands or buildings which are not owned by the owner-developer, become owned by the owner-developer or are currently owned by the owner-developer but not yet under development and that are proposed to be connected and otherwise served by a private/public sewer system shall comply with the provisions and requirements of the within policy.

12. If a separate public sanitary sewer system becomes available to serve the area benefited by the private/public sewer system, the Township shall have authority to require the private system to be connected to such public system with all connection costs being chargeable to the customers or potential customers of the private sanitary sewer system through special assessments established in the special assessment district previously created under the within policy or through other appropriate methods.

13. Any sale or transfer of lots, parcels, or condominium units and any master deed of any condominium project occurring within the area described and benefited by the private/public sewer system, shall include in the document of transfer (whether by deed, lease, option, easement or otherwise) and/or in the Master Deed, a reference to the existence of the private/public sewer system and the transferee's obligations concerning the same, which obligation shall run with the land and bind all subsequent transferees.

14. Where the private/public sewer system involves less than three sanitary sewer residential customer units, the Township may waive the within requirements regarding the creating of a special assessment sanitary sewer district in lieu of other acceptable financial means for the operation, maintenance, repair, replacement and control of the system.

15. The within policy of the Township of Leelanau shall be incorporated by reference or otherwise, in a written agreement with an interested owner-developer executed by both the owner-developer and the Township supervisor and clerk on behalf of the Township wherein both parties agree to abide and be governed by the terms of the within policy where the Township Board has previously indicated its willingness to assume responsibility for the operation and control of the proposed private/public sewer system.

16. The owner-developer's obligations hereunder shall not be assigned to any other person or entity without notice to and the written approval of the Township Board or its designated representative.

17. Policy Resolution No. 10 of 2002, as amended, previously adopted by the Leelanau Township Board is hereby repealed and superceded by the within Resolution; provided, however, any previous private/public sewer system agreement executed by the Township under its said previous 2002 policy shall remain in full force and effect unless amended in writing by agreement of the respective parties.

Motion was made by Goldschmidt, and seconded by Dunn, to adopt the foregoing Resolution.

Upon roll call vote the following voted "aye":

Denise Dunn
Gary Fredrickson
Victor Goldschmidt
Deborah Van Pelt
James Neve

The following voted "nay": 0

The Supervisor declared the motion carried and the Resolution duly adopted.

CERTIFICATE

The undersigned Clerk of the Township of Leelanau, Leelanau County, Michigan, hereby certifies that the foregoing is a true and complete copy of a Resolution adopted by the Leelanau Township Board, entitled Township Policy Concerning Private Community

Sanitary Sewer Systems, at its regular meeting held on the 31 day of January, 2006; that said meeting was conducted and noticed in accordance with the requirements of the Michigan Open Meetings Act, (Act 267 of the Public Acts of 1976, as amended); that a quorum of said members of the Leelanau Township Board were present and voted unanimously in favor of the adoption of the foregoing Resolution.

Dated: _____, 2006

Leelanau Township Clerk

Deborah K. Van Pelt,