

TOWNSHIP OF ELY
MARQUETTE COUNTY, MICHIGAN
ORDINANCE NO. 2002-1

AN ORDINANCE TO PROVIDE FOR AN REGULATE THE PROTECTION OF
GROUNDWATER RESOURCES IN THE TOWNSHIP OF ELY THAT ARE LOCATED
WITHIN A MDEQ APPROVED WELLHEAD PROTECTION AREA.

ENACTING CLAUSE

THE TOWNSHIP OF ELY ORDAINS:

ARTICLE 1: GENERAL PROVISIONS

Section 1.01. Title

This Ordinance shall be known and cited as the:
ELY TOWNSHIP WELLHEAD PROTECTION OVERLAY ZONING ORDINANCE

Section 1.02. Purpose

The Township of ELY has determined that:

- A. Certain groundwater underlying the Township is the sole source of the Township's "Greenwood System" drinking water.
- B. Groundwater aquifers are integrally connected with the surface water, lakes and streams which constitute significant public health, recreational and economic resources of the Township and surrounding area.
- C. Spills and discharges of petroleum product, sewage and hazardous substances threaten the quality of the groundwater supplies and other water related resources, posing potential public health and safety hazards and threatening economic losses.

THEREFORE, the Township of Ely has enacted an overlay Zoning Ordinance to initiate the following actions:

- A. Preserve and maintain existing and potential groundwater supplies, aquifers, and groundwater recharge areas of the Township, and to protect them from adverse land use development or land use practices.
- B. Preserve and protect sources of drinking water supply for public health, safety and welfare.
- C. Conserve the natural resources of the Township and the surrounding area.
- D. Provide a level of protection for the financial investment that the Township has in its drinking water supply.

- E. Assure that state regulations which help protect groundwater are implemented consistently when new or expanded development proposals are reviewed.

ARTICLE 2: DEFINITIONS

AQUIFER: Means a geologic formation, group of formations or part of a formation capable of storing and yielding a significant amount of groundwater to wells or springs.

BEST MANAGEMENT PRACTICES: Means measures, either managerial or structural, to prevent or reduce pollution inputs to soil, surface water or groundwater.

DEVELOPMENT: Means the construction, reconstruction, alteration of surface or structure or change in land use or intensity of land use.

ENVIRONMENTAL CONTAMINATION: Means the presence or release of a hazardous substance or other substance, in a quantity, which is or may become injurious to the environment, or to the public health, safety, or welfare.

FACILITY: Means any building, structure, installation of property from which there may be a discharge of hazardous substances.

HAZARDOUS SUBSTANCE: Means a chemical or other material which is or may become injurious to the public health, safety, or welfare, or to the environment. The term “hazardous substance” includes, but is not limited to, any of the following:

1. Hazardous Substances as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96.510, 94 State. 2767
2. Hazardous Waste as defined in Part 111 of the State of Michigan Natural Resources and Environmental Protection Act, 1994 Public Act 451, as amended.
3. Regulated Substance as defined in Part 213 of the State of Michigan Natural Resources and Environmental Protection Act, 1994 Public Act 451, as amended.
4. Hazardous Substance as defined in Part 201 of the State of Michigan Natural Resources and Environmental Protection Act, 1994 Public Act 451, as amended.
5. Used oil.
6. Animal waste or byproducts, or carcasses.

PRIMARY CONTAINMENT FACILITY: Means a tank, pit, container, pipe or vessel of first containment for a hazardous substance.

SECONDARY CONTAINMENT FACILITY: Means a second tank, catchment pit or vessel that limits and contains liquid or hazardous substance leaking or leaching from a primary containment area. Containment systems shall be constructed of material of sufficient thickness, density, and composition to prevent future environmental contamination of land, ground water or surface water.

UNDERGROUND STORAGE TANK SYSTEM: Means a tank or combination of tanks, including underground pipes connected to the tank or tanks, which is, was, or may have been used to contain an accumulation of hazardous substances, as defined in Part 213 of the State of Michigan Natural Resources and Environmental Protection Act, 1994 Public Act 451, as amended.

USED OIL: Means any oil which had been (a) refined from crude oil, (b) used, and (c) as a result of such use contaminated by physical or chemical impurities.

WELL: Means a permanent or temporary opening in the surface of the earth for the purpose of removing fresh water, testing water quality, measuring water characteristics, liquid recharge, waste disposal, or for dewatering purposes during construction, as defined in the Michigan Water Well Construction and Pump Installation Code, Part 127, Act 368 of the Public Acts of 1978, as amended, and rules.

WELLHEAD PROTECTION AREA (WHPA): Means the area around and up gradient from the public water supply wells delineated by the ten-year travel time contour capture boundary.

WELLHEAD PROTECTION OVERLAY ZONE: Means the Wellhead Protection Area as outlined on the Wellhead Protection Overlay Zoning Map in Article 2: Section 2.01.

Section 2.01: Wellhead Protection Overlay Zoning Map

**See in separate file under Ordinances Tab

ARTICLE 3: PRINCIPAL LAND USES PERMITTED, PROHIBITED

Proposed land use is specified by applicant and confirmed by the Township Planning Commission. Permitted land uses in the Wellhead Protection Overlay Zone include all permitted uses allowed in the underlying zoning district, except for the following:

1. Petroleum product manufacturing (including coal).
2. Commercial salvage yards and/or scrap processing.
3. Oil and gas drilling.
4. Vehicle maintenance services, including public and private garages.
5. Chemical and paint manufacturing operations.
6. Laundry and dry cleaner operations.
7. Electronic equipment manufacturing operations.
8. Electro-plating and chemical coating operations.

ARTICLE 4: GENERAL PROVISIONS

These provisions shall apply to all properties within the Wellhead Protection Overlay Zone, including private, commercial, industrial, residential and public properties, which use includes the storage or generation of hazardous substances in quantities greater than 100 kilograms (approximately 220 pounds or 25 gallons) per month, and which require site plan review under provisions of Article 4: Site Plan Review, Section 6.06, of the Ely Township Zoning Ordinance. The General Provisions apply to entire property parcels, providing the parcel is at least partially included in the Wellhead Protection Overlay Zone.

Section 4.01. Groundwater Protection Standards

- A. Any proposed project and related improvements shall be designed to protect the natural environment, including lakes, ponds, streams, wetlands, flood plains and groundwater, and to ensure the absence of any impairment, pollution, and/or destruction of water, natural resources, and the public trust therein.
- B. Storm water management and drainage facilities shall be designed to maintain the natural retention and storage capacity of any wetland, water body, or watercourse, and shall not increase flooding, or the potential for environmental contamination, on-site or off-site, and shall not result in loss of the use of property by any third party.
- C. Industrial facilities with a point source discharge of storm water shall maintain a Storm Water Pollution Prevention Plan in accordance with applicable state and federal regulations.
- D. General purpose floor drains shall be connected to a public sewer system, an on-site holding tank, or a system authorized through a State surface or groundwater discharge permit. If connected to a public sewer system, then the volume and concentration of waste discharged to the floor drain shall be in compliance with all State, County, and Local Industrial Pretreatment Ordinance.
- E. Sites that at any time use, store or generate substances in quantities greater than 100 kilograms (approximately 220 pounds or 25 gallons) that include hazardous substances shall be designed to prevent spills and unpermitted discharges to air, surface of the ground, groundwater, lakes, streams, rivers or wetlands.
- F. State and federal agency requirements for storage, spill prevention, record keeping, emergency response, transport and the disposal of hazardous substances and polluting materials shall be met. No discharges to groundwater, including direct or indirect discharges, shall be allowed without applicable permits and approvals.
- G. Bulk storage of pesticides shall be in accordance with applicable county, State and Federal regulations.

Section 4.02. Above Ground Storage and Use Areas for Hazardous Substances

- A. Primary containment of hazardous substances shall be product tight.
- B. Secondary containment shall be sufficient to store the substance for the maximum anticipated period of time necessary for the recovery of any released substance. Products held in containers with a volume of less than 40 gallons and packaged for retail use shall be exempt from this requirement.
- C. Outdoor storage of hazardous substances shall be prohibited except in product tight containers which are protected from weather, leakage, accidental damage and vandalism, including an allowance for the expected accumulation of precipitation.
- D. Out buildings, storage rooms, sheds, and pole barns which are utilized as secondary containment shall not have floor drains which outlet to the soil, public sewer systems, groundwater, or nearby drains or natural water bodies unless a surface or groundwater discharge permit has been obtained pursuant to applicable County, State, and Federal regulations.
- E. Areas and facilities for loading and unloading of hazardous substances as well as areas where such materials are handled and stored, shall be designed and constructed to prevent unpermitted discharges to floor drains, rivers, lake, wetlands, groundwater, or soils.

Section 4.03. Underground Storage Tank Systems

- A. Existing and new underground storage tanks shall be registered with the authorized State agency in accordance with applicable requirements of the U.S. Environmental Protection Agency and the Michigan Department of Environmental Quality.
- B. Installation, operation, maintenance, closure, and removal of underground storage tanks shall be in accordance with the applicable requirements of the Michigan Department of Environmental Quality. Leak detection, secondary containment, corrosion protection, spill prevention and overfill protection requirements shall be met.

Section 4.04. Well Abandonment

Out of service wells shall be sealed and abandoned in accordance with applicable State, County and Local requirements.

Section 4.05. Well Construction

- A. Well drilling, construction and installation shall only be performed by State of Michigan Registered Well Drillers.

- B. Well construction shall be completed in accordance with Part 127 of Act 368 of the Public Acts of 1978, as amended, and rules.
- C. Well construction shall include full grouting for the entire length of the well casing in accordance with Part 127 of Act 368 of the Public Acts of 1978, as amended, and rules.

Section 4.06. Sites with Contaminated Soils and/or Groundwater

- A. Site plans shall take into consideration the location and extent of any contaminated soils and/or groundwater on the site, and the need to protect health, safety, welfare and the environment.
- B. Information must be provided regarding the type, concentration and extent of identified contamination, land use deed restrictions and any remedial action plans.
- C. Excavation, drilling, direct-push and other earth penetration shall be sealed with grout, or with soil material exhibiting a lower hydraulic permeability than the native soil.

Section 4.07. Construction Standards

- A. The general contractor, or if none, the property owner, shall be responsible for assuring that each contractor or subcontractor evaluates each site before construction is initiated to determine if any site conditions may pose particular problems for handling any hazardous substances. i.e.: the handling of hazardous substances in proximity to water bodies or wetlands which may be improper.
- B. Hazardous substances stored on the construction site during the construction site during the construction process, shall be stored in a location and manner designed to prevent spills and unpermitted discharges to air, surface of the ground, groundwater, lakes, streams, rivers, or wetlands. Any storage container volume of over 40 gallons that contains hazardous substances shall have secondary containment.
- C. If the contractor will be storing or handling hazardous substances that require a Material Safety Data Sheet (MSDS), the contractor shall become familiar with all the requirements, and shall follow the required procedures to contain and clean up any release of the hazardous substance.
- D. Upon completion of construction, all hazardous substances and containment systems no longer used or not needed in the operation of the facility shall be removed from the construction site by the responsible contractor, or if none, the property owner, and shall be disposed of, recycled, or reused in a proper manner as prescribed by applicable State and Federal Regulations.
- E. Excavation, drilling, direct-push and other earth penetration shall be sealed with grout, or with soil material exhibiting a lower hydraulic permeability than the native soil.

Section 4.08. Maintenance

In areas where hazardous substances are handled, structural integrity of the building must be maintained to avoid inadvertent discharge of chemicals to soil and groundwater. Cracks and holes in floor, foundation and walls must be sealed in areas where hazardous substances are handled or stored.

Section 4.09. Exclusions

- A. A limited exclusion from the General Provisions is hereby authorized for hazardous substances if:
 - 1. The hazardous substance is packaged for personal or household use or is present in the same form and concentration as a product packaged for use by the general public.
 - 2. The total excluded substances containing hazardous substances does not exceed fifty (50) gallons or four hundred (400) pounds at any time.
- B. A limited exclusion from the General Provisions is hereby authorized for non-routine maintenance or repair of property in the Wellhead Protection Overlay Zone provided the uses are limited as follows:
 - 1. The aggregated of hazardous substances may not exceed fifty (50) gallons or four hundred (400) pounds at any time.
 - 2. The total use of substances containing hazardous substances may not exceed one hundred (100) gallons or eight hundred (800) pounds at any time.

ARTICLE 5: SITE PLAN REVIEW REQUIREMENTS

Section 5.01. Requirements

A site plan shall be submitted conforming to the requirements of Article 6 of the Ely Township Zoning Ordinance. In addition, the plan must delineate:

- A. Specify location, and size of interior and exterior area(s) and structure(s) to be used for onsite storage, use, loading/unloading, recycling, or disposal of hazardous substances.
- B. Specify location of all underground and above ground storage tanks for all such uses as fuel storage, waste oil holding tanks, hazardous substance storage, collection of contaminated storm water or wash water, and all other similar uses.
- C. Specify location of existing and proposed wells.
- D. Specify location of exterior drains, dry wells, catch basins, retention/detention areas, sumps, and other facilities designed to collect, store, or transport storm water of wastewater. The point of discharge for all drains and pipes shall be specified on the site plan.

- E. Specify areas on the site plan that the applicant has reason to believe are contaminated, together with a written report on the status of any site remedial action plan and copies of land use deed restrictions, if applicable.
- F. Submit a fully completed “Township of Ely, State and County Environmental Permits Checklist.”

Section 5.02. Determination of Applicability

It shall be the responsibility of any person and/or legal entity owning real property and/or owning and operating a business within Ely Township corporate limits to make a determination of the applicability of this Ordinance as it pertains to their property and/or business under ownership or operation. Failure to determine the applicability of this Ordinance shall not excuse any violations of this Ordinance.

Section 5.03. Conditions for Approval or Denial

- A. The Planning Commission, upon reviewing a site plan, shall take one of the following actions:
 - 1. Approval – If the site plan meets all of the Zoning Ordinance and related development requirements and standards, the Planning Commission shall notify the applicant in writing of such approval. The Chairman shall sign three copies of the site plan, filing two in the official site plan file maintained by the Zoning Administrator, and returning one to the applicant.
 - 2. Disapproval – If the site plan does not meet the requirements of this Ordinance and/or the Ely Township Zoning Ordinance and related development standards, the Planning Commission shall notify the applicant in writing the reasons for denial. The applicant may subsequently refile a corrected site plan under the same procedures followed for the initial submission.
 - 3. Conditional Approval – Conditions on approval of the site plan may be imposed meeting the requirements specified in the Township Zoning Act, P.A. 184, 1943, as amended, Conditions shall be:
 - a. Designed to protect natural resources, the health, safety, welfare and the social and economic well-being of residents, neighbors, and the community as a whole;
 - b. Related to the valid exercise of the police power;
 - c. Necessary to meet the purposes of this Ordinance, the Ely Township Zoning Ordinance and related to the standards established in the Zoning Ordinance for the land use or the activity under consideration.
 - 4. Table – If the site plan is found to be in violation of requirements of this Ordinance, the Ely Township Zoning Ordinance, incomplete with respect

to necessary information or presenting a unique situation, the Planning Commission may table the site plan until a public hearing can be scheduled or until such time that the additional specific information has been obtained.

ARTICLE 6: EXEMPTIONS AND WAIVERS

Section 6.01. Transportation of Hazardous Substances

The transportation of any hazardous substance shall be exempt from the provisions of this Ordinance provided the transporting motor vehicle or rail is in continuous transit, or that it is transporting substances to or from a State licensed hazardous waste treatment, storage, or disposal facility. Recreational boating shall be exempt from the provisions of this Ordinance on lakes, rivers and ponds within the wellhead protection delineation area.

ARTICLE 7: ZONING BOARD OF APPEALS

Section 7.01. Variances

In accordance with the Requirements and Standards as set forth in Article 8 of the Ely Township Zoning Ordinance, The Zoning Board of Appeals may grant a variance if it finds by written decision that the proposed use:

- A. Meets the intent of this Ordinance and the Ely Township Zoning Ordinance as well as its specific criteria;
- B. Will not, during construction or thereafter, have an actual or potential adverse impact on any aquifer or recharge area in the district;
- C. Will not actually or potentially adversely affect an existing or potential domestic or municipal water supply; and is consistent with existing and probable future development of surrounding areas.

Section 7.02. Appeals

- A. Appeals concerning any decision made by the Planning Commission relative to this Ordinance shall be made to the Ely Township Zoning Board of Appeals by filing a written notice of appeal within 30 days of the date of denial specified as the basis of appeal. All appeals taken will be governed by the provisions of Section 10 of the Ely Township Zoning Ordinance.

ARTICLE 8: PENALTIES, REMEDIES AND COSTS

Section 8.01. Falsifying Information

- A. Any persons who knowingly makes any false statements, representation or certification on any application, record, report, plan, permit or other document filed or required to be maintained pursuant to this Ordinance, or who falsifies, tampers with, or knowingly renders inaccurate any method required under this Ordinance, shall be fined upon conviction no more than two thousand (\$2,000.00) dollars per occurrence.

Section 8.02. Violations

- A. Any person or persons who are found to have violated any order of Ely Township or who willfully or negligently fails to comply with any provision of this Ordinance and the orders, rules and regulations and permits issued thereunder, shall be fined upon conviction not more than two thousand (\$2,000.00) dollars per occurrence.
- B. Each day on which a violation shall occur, or continue to occur, shall be deemed a separate and distinctive offense. In addition to the penalties provided herein, Ely Township may recover reasonable attorney's fees, court costs, court reporter's fees and other expenses of litigation by appropriate suit at law against the person found to have violated this Ordinance or the orders, rules, regulations, and permits issued thereunder.
- C. Any person or persons violating any of the provision of this Ordinance, shall be liable to Ely Township for any expense, loss or damage caused by such violation. Ely Township shall bill the person or persons for the costs incurred by the Township.
- D. In addition to other civil remedies provided for in this Ordinance, the Township Board may also institute proceedings for injunction, mandamus, abatement, and other appropriate remedies to prevent, enjoin, abate, or remove any violations of this Ordinance. The imposition payment of a civil penalty fine shall not exempt the violator from compliance with the provisions of this Ordinance.

ARTICLE 9: SEVERABILITY

Section 9.01. Severability

If any provision, paragraph, work, section or article of this Ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, and chapters shall not be affected and shall continue in full force and effect.

ARTICLE 10: ENACTMENT, EFFECTIVE DATE, SIGNATURES

Section 10.01. Enactment

This Ordinance shall be published in the manner required by law and shall become effective ten (10) days after the date of publication.

Moved by Board member David Schultz, supported by Board member Carl Hosang that the foregoing Ordinance No. 2002-1 be adopted.

Ayes: Carl Hosang, David Schultz, G. Gerine Jaykka, Ted A. Pepin

Nays: None

Absent: David Bleau

Ordinance 2002-1, the Ely Township Wellhead Protection Overlay Zoning Ordinance is declared adopted at a regular meeting of the Ely Township Board held February 20, 2002.

Section 10.02. Township Supervisor, Clerk Signatures and Effective Date

Ted A. Pepin
Supervisor

David J. Bleau
Clerk

I hereby certify that a foregoing is a true and exact copy of the Ordinance adopted by the Ely Township Board at the Regular meeting held on February 20, 2002. The Ordinance was published in the Mining Journal on March 5, 2002.