

Brooks Township
Newaygo County Michigan
Ordinance 05-50

INSPECTION OF RESIDENTIAL ON-SITE SEWAGE DISPOSAL SYSTEMS AT THE TIME OF PROPERTY TRANSFER ORDINANCE

An Ordinance to require pumping and inspections of on- site sewage disposal systems (OSDS), upon the sale, transfer, or conveyance of property upon which an OSDS is located. This ordinance is enacted pursuant to, among other Public Acts, Act 248 of Public Acts of 1945, as amended (now MCL 41.181); to repeal any Ordinance, or provision thereof in conflict herewith; and to prescribe penalties and enforcement remedies for the violation of this Ordinance.

Section 1.0 TITLE

This Ordinance shall be known and cited as the Brooks Township “Inspection of Residential Onsite Sewage Disposal Systems at the Time of Property Transfer Ordinance.”

Section 2.0 PURPOSE

The Township is empowered by Act 246 of the Public Acts of 1945, as amended (now MCL 41 .181), to adopt Ordinances regulating the health, safety, and welfare of persons and property, and to provide penalties for violations of such Ordinances.

The purpose of this Ordinance is to protect public health and to prevent or minimize degradation of ground water or surface water by improper or malfunctioning sewage disposal systems through the regulation of the transfer or sale of the property or premises.

This ordinance contains minimum standards in addition to and supplemental to rules and regulations enacted by the Michigan Department of Public Health, the District #10 Health Department or the County of Newaygo, and Michigan statute and law or any federal law which preempts this area of regulation. The intent of the ordinance is to impose standards more restrictive than those required by federal, state or other local regulations.

Section 3.0 DEFINITIONS

As used in this Ordinance:

1. “Authorized agent” shall mean any individual, corporation or other entity which is authorized in writing by (a) the seller, transferor, or conveyor, or (b) the purchaser, transferee, or conveyee, to act as legal representative in all matters authorized on their behalf.

2. "Enforcement Agent" shall mean the person (or duly authorized representative thereof) who the Brooks Township Board authorizes and appoints as responsible for ensuring compliance with the provisions of this Ordinance.
3. "Failure" is defined as including the following:
 - (a) the backup of sewage into a structure;
 - (b) discharge of effluent onto the ground surface;
 - (c) the connection of an OSDS to a storm drain;
 - (d) liquid level in the septic tank above the outlet invert;
 - (e) structural failure of a septic tank;
 - (f) discharge of sewage into any body of water; and
 - (g) the liquid level in a disposal field above the outlet holes in the pipe of such field.
4. "OSDS" shall mean an on-site sewage disposal system.
5. "Owner" shall mean any person who has legal title to any premises.
6. "Person" shall mean any individual, firm, partnership, party, corporation, company, society, association, or other legal entity.
7. "Premises" shall mean any tract of land, or portion thereof, or combination of tracts of land under single or common ownership, operation or control, which contains (a) any type of structure that is, was, or will be inhabited either permanently or transiently, and (b) a septic tank, drains, drain field, underground tank or pipes, or similar appurtenances containing sewage or other contaminants or a combination thereof.
8. "Substantial conformance" shall mean there is a minimal likelihood of risk to public health caused by improper construction, location, or operation of an OSDS, or of a malfunctioning OSDS.

Section 4.0 ADVISING OWNERS OF ORDINANCE

- A. Any corporation, financial institution, title company, real estate agent, or other authorized agent involved in a land sale, conveyance, or transfer, (including land contracts and inheritance), shall advise property owners and purchasers of the Brooks Township "Inspection of Residential On-site Sewage Disposal Systems at the Time of Property Transfer Ordinance."

Section 5.0 EVALUATIONS

- A. An owner of premises or a dwelling shall not sell, convey, assign nor transfer ownership of, or exclusive rights in, any dwelling and/or habitable building or premises in Brooks Township unless and until the owner or his designated agent has both pumped the septic tank and has had the existing OSDS evaluated by a professional competent in such matters. Evidence of tank pumping within the last twelve (12) months and a written copy of the disposal system evaluation shall be provided and furnished to the Township and any prospective purchaser or transferee and the seller or transferor as part of the said transaction.
- B. The evaluation shall consist of a determination that the OSDS is in substantial conformance with the standards of the District 10 Health Code. In making this determination, the following criteria shall be considered but not necessarily limited to:
1. The presence of a septic tank and field;
 2. The age of the system;
 3. The size of the system in relation to the dwelling size and demands upon it;
 4. Vertical isolation distance between the high ground-water table and the point of sewage discharge;
 5. Isolation distance from surface waters or wetlands;
 6. Isolation distance between water well and sewage system;
 7. The on-site conditions of the property, including but not limited to soil types, groundwater elevation, flow and direction;
 8. Lot size and useable area for on-site sewage disposal;
 9. Operational condition of existing sewage system;
 10. Potential area for replacement or reserve system.
- C. Evaluation reports must be in written form, and include, at a minimum, the following:
1. The address of the site;
 2. The parcel identification number;
 3. The name of the owner or owner's authorized agent;
 4. The location of the OSDS to be inspected;
 5. A description of the current operational or functional status of the OSDS, including whether the OSDS is failing or if such a failure is imminent;
 6. Identification of any necessary repairs or replacement of all or portions of the OSDS
 7. Other relevant or unusual observations related to the OSDS
 8. Recommendations to extend the life of the OSDS and to prevent the premature failure of the OSDS in the future.
 9. Educational material regarding OSDS maintenance that has been approved by the Township Board.

D. The following are exempt from OSDS inspection and maintenance standards herein.

1. A sale, transfer, or conveyance of a premises containing a new home that has not previously been occupied or lived in provided a septic compliance permit has been issued for the septic system.
2. A sale transfer, or conveyance of premises that contains an OSDS that the enforcement agent certified within twelve (12) months before the proposed sale, transfer or conveyance as complying with this Ordinance.

Section 6.0 OSDS EVALUATORS

A. All evaluators performing evaluations under this Ordinance must be registered with the State of Michigan as a sanitarian before undertaking any evaluations. Evidence of registration must be provided to the Township Clerk.

B. Removal of an Evaluator. The Township Board may remove an evaluator from the list maintained by Brooks Township for any of the following reasons:

1. The evaluator fails to comply with this Ordinance.
2. The Township Board determines that the evaluator (a) is unable to properly perform evaluations of an OSDS under this Ordinance, or (b) was negligent in the discharge of his duties or responsibilities in this regard.
3. The evaluator submits false or misleading information on an application for registration, or an evaluation report.
4. The evaluator submits a report under this Ordinance that lacks information deemed relevant, and the evaluator thereafter fails to submit the omitted information within five business days from the date the Enforcement Agent requests that he provide such information.
5. The evaluator does not maintain the required certification as required by this Ordinance.

C. Procedure to Remove an Evaluator from the Registered List

Before the Township Board removes an evaluator from the registered list under this Ordinance, the Enforcement Agent shall give written notice, either personally or by first class mail, to that evaluator. An evaluator is considered notified if the notice is sent to the evaluator's last known mailing address. Upon a written request by the evaluator within 14 days from the date of the written notice, the evaluator must be given an opportunity at an informal meeting with the Township Board to demonstrate why he should not be removed from the registered evaluators list without further proceedings.

Section 7.0 ENFORCEMENT

- A. If, at any time, the Enforcement Agent believes that a person is violating this Ordinance, the Enforcement Agent shall make a good faith attempt to enter a voluntary agreement with the property owner to resolve the violation. If a voluntary agreement cannot be reached, the Enforcement Agent may issue a violation notice to the owner, accompanied by a statement of facts upon which the notice is based.
- B. The Enforcement Agent may, after presenting proper documents as may be required by law and upon stating the authority and purpose for the investigation, enter and inspect any premises containing an OSDS at reasonable times in order to determine compliance or noncompliance with this Ordinance, this may include:
1. Inspection at reasonable times of any premises at which an OSDS and related systems is located.
 2. Collection of evidence and information for the purpose of determining compliance with this Ordinance,
- C. Violation of this Ordinance. Upon determining that there exists a violation of this Ordinance the Enforcement Agent may:
1. Issue a Cease and Desist Order: suspend any permit, certificate or other approval issued pursuant to this Ordinance to the owner or other party violating the Ordinance; or
 2. Request that the Brooks Township Board authorize the commencement of legal action to enjoin the violation and to recover any and all costs related to correcting, removing or abating the violation.
- D. Penalties. Any person who violates this Ordinance is guilty of a Municipal Civil Infraction punishable by a fine of not more than \$500.00. All such persons, regardless of their interest in property (for instance, owner or occupant) may be responsible for the civil infraction. Each day the violation remains may be a separate offence.
- E. Assessment against the Property. If an owner does not have his or her premises evaluated as specified by this Ordinance, the Enforcement Agent may cause an inspection and evaluation report to be completed, and may charge all costs and fees incurred as a result to the owner of the premises. If the owner refuses on demand to pay any expenses incurred by the Enforcement Agent for which the owner is responsible under this Ordinance, the sum of such expenses shall be assessed against the subject property and shall be collected and treated in the same manner as taxes assessed under the general tax laws of this State.

Section 8.0 SEVERABILITY

The provisions of this Ordinance are hereby declared to be severable and if any clause, sentence, work, section, or provision is declared void or unenforceable for any reason by any court of competent jurisdiction, such declaration shall not affect any portion of the Ordinance other than said part or portion thereof.

Section 9.0 REPEAL

All Ordinances and parts of Ordinances that are in conflict with this Ordinance are hereby repealed.

Section 10.0 EFFECTIVE DATE

This ordinance is hereby adopted at a regular meeting of the Brooks Township Board on the 14th day of November, 2005 and shall be effective December 30, 2005.

Brooks Township, Newaygo County, Michigan

YEAS: Black, Jones, Haynor & Wood

NYAS:

ABSTAIN/ABSENT: Henning

ORDINANCE DECLARED ADOPTED.

Dated: November 14, 2005

Dale Black, Supervisor

Lora Jones CMC, Clerk

Introduced: October 17, 2005
Adopted: November 14, 2005
Published: November 30, 2005
Effective: December 30, 2005

CERTIFICATION

I certify that the foregoing is a true and complete copy of Ordinance No. 05-50, which was adopted by the Brooks Township Board at a regular meeting, held on November 14th, 2005, which was conducted in accordance with the Open Meetings Act, Act 267 of the Public Acts of Michigan of 1976, as amended.

Lora L. Jones CMC, Brooks Township Clerk