

ORDINANCE NO. 2011-

354

AN ORDINANCE OF OLEY TOWNSHIP, BERKS COUNTY, PENNSYLVANIA, AMENDING CHAPTER 27 (ZONING) OF THE OLEY TOWNSHIP CODE OF ORDINANCES, ADOPTED BY ORDINANCE NO. 311, AS AMENDED, TO PROVIDE CERTAIN NEW DEFINITIONS; AND TO PROVIDE NEW REGULATIONS PERTAINING TO WELL HEAD PROTECTION.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Supervisors of Oley Township, Berks County, Pennsylvania, and IT IS HEREBY ENACTED AND ORDAINED by the authority of the same, that Chapter 27 (Zoning) of the Oley Township Code of Ordinances (Ordinance No. 311), as amended, is further amended as follows:

SECTION 1. Section 27-202 of Part 2 of Chapter 27 of the Oley Township Code of Ordinances is amended to provide for the following new definitions:

HAZARDOUS MATERIALS - Any substance or mixture of such physical, chemical or infectious characteristics as to pose a significant actual or potential hazard to water supplies, or other hazards to human health, if such substance or mixture were discharged into land or waters of the Township. Hazardous materials include, without limitation, organic and inorganic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalies, and include products such as pesticides, herbicides, petroleum solvents, thinners and fertilizers. More specifically, hazardous materials, as defined herein, are those substances listed on the Hazardous Substance List, Chapter 323 of the Pennsylvania Code, including the automatic additions referenced in Chapter 323.

NUTRIENT/MANURE MANAGEMENT PLAN - A plan prepared by a qualified professional establishing application rates for manure/fertilizers on agricultural lands to achieve a proper balance of nutrients and minimize nutrient contamination of ground water.

WELL HEAD PROTECTION AREA - The surface and subsurface area surrounding a water well or well field supplying a public or community water system, through which contaminants are reasonably likely to move toward and reach a water well or well field.

WELL HEAD PROTECTION ZONES - One or more zones of special regulation that comprise a well head protection area within Oley Township delineated on Figure 3-1 of the 2011 Oley Township Municipal Authority Source Water Protection Plan, and further defined as Zone I and Zone II, which have been established for insuring the long-term environmental integrity of the four wells which comprise the Township's community water system.

SECTION 2. Part 14 of Chapter 27 of the Oley Township Code of Ordinances is amended to provide for the following new Section 27-1433:

§27-1433. Well Head Protection.

1. **Purpose.** The following well head protection standards are established to protect the public health, safety and welfare by minimizing adverse environmental impacts. These standards are intended to meet the following purposes:
 - A. Protect groundwater-based water supply sources within the Township from contamination.
 - B. Protect groundwater resources from excessive extraction and depletion.
 - C. Manage land use activities that store, handle or produce hazardous materials which can contaminate water supply sources through improper stormwater and other inadequate site management.

- D. Encourage the use of best management practices (regulatory and non-regulatory).
 - E. Protect future groundwater sources of drinking water within the Township.
 - F. Recognize local government responsibility in protection of groundwater resources.
 - G. Encourage work with neighboring communities for adequate protection of resource areas extending into other jurisdictions.
 - H. Implement the 2011 Oley Township Municipal Authority Source Water Protection Plan.
2. **Applicability.** These provisions specifically apply to wells serving public and community water supply systems, and apply only to those land uses on parcels located within a Well Head Protection Zone that use or store hazardous materials in quantities meeting or exceeding established quantity thresholds, as defined herein, or which otherwise conduct a specific activity identified in Section 27-1433.4.
3. **Establishment and Delineation of the Well Head Protection Zones.** The Well Head Protection Zones are Zone I and Zone II, as shown on the Wellhead Protection Zones Plan, prepared by Brandywine Conservancy, dated October 6, 2011, and attached hereto, and shall be defined as:
- A. **Zone I.** A protective area immediately surrounding a public water supply well with a radius defined by the Township Municipal Authority's 2011 Source Water Protection Plan, and specified as follows:
 - Well 1. A radius of 100 feet.
 - Well 2. A radius of 180 feet.
 - Well 3. A radius of 120 feet.
 - Well 4. A radius of 100 feet.
 - B. **Zone II.** The capture zone having up to a ten-year time-of-travel to the public water supply.

This Ordinance, including the delineation of these two Well Head Protection Zones, is based on technical analysis supporting the Oley Township Municipal Authority's Source Water Protection Plan (2011).

4. Permitted Uses and Structures Within the Well Head Protection Zones.

A. A lot within either Well Head Protection Zone may be used or occupied for any use permitted within the underlying Zoning District, except for those uses specifically regulated according to the provisions of Paragraph B below.

B. The following uses, where otherwise permitted by the underlying Zoning District, will be prohibited or permitted only by Special Exception within Zone I and Zone II, as applicable:

SCHEDULE OF USES SPECIALLY REGULATED IN THE WELL HEAD PROTECTION ZONES

- (1) Automatic self-service laundry or dry cleaning establishment, as permitted in the HB District and V District: Zone I - Prohibited; Zone II - Permitted only by Special Exception.
- (2) Motor vehicles service station, as permitted in the HB District and V District: Zone I - Prohibited; Zone II - Permitted only by Special Exception.
- (3) Heavy manufacturing use, as permitted in the LIB District: Zone I - Prohibited; Zone II - Permitted only by Special Exception.
- (4) Land application of wastewater and waste sludge, manure, fertilizers, herbicides and pesticides, incidental and accessory to an agricultural, horticultural or forestry use, as permitted in an underlying District: Zone I - Prohibited; Zone II - as permitted in the underlying District with a Nutrient/Manure Management Plan in place.

- (5) Open burning sites and dumps, incidental and accessory to a use permitted in the underlying District: Zone I - Prohibited; Zone II - Prohibited.
- (6) Road salt stockpiles, incidental and accessory to a Township, governmental or public utility use permitted in the underlying District: Zone I - Prohibited; Zone II - Prohibited.
- (7) Storage of fuels, incidental and accessory to a use permitted in the HB District, the V District or the LIB District: Zone I - Prohibited; Zone II - Permitted only by Special Exception.
- (8) Car sales lot, as permitted in the HB District: Zone I - Prohibited; Zone II - Permitted only by Special Exception.
- (9) Laundry or dry cleaning plant, as permitted in the HB District: Zone I - Prohibited; Zone II - Permitted only by Special Exception.
- (10) Mortuary or funeral home, as permitted in the HB District: Zone I - Prohibited; Zone II - Permitted only by Special Exception.
- (11) Outdoor storage of building materials or products of manufacturing uses permitted in the Township, as permitted in the HB District: Zone I - Prohibited; Zone II - Permitted only by Special Exception.
- (12) Automobile car wash, as permitted in the HB District: Zone I - Prohibited; Zone II - Permitted only by Special Exception.
- (13) Hazardous material storage, processing and disposal facilities, as permitted in the LIB District: Zone I - Prohibited; Zone II - Prohibited.

C. To the extent otherwise permitted or regulated by Federal, Commonwealth and/or Berks County statutes and regulations, the owners and/or occupiers of parcels which are primarily utilized for the purpose of single or multi-family residential dwellings are permitted to utilize and store fuels, hazardous chemicals, pesticides, fertilizers, inflammable liquids and gases, and toxic and regulated substances in such quantities and in such manner as is associated with normal consumer, household use, and such limited utilization shall not be deemed a hazardous material for the purposes of this Section.

5. **Nonconforming Uses.**

A. In addition to the Nonconforming Uses, Structures and Buildings provisions of Section 27-1401 of this Ordinance, uses of parcels in existence on the date of enactment of this Section which are listed in Section 27-1433.4.B shall be deemed to be "nonconforming uses" of land. Such nonconforming uses may be continued provided that:

- (1) Such nonconforming use is and remains otherwise lawful and in compliance with all Federal, Commonwealth and Berks County environmental, pollution control, hazardous substance and drinking water laws and regulations;
- (2) Such nonconforming use has not been and is not discontinued for a period of twelve consecutive months;
- (3) Such nonconforming use is not, after the date of enactment of this Section, materially altered, changed or expanded, except to the extent justified by a strict showing of commercial necessity for such alteration, change or expansion presented to the Zoning Hearing Board, and then only to the extent permitted by a grant of special exception from the Zoning Hearing Board under the provisions of Section 27-1707.2, and only upon the same lot that the nonconforming use was located upon at the time the use became

nonconforming;

- (4) The record owner of the parcel on which such nonconforming use is located is in compliance with Section 27-1433.6, regarding reporting requirements; and,
- (5) Such nonconforming use is not an actual source of groundwater contamination.

B. A use listed in Section 27-1433.4.B shall be deemed to be new or materially altered, changed or expanded if:

- (1) The land use which constitutes the use was not previously present and conducted upon the parcel in question;
- (2) The production and/or storage capacity of the use is increased;
- (3) The types of any substances which give rise to the use are changed;
- (4) The number of types of any substances which give rise to the use is increased; and/or,
- (5) The quantity of any substances which give rise to the use is materially increased.

C. Following the date of enactment of this Part, uses listed in Section 27-1433.4.B which are new or which constitute material changes, alterations or expansions of nonconforming uses shall comply with the provisions of Section 27-1433.4. Any such use which is permitted subject to the granting of a Special Exception in accordance with the terms of this Part shall not be deemed to be a nonconforming use of land provided that:

- (1) Such nonconforming use is not, after the date of enactment of this Part, materially altered, changed or expanded;
- (2) The record owner of the parcel on which such nonconforming use is located is in compliance with Section 27-1433.6 regarding reporting requirements; and,

(3) Such nonconforming use is not an actual source of groundwater contamination.

6. **Reporting Requirements.** The record owner of any parcel with a use subject to the provisions of Section 27-1433.4.B shall submit, or cause to be submitted, to Oley Township, the following reports and information in the manner prescribed:

A. Copies of all Federal, Commonwealth and Berks County operational approvals, certificates, permits and applications, on-going environmental reports and monitoring results relating to environmental, pollution control, hazardous substance and drinking water laws and regulations pertaining to such lot or tract of land, as and when required to be submitted to Federal, Commonwealth and Berks County governmental authorities;

B. In the event that any contaminants and/or substances regulated under Federal, State or State environmental, pollution control, hazardous substance and drinking water laws and regulations are released on or from any lot or tract of land within the Well Head Protection Area, copies of any and all notices, reports and documents which such owner filed, or caused to be filed, with any Federal, Commonwealth and/or Berks County governmental authorities which provide notice of or relate to such release, as and when such notices, reports and documents are required to be filed with such governmental authorities; and

C. Copies of all notices, orders, rules, decisions, recommendations, enforcement actions and similar documentation, as and when received by or on behalf of such record owner or the occupant of any such lot or tract of land from any Federal, Commonwealth or Berks County governmental authority in connection with the enforcement of environmental, pollution control, hazardous substance and drinking water laws and regulations.

7. **Enforcement - Additional Powers.** In addition to enforcement provisions of Part 19, for the purpose of preventing violations and enforcing the provisions of this Section, the Township, or its Zoning Officer, may seek summary criminal actions. In addition, the Zoning Officer may issue cease and desist orders whenever such Officer becomes aware of violations of this Section.

8. **Savings Clause.** This Section shall not affect any act done or any offense committed prior to its effective date, nor affect any action to enforce any prior Ordinance or to punish any offense against a prior Ordinance.

SECTION 3. SEVERABILITY. The provisions of this Ordinance are severable. If any sentence, clause or section of this Ordinance is, for any reason, found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses or sections of this Ordinance. It is hereby declared to be the intent of the Board of Supervisors of the Township of Oley that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause or section not been included herein.

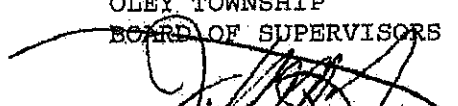
SECTION 4. REPEALER. All Ordinances, or parts of Ordinances, inconsistent with this Ordinance are hereby repealed insofar as they may be inconsistent herewith.

SECTION 5. EFFECTIVE DATE. This Ordinance, and all of its terms and provisions, shall become effective five (5) days after its adoption.

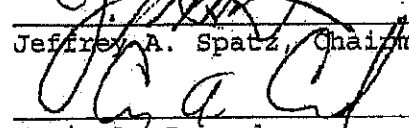
ENACTED AND ORDAINED, this 14~~th~~ day of November,

2011.

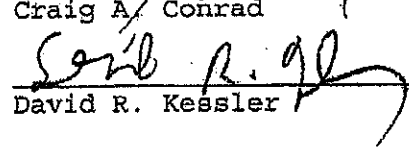
OLEY TOWNSHIP
BOARD OF SUPERVISORS



Jeffrey A. Spatz, Chairman



Craig A. Conrad



David R. Kessler