

ORDINANCE NO. 02-01

AN ORDINANCE PROTECTING TOWN WATER SUPPLY

WHEREAS, it is in the public interest and welfare to establish an ordinance protecting the water supply of Town residents; and,

WHEREAS, the Town finds it necessary to exercise its police powers as the same are authorized by the laws of the State of Wisconsin; and,

WHEREAS, the Town wishes to exercise its general powers relating to the preservation of water supply, groundwater protection and to otherwise encourage the protection of groundwater resources for the health, welfare and safety of the Town's residents;

NOW, THEREFORE, the Town Board of the Town of Grant, Portage County, does ordain as follows:

**SECTION I
APPLICABILITY**

This ordinance shall regulate test wells or permanent wells within the Town intended to be used as part of a community water system, a municipal water system, a public water system, or a high capacity water system as the same are defined herein. The purpose of this ordinance is to:

- A. Provide advance notice of the installation or construction of a test well or permanent well for the previously described systems; and
- B. To provide security to protect Town residents against injury caused by the installation or operation of a test well or permanent well as defined herein.

**SECTION II
DEFINITIONS**

For the purpose of this Ordinance, the following terms are defined:

- A. **Adequate Water Supply.** A water supply which has a yield, where obtainable, and the pump capacity to provide the quantity of water which is reasonably necessary to maintain use for drinking, culinary, personal hygiene, and other purposes for which the water is reasonably intended to be used. This ordinance is intended to maintain rather than increase the existing water supply of Town residents.

B. **Community Water System.** As defined in the Wisconsin Administrative Code which is incorporated herein as if fully set forth.

C. **Contaminant.** Any matter which may render water bacteriologically or chemically impure or turbid so as to make it unfit for human consumption.

D. **Distributive System.** All pipes or conduits by which water is delivered to consumers or municipalities located outside the Town boundaries, except piping inside buildings served and service pipes from a building to a distribution main or pipe.

E. **Drawdown.** The extent of lowering the water level or water pressure in impacted private wells when water is pumped or flows from wells subject to regulation pursuant to the terms of this Ordinance.

F. **Drawdown Radius.** The area including all wells anticipated to be or after testing, demonstrated to be impacted by the installation and operation of wells subject to regulation by this ordinance.

G. **Groundwater.** Subsurface water which is within the zone of saturation, including but not limited to, perched water tables, shallow regional groundwater tables and aquifers or zones that are seasonally, periodically, or permanently saturated.

H. **Groundwater Source.** All groundwater obtained from horizontal collectors, filtration lines, springs and dug, drilled, or other types of test wells or permanent wells.

I. **High Capacity Water Supply or System.** As defined in the Wisconsin Administrative Code which is incorporated herein as if fully set forth.

J. **Living Unit.** A domicile located within the Town's boundaries.

K. **Municipality.** Any City, Town, Village, County, County Utility District, Town Sanitary District, Town Utility District, School District or Metropolitan Sewage District or any other public entity created under Wisconsin law and having authority to collect, obtain, store, treat or convey water for domestic, commercial or industrial use.

L. **Municipal Water System.** As defined the Wisconsin Administrative Code which is incorporated herein as if fully set forth.

M. **Person.** An individual, corporation, company, association, cooperative, trust, institution, partnership, state, municipality, or federal agency.

N. **Private Water Supply.** One or more sources of groundwater, including facilities for storage and conveyance of groundwater, such as wells, springs, pumps, pressure tanks and reservoirs, on one property, other than those serving a public water system.

O. **Public Water System.** As defined by the Wisconsin Administrative Code which is incorporated herein as if fully set forth.

P. **Specific Capacity.** The continuous yield of a well at a given well water or pressure drawdown expressed in gallons per minute, per foot of drawdown.

Q. **Supplier of Water.** Any person who owns or operates a public water system.

R. **Utility.** A public utility as defined in Chapter 196 of the Wisconsin Statutes as the same may be modified or amended.

S. **Waterworks or Water System.** Any facility installed or constructed to obtain, store, treat, or convey water for drinking or domestic, commercial, or industrial use for a public water system.

T. **Well.** An excavation or opening into the ground made by digging, boring, drilling, driving, or other methods for the purpose of obtaining groundwater. This definition applies to all wells, whether for test purposes or for permanent use.

U. **Well Driller.** Any person, firm, or corporation, whether private or public, employed in obtaining groundwater from a well by digging, boring, drilling, driving, or other methods for the purpose of obtaining groundwater.

V. **Yield.** The quantity of water which may flow or be pumped from the well per unit of time.

SECTION III NOTICE REQUIREMENTS

1. No test well, permanent well or modification to or reconstruction of any existing well shall be constructed in the Town if such well is intended as part of a community water system, a municipal water system, a public water system, or a high capacity water system, unless written notice of such well and its intended use is given to the Town at the earliest of:

A. Within ten (10) days of the submission of preliminary plans and specifications to the Wisconsin Department of Natural Resources under; or

B. Sixty (60) days prior to the commencement of any test or permanent well construction.

2. Said notice shall be provided to the Town Clerk and shall contain the following information:

A. The name of the supplier of water and/or owner of the well;

B. The type of water system for which the well will be used;

C. The location of the well and the name of the owner of the site location;

D. The description and location of the distribution system for the water system, identifying affected roads, rights-of-way, and easements to be utilized in transporting the water to its ultimate use;

E. The name and address of the well driller;

F. Identification of all existing wells, public, private, municipal, community and/or high capacity within the greater of:

1. A two (2) mile radius of the projected well; or

2. The drawdown radius of the projected well.

G. The estimated specific capacity of the well, whether a test or permanent well;

H. The estimated yield of the test and/or permanent well(s), utilizing calculations based on per minute yields, per day yields, and annual yields;

I. The groundwater source to be utilized by the well;

J. The estimated time from completion of the permanent water supply and distribution systems;

K. The estimated useful life of the well and water system; and

L. The contact person having authority to respond to inquiries regarding the application.

3. In all events, the Town reserves the right to require well surveys to identify the status of existing area wells prior to testing or operation of any well subject to regulation by this Ordinance. Installation of test wells at certain locations as determined by the Town Board and the monitoring of test wells by the Town Board Designee.

4. Any information identified above which is not available at the time of the required submission of the Notice shall be supplied immediately as the same becomes available or determinable. The Notice required by this Section shall be in addition to any and all reports, applications and/or Notices required elsewhere in any Town ordinance applicable to wells or the location of wells. The applicant shall be responsible for supplementing or updating the submitted application as new information is obtained or as circumstances change.

SECTION IV REPORT FILING - FILING FEES

1. The plans and specifications for construction, modification or reconstruction for all water distribution systems located or to be located within the Town shall be filed with the Town Clerk one hundred eighty (180) days prior to commencement of construction of any such distribution system or portion thereof. The information to be submitted shall include specification of the size, type and exact location of the distribution system and its appurtenances and shall indicate whether such is to be located within private or public lands and shall indicate the owners of all lands upon which the system shall be located.

2. If the water system proposed or under construction is a reviewable project under the Wisconsin Administrative Code, copies of any and all reports required to be filed with the Department of Natural Resources shall simultaneously be filed with the Town Clerk.

3. The plans and specifications for all water distribution systems described in Paragraph 1 above shall be accompanied by:

A. An application and inspection fee of \$50.00 plus all additional costs and expenses reasonably incurred by the Town in connection with review of the application, inspection and ;

B. A performance bond in an amount which the Town Board determines to be reasonably necessary to secure the proper performance and completion of the construction of the relevant water distribution systems located within the Town. Said bond shall be determined in light of the nature of the improvements and the contents of the plans and specifications filed with the Town Clerk as set forth in Section 1 above.

**SECTION V
COSTS INCIDENT TO WELL CONSTRUCTION**

1. The provisions of this and any other Town ordinance notwithstanding, each well owner and supplier of water subject to this Ordinance shall be solely responsible for all costs of repairs to roads, public right-of-ways, topography or other surfaces or locations damaged or disturbed in any manner due to the construction of any well and/or water distribution system servicing a community water system, municipal water system, public water system and/or high capacity water system.

2. The well owner and water supplier shall be solely responsible for obtaining the necessary easements, public or private, for location of the well and distribution system and for conformance to all Town, State and Federal requirements governing the same. The Town Board may limit and/or regulate the location of wells and distribution systems in conformance with applicable zoning ordinances and uses allowed in accordance therewith.

**SECTION VI
GROUNDWATER PROTECTION FUND**

1. The existence of wells servicing community water systems, municipal water systems, public water systems and/or high capacity water systems in the Town may have future adverse effects on the groundwater and groundwater sources utilized by Town residents. Protection of groundwater and groundwater sources is necessary for the maintenance of the health, welfare, and economic well-being of the Town and its residents. There presently exists the scientific knowledge and expertise necessary to reasonably determine the effect of such wells on prior, existing, normal capacity private wells and the groundwater sources for such private wells. To protect Town property owners from adverse effects of the existence and location of community, public, municipal and/or high capacity wells in the Town, and to provide for reasonable compensation for any losses which may be incurred thereby, there is hereby established a Groundwater Protection Fund, to be administered as set forth herein.

2. A special permit shall be required prior to the installation and operation of all wells servicing community, municipal, public and/or high capacity water systems located within the Town. An applicant for a special permit shall submit his or her request on forms to be supplied by the Town Clerk.

3. There shall be imposed upon all wells servicing community, municipal, public and/or high capacity water systems an initial special permit fee payable to the Town prior to the installation of said permanent well in an amount of Fifteen Thousand and no/100 Dollars (\$15,000.00) plus such amount as is reasonably expected by the Town to be required to pay the damages identified in this Section.

The initial special permit fee shall be utilized to fund a study to determine the estimated drawdown radius of the proposed well. Said study shall be prepared by a competent engineer of the Town's choice. ~~In the event, the cost of the study exceeds the amount of initial special permit fee specified herein, such additional expense shall be charged to the applicant.~~

A. The estimated drawdown radius ("EDR") shall specify the limits of the area within which the drawdown is estimated to be one (1) foot or greater during maximum pumpage of the proposed well on a continuous basis for a period of thirty (30) days. Said area shall be designated the cone of depression ("CD").

B. All private wells within the CD shall be identified. Written notice shall be given to the owner of each well within the CD of the proposed well and permission sought for access to such well to undertake the following survey. The survey shall consist of:

- i. Type of well;
- ii. Depth of well;
- iii. Screen length;
- iv. Dept of groundwater;
- v. Specific yield; and
- vi. Water sample - to be tested for bacteria, alkalinity, nitrates, iron, chloride and manganese.

C. The survey required pursuant to the terms of this section shall be undertaken by a competent engineer of the Town's choice. The expense of surveys required by this section shall be charged to the applicant.

D. In the event no private wells are located within the CD of the proposed well, the applicant shall be relieved from further obligations imposed by this Ordinance for so long as no private wells are so located. Development of vacant property within the CD and construction of a private well intended for residential use on site will subject wells initially subject to regulation by this Ordinance to the rules and obligations created by the "Groundwater Protection Fund" created by this Ordinance.

E. In the event any private well is located or a private well is intended for residential use on site becomes located within the CD, there shall be imposed upon all wells servicing community, municipal, public and/or high capacity water systems an annual operation permit fee payable to the Town no later than February 1 of the year following each year, or fraction thereof, that such a well is operating in the CD, in the amount of One Thousand and no/100 Dollars (\$1,000.00) plus an amount sufficient to pay any damages provided for by this section but not available to disbursement of the initial special permit fee, together with any costs or expenses incurred in the administration of

this Groundwater Protection Fund in excess of One Thousand and no/100 Dollars (\$1,000.00) for the permit year or fraction thereof.

F. Private wells owned by the applicant shall be exempt from the provisions of this Ordinance for so long as they remain in the ownership of the applicant, its successors and assigns.

4. The initial special permit fees and annual operation permit fees shall be deposited into an account known as the "Groundwater Protection Fund" to be administered as follows:

A. The Town shall establish and maintain a separate account for monies administered under this Ordinance. Deposits into and distributions from said account shall be limited to those purposes authorized herein.

B. Distributions are to be made from the Groundwater Protection Fund to well owners who incur damages or expenses as a result of any adverse effect(s) created by wells subject to the jurisdiction of this Ordinance. Such damages or expenses shall include, but are not limited to, those resulting from the following:

1. Contamination of water supply;
2. Depletion of groundwater sources resulting in the drawdown of wells;
3. Depletion of groundwater sources resulting in a significant lowering of well water pressure in wells;
4. Such other and similar expenses or damages reasonably shown to have been caused by wells regulated under this Ordinance.

C. Any damages or expenses found to be compensable under "B" above which occur within the greater of a two (2) mile radius or the drawdown radius shall be presumed to have been caused by the operation of the community, public, municipal and/or high capacity well. Damages or expenses incurred by well owners outside the two (2) mile radius area may be compensable under this section if sufficient evidence is presented to reasonably establish a causal connection between the damage or expense and the community, municipal, public and/or high capacity well. The presumptions set forth above may be rebutted by clear and satisfactory evidence presented by hearing before the Town Board.

D. Compensable damages or expenses payable to existing well owners pursuant to the terms of this shall also apply to new wells constructed in the impacted area after the construction of the regulated well except that the distributee of the Fund shall not be

entitled to compensation equivalent to the cost of the construction of a well which could have been installed but for the added requirements created by the drawdown caused by the regulated well.

E. Distributions from the Groundwater Protection Fund shall be made upon the submissions by the well owner of evidence of damages or expenses incurred, or to be incurred. The private well owner's submission shall include two bids identifying the work required and the cost thereof. Compensable expenses shall be limited to the following:

1. Obtaining an alternate water supply for a maximum period of one (1) year after the date of the written request for a distribution from the Groundwater Protection Fund, or until a replacement water supply has been obtained.
2. A replacement water supply.
3. Equipment used for treating the contaminated water supply only if it is not feasible to remedy the contamination with a replacement water supply.
4. Other costs as deemed necessary by the Town Board to accomplish the purposes of this Ordinance.
5. Future costs incurred by impacted well owners for replacement of the original equipment or services required to remedy the drawdown caused by a regulated well except that such replacement costs shall be limited to the difference between the cost of a system as was in existence prior to operation of the regulated well compared to the cost of a system required due to the drawdown caused by the regulated well.

F. Distribution from the Groundwater Protection Fund shall not be made for the following ineligible costs:

1. The replacement of a sand point well with a drilled well unless:
 - a. the Town Board determines that replacement with another sand point well is not feasible or in accordance with current State of Wisconsin Department of Natural Resources and Department of Labor and Human Relations Codes-Regulations; and
 - b. the Town Board determines that the claimant had no knowledge or reason to believe the sand point well would become contaminated at the time it was constructed; and

- c. the well serves a principal residence.
 2. Any costs incurred prior to the date of this Ordinance.
 3. The cost of the replacement well greater than the estimated reasonable cost of a well seven (7) inches in diameter. That is, the cost for a replacement well in excess of the estimated cost of a well greater than seven (7) inches in diameter shall be deemed ineligible.
 4. A replacement well screen greater than ten (10) feet in length.
 5. Any consulting or cost estimate fees in excess of \$100.00.
 6. Relocation, replacement or abandonment of buried gasoline or fuel oil tanks, or similar items.
 7. Mileage, phone, postage, and other miscellaneous costs incurred by the claimant in excess of \$100.00.
 8. Any other well construction costs which exceed the dollar limits set forth in the Wisconsin Administrative Code.
 9. In the event the distribution is for the replacement of the equipment or services set forth in Sec. 6.4D, then no costs as delineated in Subsection 5 or 7 herein shall be reimbursed.
- G. Distributions from the Groundwater Protection fund shall be in addition to, and not in lieu of, other compensations which may be available to a well owner, but in no case shall distributions be made for other than actual damages and/or expenses for which compensation or reimbursement has not been received from another source.
- H. Nothing in this Ordinance or the Groundwater Protection Fund created hereunder shall be deemed to be a property right of a property well owner. Distributions from the Groundwater Protection Fund are qualified by and limited to available monies. Nothing contained herein shall obligate the Town to maintain a fund in amounts sufficient to compensate private well owners.

SECTION VII EMERGENCY WATER PROVISIONS

The Town Board shall have authority under this Ordinance to require a special permittee to provide emergency water supplies to Town residents, including farms for livestock use, in all

cases where it is reasonably determined by the Town Board that the operation of the community, municipal, public and/or high capacity water system has depleted, contaminated, or has otherwise caused the loss of an adequate water supply. The exercise of the emergency powers herein are in addition to all other powers granted to the Town Board under this Ordinance or as authorized by law.

SECTION VIII NON-EXCLUSIVITY

Adoption of this Ordinance does not preclude the Town Board from adopting any other ordinance or providing for the enforcement of any other law or ordinance relating to the same or other matters. The jurisdiction and duties defined herein shall not preclude the Town Board or any other Town officer from proceeding under any ordinance or law or by any other enforcement method to enforce any ordinance, regulation or order.

SECTION IX MEASUREMENT OF DRAWDOWN

In the event a well is constructed, modified or reconstructed, drawdown monitoring wells shall be maintained by the well owner at test well locations within a two (2) mile radius of the constructed, modified or reconstructed well, such that the drawdown can be measured at any given date and time. Drawdown measurements shall be made by the well owner upon request by the Town and the results shall be furnished to the Town, with verification of results made by the Town's engineer, such measurements, results and verification to be at well owner's expense.

SECTION X ENFORCEMENT

The Town Board shall have the authority to institute the appropriate action or proceedings to prevent, restrain, correct, or abate a violation of this Ordinance. Enforcement remedies created by this Ordinance are cumulative and shall be in addition to all other remedies available under the law. Any person who violates any provision of this Ordinance or any other, rule, or regulations promulgated shall, upon conviction, be fined not less than One Hundred and no/100 Dollars (\$100.00) nor more than One Thousand and no/100 Dollars (\$1,000.00), for each offense, together with the costs of prosecution. Each day that a violation continues shall be considered a separate offense.

SECTION XI INTERPRETATION

The provisions of this Ordinance shall be considered minimum requirements. Where the provisions of this Ordinance impose greater restrictions than any statute, other regulation,

Ordinance, or covenant, the provisions of this Ordinance shall prevail. Where the provisions of any statute, other regulation, ordinance, or covenant impose greater restrictions than the provisions of this Ordinance, the provisions of such statute, other regulations, ordinance or covenant shall prevail.

**SECTION XII
SEVERABILITY**

If any provision of this Ordinance is invalid or unconstitutional, or if the application of this Ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the provision or applications of this Ordinance which can be given effect without the invalid or unconstitutional provision or application.

**SECTION XIII
EFFECTIVE DATE**

This Ordinance shall take effect and be in force upon its passage and publication as provided by law.

Passed and adopted this 9 day of July, 2002, by the Town Board of the Town of Grant, Portage County, Wisconsin.

TOWN OF GRANT

By: Alden Pedersen
Alden Pedersen, Town Chairman

ATTEST:

Kitty Gross, Clerk
Kitty Gross, Clerk