

**FRANKLIN TOWNSHIP  
YORK COUNTY, PENNSYLVANIA**

**ORDINANCE NO. 2 OF 2005**

**AN ORDINANCE OF THE TOWNSHIP OF FRANKLIN, YORK COUNTY, PENNSYLVANIA, AMENDING THE FRANKLIN TOWNSHIP SUBDIVISION AND LAND DEVELOPMENT ORDINANCE TO INCLUDE A DEFINITION FOR PROFESSIONAL CONSULTANTS AS THAT TERM RELATES TO TOWNSHIP RECOVERY OF PLAN REVIEW AND INSPECTION FEES; TO PROVIDE FOR PAYMENT BY APPLICANTS OF PLAN REVIEW FEES, INCLUDING THOSE OF PROFESSIONAL CONSULTANTS; TO MODIFY PROCEDURES FOR INVOICING PLAN REVIEW FEES TO APPLICANTS AND FOR CHALLENGES TO THE REASONABLENESS OF SUCH FEES; AND, TO MODIFY PROCEDURES FOR INVOICING IMPROVEMENT INSPECTION FEES TO APPLICANTS AND FOR CHALLENGES TO THE REASONABLENESS OF SUCH FEES.**

IT IS HEREBY ENACTED AND ORDAINED by the Board of Supervisors of the Township of Franklin, York County, Pennsylvania, as follows:

SECTION 1: Ordinance No. 4 of 1997 [The Franklin Township Subdivision and Land Development Ordinance] is amended as follows:

- A. The Definition of the term Professional Consultants is hereby inserted in Section 203 [Specific Words and Phrases] of Article II [Definitions] to state in its entirety as follows:

Professional Consultants – Persons who provide expert or professional advice, including, but not limited to, architects, attorneys, certified public accountants, engineers, geologists, land surveyors, landscape architects or planners.

- B. Section 609 [Reimbursement of Fees] of Article VI [Improvements, Dedications and Reservation] is amended to state in its entirety as follows:

§ 609 Reimbursement of Fees

a) The Township Board of Supervisors shall establish, by resolution, a schedule for inspection fees to be paid by the applicant. Every applicant or developer shall reimburse the Township for the reasonable and necessary expense incurred in connection with the inspection of improvements. Inspection fees shall include reasonable and necessary charges by the Township's professional consultants for inspection and report thereon to the Township. The applicant shall not be required to reimburse the Township for any inspection which is duplicative of inspections conducted by other

governmental agencies or public utilities. The burden of proving that any inspection is duplicative shall be upon the objecting applicant. Such expense shall be reasonable and in accordance with the ordinary and customary fees charged by the Township's professional consultant for work performed for similar services in the community, but in no event shall the fees exceed the rate or cost charged by the professional consultant to the Township for comparable services when fees are not reimbursed or otherwise imposed on applicants.

b) The Board of Supervisors shall submit to the applicant an itemized bill showing the work performed in connection with the inspection of improvements performed, identifying the person performing the services and the time and date spent for each task. In the event the applicant disputes the amount of any such expense in connection with the inspection of improvements, the applicant shall, no later than 30 days after the date of transmittal of a bill for inspection services, notify the Township and the Township's professional consultant that such inspection expenses are disputed as unreasonable or unnecessary and shall explain the basis of their objections to the fees charged, in which case the Township shall not delay or disapprove a request for release of financial security, a subdivision or land development application or any approval or permit related to development due to the applicant's dispute of inspection expenses. Failure of the applicant to dispute a bill within 30 days shall be a waiver of the applicant's right to arbitration of that bill under this section.

c) Subsequent to the final release of financial security for completion of improvements for a subdivision or land development, or any phase thereof, the professional consultant shall submit to the Board of Supervisors a bill for inspection services, specifically designated as a final bill. The final bill shall include inspection fees incurred through the release of financial security.

d) If the professional consultant and the applicant cannot agree on the amount of expenses which are reasonable and necessary, then the applicant shall have the right, within 45 days of the transmittal of the final bill or supplement to the final bill to the applicant, to request the appointment of another professional consultant to serve as an arbitrator. The applicant and professional consultant whose fees are being challenged shall, by mutual agreement, appoint another professional consultant to review any bills the applicant has disputed and which remain unresolved and make a determination as to the amount thereof which is reasonable and necessary. The arbitrator shall be of the same profession as the professional consultant whose fees are being challenged.

e) The arbitrator so appointed shall hear such evidence and review such documentation as the arbitrator in his or her sole opinion deems necessary

and shall render a decision no later than 50 days after the date of appointment. Based on the decision of the arbitrator, the applicant or the professional consultant whose fees were challenged shall be required to pay any amounts necessary to implement the decision within 60 days. In the event the Township has paid the professional consultant an amount in excess of the amount determined to be reasonable and necessary, the professional consultant shall within 60 days reimburse the excess payment.

f) In the event that the Township's professional consultant and applicant cannot agree upon the arbitrator to be appointed within 20 days of the request for appointment of an arbitrator, then, upon application of either party, the President Judge of the Court of Common Pleas of the judicial district in which the Township is located (or if at the time there be no President Judge, then the senior active judge then sitting) shall appoint such arbitrator, who, in that case, shall be neither the Township's professional consultant nor any professional consultant who has been retained by, or performed services for, the Township or the applicant within the preceding five years.

g) The fee of the arbitrator shall be paid by the applicant if the review fee charged is sustained by the arbitrator; otherwise, it shall be divided equally between the parties. If the disputed fees are found to be excessive by more than \$5,000, the arbitrator shall have the discretion to assess the arbitration fee in whole or in part against either the applicant or the professional consultant. The Board of Supervisors and the consultant whose fees are the subject of the dispute shall be parties to the proceeding.

C. Section 805 [Review Fees] of Article VIII [Administration and Enactment] is amended to state in its entirety as follows:

§ 805 Review Fees

a) The Township Board of Supervisors shall establish, by resolution, a schedule for review fees to be paid by the applicant at the time of filing of the sketch, preliminary and final plans, and any other plans required in this ordinance. Review fees shall include reasonable and necessary charges by the Township's professional consultants for review and report thereon to the Township. Such review fees shall be reasonable and in accordance with the ordinary and customary charges for similar service in the community, but in no event shall the fees exceed the rate or cost charged by the professional consultant for comparable services to the Township for services which are not reimbursed or otherwise imposed on applicants. Fees charged to the Township relating to any appeal of a decision on an application shall not be considered review fees and may not be charged to an applicant.

i) The Board of Supervisors shall submit to the applicant an itemized

bill showing work performed, identifying the person performing the services and the time and date spent for each task. Nothing in this subparagraph shall prohibit interim itemized billing or municipal escrow or other security requirements. In the event the applicant disputes the amount of any such review fees, the applicant shall, no later than 45 days after the date of transmittal of the bill to the applicant, notify the Township and the Township's professional consultant that such fees are disputed and shall explain the basis of their objections to the fees charged, in which case the Township shall not delay or disapprove a subdivision or land development application due to the applicant's dispute over fees. Failure of the applicant to dispute a bill within 45 days shall be a waiver of the applicant's right to arbitration of that bill under section 609.

ii) In the event that the Township's professional consultant and the applicant cannot agree on the amount of review fees which are reasonable and necessary, then the applicant and the Township shall follow the procedure for dispute resolution set forth in section 609, provided that the arbitrator resolving such dispute shall be of the same profession or discipline as the professional consultant whose fees are being disputed.

iii) Subsequent to a decision on an application, the Board of Supervisors shall submit to the applicant an itemized bill for review fees, specifically designated as a final bill. The final bill shall include all review fees incurred at least through the date of the decision on the application. If for any reason additional review is required subsequent to the decision, including inspections and other work to satisfy the conditions of the approval, the review fees shall be charged to the applicant as a supplement to the final bill.

SECTION 2: In all other respects, Ordinance No. 4 of 1997 [The Franklin Township Subdivision and Land Development Ordinance] shall remain as heretofore enacted, ordained, and amended.

SECTION 3: If any sentence, clause, phrase 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, phrases, sections or parts of this Ordinance. It is hereby declared as the intention of the Board of Supervisors of this Township that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, phrase, section or part thereof not been included therein.

SECTION 4: All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 5: This ordinance shall become effective in accordance with applicable law.

ENACTED AND ORDAINED this 21 day of April, 2005.

ATTEST:

Linda J. Hansen  
Linda J. Hansen, Secretary

FRANKLIN TOWNSHIP  
BOARD OF SUPERVISORS

By: Edward Balsavage  
Edward Balsavage, Chairman

By: Larry Lambert  
Larry Lambert, Vice Chairman

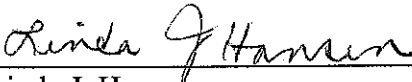
By: Naomi Decker  
Naomi Decker

By: Donald Lerew Sr  
Donald Lerew, Sr.

By: John L. Shambaugh  
John Shambaugh

**CERTIFICATION**

I, the undersigned, Secretary of the Township of Franklin, York County, Pennsylvania, hereby certify that the attached is a true and correct copy of Ordinance 2-2005, which was duly enacted and ordained (adopted) on April 21, 2005, by the Board of Supervisors of the Township of Franklin, York County, Pennsylvania, which will be, and continue to be in effect within the Township.

  
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Linda J. Hansen  
Township Secretary

(Seal)

MARTSON DEARDORFF WILLIAMS &amp; OTTO

**MDW&O**

INFORMATION • ADVICE • ADVOCACY

10 EAST HIGH STREET  
 CARLISLE, PENNSYLVANIA 17013  
 TELEPHONE (717) 243-3341

FACSIMILE (717) 243-1850  
 INTERNET [www.mdwo.com](http://www.mdwo.com)

ATTORNEYS &amp; COUNSELLORS AT LAW

WILLIAM F. MARTSON  
 JOHN B. FOWLER III  
 EDWARD L. SCHORPP  
 DANIEL K. DEARDORFF  
 THOMAS J. WILLIAMS\*  
 IVO V. OTTO III  
 GEORGE B. FALLER JR.\*

CARL C. RISCH  
 DAVID A. FITZSIMONS  
 DAVID R. GALLOWAY  
 ANTHONY T. LUCIDS  
 CHRISTOPHER E. RICE  
 JENNIFER L. SPEARS  
 HILLARY A. DEAN\*

\*BOARD CERTIFIED CIVIL TRIAL SPECIALIST

**FACSIMILE TRANSMISSION**

**TO :** Linda Hansen **FAX:** 717-432-7537  
**FROM:** Edward L. Schorpp **FAX:** 717-243-1850  
**DATE:** January 28, 2005  
**PAGES:** X 10 (including this sheet)  
**RE:** OLDS Ordinance Amendment

I am sending the hard copy by mail today, but thought you might need a fax copy to meet the publishing deadline for the Feb. 3 edition. Gil Picarelli is sending me a "clean" copy of the map which I will forward to you for attachment to the original ordinance when enacted. Please call if you have any questions.

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE (COLLECT), AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE (WE WILL REIMBURSE POSTAGE). THANK YOU.

MARTSON DEARDORFF WILLIAMS &amp; OTTO

**MDW&O**

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\*BOARD CERTIFIED CIVIL TRIAL SPECIALIST

January 28, 2005

Linda J. Hansen, Secretary  
Franklin Township  
150 Century Lane  
Dillsburg, PA 17019RE: Ordinance to Amend On-Lot Septic System Maintenance Program  
Our File No. 10411.16

Dear Linda:

I enclose the Ordinance and Notice to effectuate the changes approved for the Township's Act 537 Plan. Please have the Notice published not later than February 3, 2005.

In a very recent case, the Supreme Court of Pennsylvania has ruled that municipalities must strictly follow the statutory procedure for adoption of ordinances, otherwise they are invalid and never take effect. Therefore, although I believe you are following the provisions of the Township Code, I thought I would review them given the critical seriousness the Court has now attributed to the procedure.

A Notice with the full text of the Ordinance, or Notice of summarized ordinance (in most instances I use a summary rather than the full text), must be published not less than 7 nor more than 60 days prior to adoption. If the Public Notice does not include the full text of the ordinance, then a copy of the ordinance must be provided with the Notice to the newspaper publishing the notice and an attested copy of the ordinance must be filed within thirty days after enactment with the county law library or other county office designated to store it. Please be certain to sign the certification attached to the back of the Ordinance before filing it with the County. Finally, the Ordinance must be recorded in the Ordinance Book.

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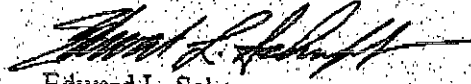


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Linda Hansen  
January 28, 2005  
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If you have any questions, please feel free to call me.

Very truly yours,

MARTSON DEARDORFF WILLIAMS & OTTO



Edward L. Schorpp

Enclosures

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## NOTICE

**NOTICE IS HEREBY GIVEN** by the Board of Supervisors of Franklin Township, York County, Pennsylvania, of its intention to consider for adoption, and to vote upon enactment of an Ordinance entitled and summarized hereafter at its scheduled meeting to be held on Thursday, February 17, 2005 at 7:00 p.m., prevailing time, in the Meeting Room of the Franklin Township Municipal Building located at 150 Century Lane, Dillsburg, Pennsylvania, or at another public meeting at said location and time (to be determined) not less than seven (7) nor more than sixty (60) days following the publication of this Notice.

The title of the proposed ordinance is An Ordinance Amending the Olds (On-Lot Disposal System) Management Program Ordinance to Provide for a New On-Lot Management District 2-A; to Modify Existing Districts to Exclude Those Areas Encompassed by the New District 2-A; and, to Provide for Mandatory Pumping of On-Lot Systems in District 2-A on a Biannual Basis.

This Ordinance implements amendments recently approved for the Franklin Township Act 537 Sewage Management Plan. Upon its effective date, a new On-Lot Management District will be created in the Clear Springs area of the Township. A map depicting the boundaries of the new district is attached as an exhibit to the ordinance and is incorporated by reference. Persons desiring to view the map may do so at the Office of the Township Secretary during regular business hours. Should the Ordinance be enacted, owners of properties within the boundaries of the new district 2-A will be required to pump their on-lot systems on a biannual basis and submit inspection reports to the Township SEO. Heretofore, those properties were subject to mandatory pumping on a tri-annual basis.

The full text of the proposed ordinance and the map may be examined at the office of the Township Secretary, 150 Century Lane, Dillsburg, Pennsylvania, during regular business hours. In addition, a copy of the proposed ordinance and map has been filed with the newspaper publishing this notice and at the York County Law Library or the office of the York County Commissioners, One West Marketway, 4<sup>th</sup> Floor, York, Pennsylvania.

Edward L. Schorpp, Esq.  
Solicitor, Franklin Township

Linda J. Hansen  
Township Secretary