

**ORDINANCE NUMBER 99-02
AN ORDINANCE OF THE TOWN OF BLOOMING GROVE
PROHIBITING HOLDING TANKS**

The Town Board of the Town of Blooming Grove, Dane County, Wisconsin, does hereby ordain as follows:

Section 1. That Ordinance No. 5.05 shall be repealed and recreated as follows:

1. Holding Tanks Prohibited. Pursuant to sec. COMM 83.18(2)(b)1, Wis. Admin. Code, holding tanks, as that term is defined in sec.COMM83.02(26), Wis. Admin. Code, are prohibited as private sewage systems for new construction in the Town, unless authorized as a variance of the Town Board, granted pursuant to this Ordinance.

2. Application. The owner(s) of property in the Town may apply for a variance under this Ordinance to install a holding tank on his or her property. The application shall be signed by all of the property owners. An application for a variance under this Ordinance shall be filed with the Town Clerk. The application shall include a sworn statement that the application is true and factual. The application shall include the following information:
 - (1) The name, address and telephone number of the applicant.
 - (2) The address, size, parcel identification number and legal description of the property on which the holding tank would be installed.
 - (3) Whether the holding tank would serve a commercial property or a single family residence.
 - (4) A list of the names and addresses of the owners and occupants of property located within 300 yards of the property on which the holding tank would be installed, together with stamped envelopes properly addressed to such owners and occupants.
 - (5) Copies of all available site reports, feasibility reports, engineering plans of other documents prepared by or on behalf of the applicant relating to the installation of the holding tank or other private sewage system on the property.
 - (6) All other information that the applicant believes is relevant to the application.

3. Application Fee. The application for a variance shall be accompanied by a fee of \$300.

4. Notice and Public Hearing. Upon the filing of a completed application and the payment of the application fee, the Town Board shall hold a public hearing on the application, unless the Board shall designate the Plan Commission to hold the hearing, in which case the Plan Commission shall report its recommendation to the Board. The Town shall publish or post notice of the time, place and purpose of the public hearing by Class 1 notice under Wisconsin Statutes in the official Town newspaper. Notice of the time, place and purpose of the public hearing shall also be mailed to the applicant and the owners and occupants of property located within 300 yards of the property on which the holding tank would be installed.

5. Variances.
 - (1) Commercial Property. The Town Board may, at its sole discretion, grant a variance to a property owner allowing the installation and use of a holding tank to serve commercial property pursuant to Sec. 5(2)(b) through (e) of this Ordinance.

 - (2) Residential Property. The Town Board may, at its sole discretion, grant a variance allowing the installation and use of a holding tank to serve residential property if:
 - (a) The holding tank will serve a single-family residence.

 - (b) The Town Board determines that approval of the variance promotes the health, safety and general welfare of the Town and its residents.

 - (c) The Town Board determines that approval of the variance is necessary to avoid a substantial hardship to the property owner that is not self-created by the property owner.

 - (d) The property where the holding tank would be installed is not located in an environmentally sensitive area as defined by this Ordinance.

 - (e) The applicant consents to all of the following conditions:
 - (i) The recording of a deed restriction in a form approved by the Town attorney, running with the land, that obligates the property owner and all successors, heirs, assigns and subsequent owners of the property to abide by all conditions of the variance established by the Town Board. The applicant shall agree to be

responsible for the cost of drafting and recording the deed restriction with the Dane County Register of Deeds.

- (ii) The property owner grants the Town of Blooming Grove an easement in a form approved by the Town attorney, running with the land, authorizing the Town, its officers, employees, agents, contractors, or others as permitted by the Town to enter the property at any time, without first procuring a warrant, to inspect the holding tank in order to determine whether it is being operated properly, consistent with the requirements of Wisconsin law and this Ordinance, or to carry out the other duties of the Town with respect to holding tanks. The applicant shall be responsible for the cost of drafting and recording the easement with the Dane County Register of Deeds.
- (iii) The property owner posts and maintains at all times a surety bond issued by a licensed surety company authorized to do business in the State of Wisconsin in an amount found by the Town Board to be sufficient to defray the cost of pumping the holding tank in the event the property owner fails to pump it and to remediate the effects of any discharge of sewage from the holding tank. The Board may establish a bond amount that escalates over time to meet projected increased costs. The property owner shall be solely responsible for the cost of posting and maintaining the surety bond.
- (iv) When public sewer service or another form of private sewage system is available for use on the property, the holding tank shall be abandoned and removed in accordance with all applicable laws, regulations and ordinances.
- (v) The property owner shall comply with all applicable laws, regulations and ordinances regarding the installation and use of the holding tank.
- (vi) Installation of the holding tank shall be commenced within 3 months from the date the variance is granted. In the event that the installation is not commenced within 3 months, the variance shall expire.
- (vii) Any other conditions or requirements reasonably imposed by the Board.

6. Environmentally Sensitive Areas. Notwithstanding any other provision of this Ordinance, the Town Board may not authorize installation of a holding tank to serve any use, whether residential or commercial, on any property that is:
 - (1) A wetland as defined by Wisconsin law or as zoned on the Dane County zoning map;
 - (2) Zoned conservancy on the Dane County zoning map; or
 - (3) Within a floodway, floodplain or a shoreland.

7. Appeal. If the Town Board denies the variance application, the applicant may appeal such decision to the Circuit Court for Dane County by writ of certiorari within 30 days of the date of such denial for a determination whether the Board's actions were arbitrary, unreasonable, or capricious.

8. Previous Authorization. Any holding tank that has been previously approved by the Town Board shall be permitted to continue in operation as long as the conditions under which it was originally granted apply. In the event any holding tank previously authorized is discontinued in use for a period of more than 90 days the property owner shall apply and be granted a variance under this Ordinance before placing the holding tank back in service.

9. Violations. The Town Board shall have the authority to enforce the provisions of this Ordinance by civil action or by proceedings for an injunction. Any person violating the provisions of this Ordinance shall forfeit the sum of not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00) per violation. Each day of continued violations constitutes a separate offense. For the purposes of this Ordinance, all persons assisting or facilitating in the illegal installation, operation or maintenance of a holding tank shall be jointly and severally liable for the damages and forfeitures imposed under this Ordinance.

Section 2. Effect. This Ordinance shall take effect the day after its passage and publication.

Section 3. Severability. If any section or part of this Ordinance is adjudged to be unconstitutional, unlawful or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

The above and foregoing Ordinance was duly adopted by the Town Board of the Town of Blooming Grove at a regular meeting held on the 10th day of August, 1999 by a vote of 4 in favor, 0 opposed, and 1 not voting.

TOWN OF BLOOMING GROVE

By _____
Tom N. Anderson, Chairman

ATTEST:

Verlene I. Hendrix, Clerk

Approved: August 10, 1999

Published: