

TOWNSHIP OF SOUTH MIDDLETON  
CUMBERLAND COUNTY, PENNSYLVANIA

ORDINANCE NO. 2019-05

AN ORDINANCE ESTABLISHING A STORMWATER DISTRICT COMPRISING OF ALL THE PROPERTIES IN PHASES 1 THROUGH 7 OF THE WESTGATE SUBDIVISION; PROVIDING FOR THE AUTHORIZATION FOR COLLECTION OF A FEE FROM ALL DEVELOPED PROPERTIES LOCATED WITHIN THE STORMWATER DISTRICT, AND ESTABLISHING A MAINTENANCE PROGRAM FOR STORMWATER FACILITIES WITHIN THE DISTRICT.

WHEREAS, the Board of Supervisors of South Middleton Township has approved Final Subdivision Plans for Phases 1 through 7 of the plan known as the "Westgate Subdivision"; and

WHEREAS, those plans called for the construction of stormwater management facilities to manage the accelerated runoff of stormwater resulting from the development, which increased flows and velocities, identified on the plans as Pond 'A', Pond 'B', Pond 'C', and Pond 'D'; and

WHEREAS, inadequate management of stormwater runoff through a watershed can increase and accelerate flows and velocities, contribute to and increase erosion and sediment loading, overtax the carrying capacity of existing streams and storm sewers, greatly increase the cost of public activities and public facilities to effectively convey and manage stormwater, undermine floodplain management and flood reduction efforts in downstream communities, reduce groundwater recharge, negatively impact other related water resource needs and threaten public health and safety; and

WHEREAS, the stormwater management facilities were identified to initially be owned and maintained by the developer until such time that the facilities were turned over to the Homeowner's Association (hereafter "HOA"), who would then be responsible for ownership and maintenance; and

WHEREAS, the developer failed to compel a portion of the residents in the subdivision to be part of the HOA; and

WHEREAS, the HOA is currently inactive and has no duly elected officers; and

WHEREAS, neither the developer nor the HOA is maintaining the stormwater management facilities; and

WHEREAS, the Board of Supervisors of South Middleton Township feels that it is in the best interest of the Township, its residents, and the environment to

become actively involved in the maintenance of said stormwater facilities, and ensuring that these facilities are both functional and effective;

WHEREAS, said Township of South Middleton is authorized under Section 2704 of the act of May 1, 1933 (P.L.103, No.69), known as The Second Class Township Code, to enact stormwater management ordinances; and

WHEREAS, the act of July 1, 2016 (P.L.439, No.62) amended the Second Class Township Code to authorize the Township of South Middleton to enact and enforce ordinances to govern the construction and maintenance of stormwater facilities, and assess reasonable and uniform fees based on the characteristics of the property benefited by the facilities, and requires the Township to consider and provide appropriate exemptions and credits for properties; and

WHEREAS, it is the Township's desire to establish A "Stormwater Management District" (hereafter "SWM District") comprising of all the properties of the Westgate Subdivision, to assess fees on each developed property, and to establish a maintenance program for the facilities located within the SWM District;

AND NOW, THEREFORE, be it enacted and ordained by the Board of Supervisors for the Township of South Middleton, and it is hereby enacted and ordained by their authority of the same, as follows:

### **SECTION 1: INTENT**

It is the intent of the South Middleton Township Board of Supervisors to develop a program to establish a SWM District and impose fair, reasonable and equitable uniform fees, so that owners of developed properties within the SWM District will pay an equitable share of the costs of operation, maintenance, repair, inspection, regulatory compliance, administration, replacement and construction of improvements related to the stormwater management facilities, stormwater management systems, management plans, and related services provided or paid for by South Middleton Township within the SWM District.

### **SECTION 2: DEFINITIONS**

Words and terms used in this chapter, and not given a specific definition, as set forth in this section, shall be defined as may be set forth in the applicable statutes and/or regulations of the United States or of the Commonwealth of Pennsylvania and shall otherwise be given their ordinary and common meaning:

**BEST MANAGEMENT PRACTICES (BMPs)** - Methods, procedures and analyses, as specified in the Pennsylvania Stormwater Best Management Practices Manual, to reduce flooding potential and to manage and control the volume, flow rate, and water quality of stormwater.

**DEVELOPED PROPERTY OR DEVELOPED PROPERTIES** - Each lot, parcel, building or portion thereof within South Middleton Township's Stormwater Management District, separately established by a property identification number issued by Cumberland County, and containing in excess of 300 square feet of Impervious Surface.

**FEES** - A sum of money assessed, imposed, and to be collected from the owner of each Developed Property within the SWM District which uses, benefits from, or is serviced by the stormwater management system or stormwater management facility or discharges stormwater directly or indirectly, into the stormwater management system or stormwater management facility, with such fee to be paid to South Middleton Township for its utilization in planning, constructing, operating, maintaining, regulating, inspecting, and improving such system and facilities and the services provided thereby.

**IMPERVIOUS SURFACE** - A surface that prevents the infiltration of water into the ground. Impervious surfaces (or areas) shall include, but are not limited to, roofs, additional indoor living spaces, patios, garages, storage sheds and similar structures, roads, cartways, and paths; whether paved, gravel, dirt, or any other non-vegetated surface. Any surface area proposed to initially be gravel or crushed stone shall be assumed to be impervious, unless designed as an infiltration BMP. All areas not sufficiently stabilized (reference Pa Code Title 25, Chapter 102) with vegetation shall, for the purposes of this policy, be considered impervious.

**OWNER** - Any person, firm, corporation, individual, partnership, company, association, organization, society or group owning herein affected developed property in South Middleton Township.

**STORMWATER** - Runoff water from all precipitation events, snowmelt and natural springs.

**STORMWATER MANAGEMENT DISTRICT (SWM DISTRICT)** - A geographic area within South Middleton Township consisting of land (and including the previously subdivided lots or parcels within) identified and described in Section 3 of this chapter.

**STORMWATER MANAGEMENT FACILITIES** - Components, including both man-made structures and natural features, which comprise a stormwater management system (including, but not limited to, storm sewers, pipes, conduits, mains, inlets, culverts, catch basins, gutters, manholes, ditches, channels, basins, outfalls, detention ponds and tanks, streets, curbs, drains, and all devices, appliances, and stormwater BMPs, such as infiltration and filtration facilities).

**STORMWATER MANAGEMENT SYSTEM** - The system of runoff avoidance, infiltration, collection and conveyance (including storm sewers, pipes, conduits, mains, inlets, culverts, catch basins, gutters, manholes, ditches, channels, basins,

outfalls, and detention ponds and tanks, streets, curbs, drains, and all devices, appliances, and stormwater BMPs, such as infiltration and filtration facilities) used for collecting, conducting, pumping, conveying, detaining, infiltrating, reducing, managing, avoiding the generation of, and treating stormwater, regardless of ownership.

**STORMWATER MANAGEMENT SYSTEM EXTENT** - For the purpose of this chapter the extent of a stormwater management system shall commence where stormwater runoff enters a closed conduit system and extend to the exit of a structural outfall to a stream, drainageway or watercourse. The extent of the stormwater management system shall not include surface runoff or swales that convey stormwater either to or away from a stormwater management system.

**USER** - Any person, firm, corporation, individual, partnership, company, association, society, or group using, benefiting from or being served by the stormwater management system and/or stormwater management facilities.

### **SECTION 3: CREATION OF DISTRICT**

South Middleton Township hereby creates and establishes its Stormwater Management District as a geographic area within South Middleton Township consisting of land (and including the previously subdivided lots or parcels within) identified and described in the following plans of record (as recorded at the Cumberland County Recorder of Deeds):

Plans of Lots – As-Filed of Record (Plan Book Volume/Page)

Westgate

Phase 1 – Plan Book 70, Page 101

Phase 2 – Plan Book 77, Page 47

Phase 3 and 4 – Plan Book 81, Page 15

Phase 5 – 7 – Plan Book 94, Page 59

Copies of the pertinent portions of the above-referenced plans are attached hereto as exhibits (and incorporated herein by reference). A further description of individual properties within the above-described Stormwater Management District has been prepared by the Township and a listing of same is and shall be maintained in the offices of South Middleton Township, 520 Park Drive, Boiling Springs, PA 17007 (and the provisions of same are hereby incorporated by reference).

### **SECTION 4: IMPOSITION OF FEES**

The fees as determined herein are fair, reasonable, equitable, and uniform, and are based on the following facts:

The fees specified herein shall be applicable to all Developed Property within the SWM District, except as may otherwise be provided by the terms of this chapter.

South Middleton Township hereby establishes and imposes a fee, as specified herein, upon each Developed Property within the SWM District that uses or is benefited by the stormwater management system, and/or stormwater management facilities, either directly or indirectly. The fee herein shall be imposed for the use, benefit, construction, inspection, planning, operation, maintenance, repair, replacement and improvement of the stormwater management system and/or stormwater management facilities. The fee herein shall be imposed on a yearly basis and paid annually as follows:

- A. The fee shall be established by resolution of the Board of Supervisors and charged to each Developed Property within the SWM District.
- B. The credit policy shall be established by resolution of the Board of Supervisors and be available to each Developed Property within the SWM District.

#### **SECTION 5: USE OF FEES**

The fee provided herein shall be used for the operation, maintenance, repair, inspection, regulatory compliance, administration, replacement and construction of improvements related to the stormwater management facilities, stormwater management systems, management plans, and related services provided or paid for by South Middleton Township within the SWM District.

#### **SECTION 5: UNIFORM APPLICATION OF FEES**

The fee provided herein shall be uniformly assessed, liened and collected on all Developed Property within the SWM District.

#### **SECTION 6: "USER" AND "OWNER" DISTINGUISHED**

References in this chapter to "use," "user," "lot," "parcel," with respect to the assessment of fees shall not be construed to modify or alter the fact that the fees authorized by this chapter shall be assessed to the owner(s) of each Developed Property, and such owner(s) shall be and remain liable for payment of same, whether or not such owner occupies the property and therefore directly uses the stormwater management facilities and stormwater management system. Nothing in this chapter shall be construed to prohibit the owner's ability to collect by lease or contract equivalent sums due from a tenant or other occupier of the owner's property, but such lease or contract shall not bind South Middleton Township or limit in any way its authority to impose, assess, and collect the fees specified herein from the owner(s) of the property and to lien a property regulated hereby.

## **SECTION 7: BILLING AND COLLECTION OF FEES**

- A. The fee(s) fixed and established by this chapter shall be applicable, beginning in calendar year 2019 and annually thereafter as to all Developed Properties that use, are served, or are benefited by the stormwater management system existing as of the effective date of this chapter, and shall thereafter be applicable and effective to all other Developed Properties that begin to use, be served or be benefitted by the stormwater management system. Fees imposed by this chapter shall be assessed annually and. The fees assessed and collected will not be subject to proration or refund by South Middleton Township in the event that a property is sold; provided, however, that a buyer and seller of property shall not be precluded hereby from making their own private, contractual agreement to provide for proration of credit between them of any fees associated herewith.
- B. South Middleton Township Board of Supervisors may review and update the fees fixed and established by this chapter by a subsequent resolution, as may be deemed necessary from time to time, and as adopted by resolution at a properly advertised meeting.

## **SECTION 8: STORMWATER MANAGEMENT FEES CONSTITUTE LIEN ON PROPERTY**

In accordance with Section 1612 of the Second Class Township Code and the Municipal Claims Act, 53 P.S. § 7101 et seq., as amended, all fees, penalties, interest (at the permitted legal rate upon the unpaid balance after its due date), collection fees (including reasonable attorneys' fees), lien filing and satisfaction fees and other charges imposed for failure to pay promptly the fees assessed by this chapter, shall constitute a lien upon and against the subject property and its owner from the date of their imposition and assessment.

## **SECTION 9: CREDITS AND APPEALS**

- A. Credits for fees otherwise imposed hereby will be provided when owner(s) of Developed Properties have specifically requested such credit and the required maintenance or repairs are performed in accordance with Township directives on a timely basis and such stormwater facilities are current and in accordance with acceptable standards (all as determined by the Township in its reasonable discretion). Additionally, to qualify for such credit, the owner(s) shall be required to have executed a standard operation and maintenance plan agreement (in a form acceptable to South Middleton Township) which shall be recorded at the Cumberland County Recorder of Deeds acknowledging the owner(s)' ongoing maintenance requirements.
- B. Any owner (or group of owners) who believes its fees have been calculated in error may appeal such calculation to South Middleton Township's Board of

Supervisors, with such appeal to be heard promptly thereafter at a public meeting.

#### **SECTION 10: STORMWATER REVENUE ACCOUNT**

All fees and other stormwater-related revenue authorized to be imposed, assessed, and collected by the Township shall be deposited in South Middleton Township Stormwater District Revenue Account, a separate account dedicated to the operation, administration, maintenance, repair and improvement of the stormwater management system in the SWM District. Such fees and revenue shall, in accordance with the provisions of Pennsylvania Act No. 62 of July 1, 2016 (P.L. 439), be used only for the purposes authorized thereby.

#### **SECTION 11: FLOODS AND LIABILITY**

Flooding may occur occasionally due to stormwater volume that exceeds the capacity of South Middleton Township's stormwater management system. Nothing in this chapter shall be deemed to imply that properties within South Middleton Township, including but not limited to those subject to the fees imposed hereby, shall always be free from flooding or flood damage, or that all flood control projects to control stormwater can provide complete protection from all flood and storm events. Nothing whatsoever in this chapter shall deem South Middleton Township liable for any injuries or damages incurred, either directly or indirectly, from stormwater or from adverse water quality. Nothing in this chapter purports to reduce the need, appropriateness, or necessity for flood insurance to be separately maintained by owners of properties, and South Middleton Township expressly reserves its right to assert all available legal immunities and defenses in any civil action seeking to impose monetary damages upon South Middleton Township, its officers, employees and agents arising out of any alleged failure of or negligence or breach of duty regarding the stormwater management system.

#### **SECTION 12: AUTHORIZATION TO IMPLEMENT AND ENFORCE TERMS OF THIS CHAPTER**

The Board of Supervisors of South Middleton Township is hereby authorized to do all acts (including authorization to delegate same to its authorized Township management staff, Township Solicitor, and other duly authorized agents) necessary to carry out the terms of this chapter, including but not limited to performance of necessary ongoing repairs, maintenance, or management associated with stormwater management functions within South Middleton Township's Stormwater Management District and, also, the collection of the related fees and costs established hereby.

#### **Section 13: SEVERABILITY**

If any section, subsection, clause, or phrase of this Ordinance is held unconstitutional or invalid for any reason, such decision shall not affect the remaining portions of

this Ordinance.

**SECTION 14: EFFECTIVE DATE**


This Ordinance shall be effective five (5) days after adoption.

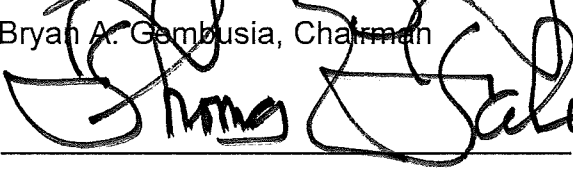
**SECTION 15: REPEALER**

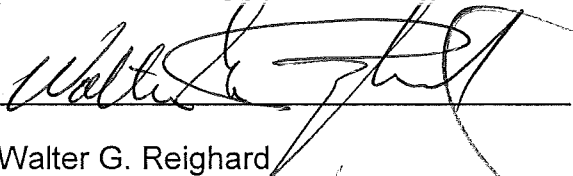
All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed.

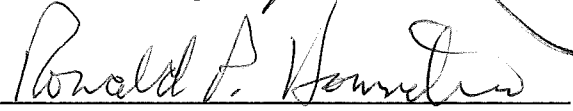
ENACTED AND ORDAINED THIS 13th day of June, 2019.


BOARD OF SUPERVISORS OF  
SOUTH MIDDLETON TOWNSHIP,

  
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Bryan A. Gambusia, Chairman

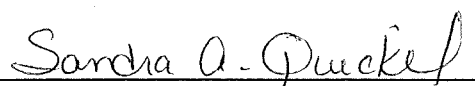
  
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Thomas E. Faley, Vice Chairman

  
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Walter G. Reighard

  
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Ronald P. Hamilton

  
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R. Duff Manweiler

ATTEST:

  
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Sandra A. Quickel, Township Secretary