

**Applicant**

Blue Earth County  
P.O. Box 3566  
Mankato, MN 56002-3566

**Request**

Request for review and approval of amendments to the Blue Earth County Code of Ordinances, Chapter 6, Article V. Subsurface Sewage Treatment Systems (SSTS), Section 6-436. – Transfer of properties with an existing SSTS.

**Background and Statement of General Need**

The existing ordinance was approved in April of 2021. The amendments incorporated language to conform with current Minnesota Statutes and Rules governing SSTS systems.

During the public comment period of the County Board meeting, concerns were raised regarding Section 6-436. – Transfer of properties with an existing SSTS. Specifically, there were concerns a compliance inspection would result from transfers of property as a result of estate planning. Revocable living trusts, special needs trusts, and supplemental needs trusts were discussed. Additionally, the requirement for a compliance inspection when property is transferred by the owner to a descendant of the owner who will reside on the property in order to care for the owner due to health conditions was deliberated.

The County Board of Commissioners approved the SSTS ordinance as presented by staff, but also requested Planning and Zoning staff review and recommend revisions to Section 6-436. Staff has reviewed the applicable public comment, SSTS ordinances from numerous surrounding counties, and consulted the County Attorney’s Office. Staff presents the proposed amendment, as follows:

**Proposed Amendments**

The proposed amendment is to add an additional exception to requiring a certificate of compliance due to a property transfer to Section 6-436. – Transfer of properties with an existing SSTS, 2), with the addition of item f).

- 2) The compliance portion of the certificate of compliance need not be completed if the sale or transfer involves any of the following circumstances:
  - a) The affected tract of land is without buildings or contains no dwellings or other buildings with plumbing fixtures.
  - b) The sale or transfer completes a contract for deed or purchase agreement entered into prior to the effective date of this article. This subsection applies only to the original vendor and vendee on such a contract.
  - c) Any dwellings or other buildings that are connected exclusively to a municipal wastewater treatment facility; any dwellings or other buildings that are located within the jurisdiction of a county approved agreement requiring exclusive connection to the wastewater treatment system of any municipality; or, any dwellings or other buildings that are connected exclusively to an approved wastewater treatment facility other than an SSTS.

- d) When title to real property is held jointly by a husband and wife and one spouse becomes deceased and the only change that occurs is to remove the deceased spouse's name from the title.
- e) When title to real property is held jointly by a husband and wife and through a divorce decree one of the said parties is removed from the title with the other said party retaining ownership of the property.
- f) **When title to real property is transferred to a Special Needs Trust or a Supplemental Needs Trust.**

Staff recognizes there may be unique and rare circumstances that require the transfer of property for these specific reasons and believe these exceptions are in the best interest of these property owners while, due to their rarity, do not harm the health, safety and general welfare of the public.

The additional requests to exempt property transfers due to Revocable Living Trusts and instances that transfer property to a primary care provider conflict with the purpose and intent of the SSTS ordinance as stated below.

### **SSTS Ordinance**

#### **Sec. 6-342. - Purpose.**

The purpose of this article is to establish minimum requirements for regulation of SSTS for the treatment and subsurface dispersal of sewage within the applicable jurisdiction of the county to protect public health and safety, groundwater quality, and reduce or prevent the development of public nuisances. It is intended to serve the best interests of the county's citizens by protecting their health, safety, general welfare, and natural resources.

#### **Sec. 6-343. - Intent.**

It is intended by Blue Earth County that this article will promote the following:

- 1) The protection of lakes, rivers, and streams, wetlands, and groundwater in Blue Earth County. These water resources are essential to the promotion of public health, safety, welfare, socioeconomic growth and development of the county.
- 2) The regulation of proper SSTS construction, reconstruction, repair and maintenance to prevent the entry and migration of contaminants into surface water or groundwater, thereby protecting the degradation of surface water and groundwater quality.
- 3) The establishment of minimum standards for SSTS placement, design, construction, reconstruction, repair and maintenance, thus preventing contamination into surface water or groundwater. If SSTS contamination is discovered, identification, control and the abatement of its source will be taken to prevent migration.
- 4) The appropriate utilization of privy vaults and other non-water carried sewage collection and storage facilities.
- 5) The provision of technical assistance and education, plan review, inspections, SSTS surveys and complaint investigations to assist in the prevention and control water-borne diseases, lake degradation, groundwater related hazards, and public nuisance conditions.

### **Land Use Plan**

The Land Use Plan states:

“Groundwater is of high quality throughout the County, and there is good availability of groundwater from bedrock aquifers. When compared with other natural resource needs and services, reliable access to good quality drinking water is the number one priority for most people. Land use planning and management have an in important role in protecting groundwater

resources to ensure long term sustainability of good quality groundwater supplies. To protect groundwater, land development for home occupations, commercial and industrial uses and wastewater treatment in areas without publicly-owned wastewater treatment should be managed in areas with high to moderate pollution sensitivity and karst.”

*Natural Resources Objective*

*“Wastewater should be managed to protect surface and groundwater resources and public health.”*

*Development Action*

*“Continue to ensure subsurface sewage treatment systems (SSTS) are in compliance with Blue Earth County Code and Minnesota Rule.”*

**County Attorney Review**

In a phone conversation with Assistant County Attorney Christopher Cain, Mr. Cain indicated the Attorney’s Office had reviewed the proposed ordinance amendment and had no objection.

**Required Notices**

The required public hearing notice was published in the Free Press on June 26, 2021. It was also mailed to all cities and townships in the county on June 25, 2021.

**Findings**

Staff has developed the following findings regarding the proposed amendment to Chapter 6, Article V. Subsurface Sewage Treatment Systems (SSTS) of the Blue Earth County Code of Ordinances:

1. Minnesota Statute, Chapter 394.21 grants counties the authority to regulate land development by adopting and amending official controls.
2. The amendment will meet or exceed the minimum requirements of Minnesota Rule Chapter 7080-7083.
3. The amendment to the Subsurface Sewage Treatment Systems Ordinance is consistent with the Land Use Plan.

**Recommendation**

Staff recommends approval of the proposed amendment to Chapter 6, Article V. Subsurface Sewage Treatment Systems (SSTS), Section 6-436. – Transfer of properties with an existing SSTS, as shown in Attachment A-1.

**Attachments**

Attachment A-1 – Proposed Ordinance Amendment

**Attachment A-1**  
**SSTS Ordinance Amendment**

**Sec. 6-436. - Transfer of properties with an existing SSTS.**

- 1) Whenever a conveyance of land upon which a dwelling or structure that requires an SSTS is located occurs, the following requirements shall be met:
  - a) A compliance inspection report or certificate of compliance must be on file with the department prior to the intended sale or transfer of the property.
  - b) The compliance inspection report must have been performed by a qualified employee of the department or a licensed inspection business following procedures described in section 6-435.
  - c) The seller of the property must disclose, in writing, information about the status and location of all known current and former SSTS's on the property to the buyer on a form acceptable to the department.
  - d) If the seller fails to provide a certificate of compliance, the seller shall provide the buyer sufficient security, in the form of an escrow agreement, to assure the installation of a complying SSTS. The security shall be placed in an escrow with a licensed real estate closer, licensed attorney-at-law, or federal or state chartered financial institution. The amount escrowed shall be equal to one hundred ten (110) percent of a written estimate to install a complying SSTS provided by a licensed and certified installer, or the amount escrowed shall be equal to one hundred ten (110) percent of the written contract price for the installation of a complying SSTS provided by a licensed and certified installer. After a complying SSTS has been installed and a certificate of compliance issued, the department shall provide the escrow agent a copy of the certificate of compliance to satisfy the escrow account stipulation.
- 2) The compliance portion of the certificate of compliance need not be completed if the sale or transfer involves any of the following circumstances:
  - a) The affected tract of land is without buildings or contains no dwellings or other buildings with plumbing fixtures.
  - b) The sale or transfer completes a contract for deed or purchase agreement entered into prior to the effective date of this article. This subsection applies only to the original vendor and vendee on such a contract.
  - c) Any dwellings or other buildings that are connected exclusively to a municipal wastewater treatment facility; any dwellings or other buildings that are located within the jurisdiction of a county approved agreement requiring exclusive connection to the wastewater treatment system of any municipality; or, any dwellings or other buildings that are connected exclusively to an approved wastewater treatment facility other than an SSTS.
  - d) When title to real property is held jointly by a husband and wife and one spouse becomes deceased and the only change that occurs is to remove the deceased spouse's name from the title.
  - e) When title to real property is held jointly by a husband and wife and through a divorce decree one of the said parties is removed from the title with the other said party retaining ownership of the property.
  - f) When title to real property is transferred to a Special Needs Trust or a Supplemental Needs Trust.
- 3) All property conveyances subject to this ordinance occurring during the period between November 15th and April 15th, when SSTS compliance cannot be determined due solely to frozen soil conditions, shall require a winter agreement. This agreement must include a requirement to complete a compliance inspection by the following June 1st by a licensed inspection business and an escrow agreement must be established in accordance with subsection 6-436(c). If the SSTS inspection indicates the system is in compliance, the escrow account may be absolved as the SSTS would not need to be upgraded. If the SSTS inspection indicates the system is noncompliant, a

permit application must be submitted, and the SSTS upgraded within the specified timeframe outlined in the notice of noncompliance issued by the county.

- 4) The responsibility for submittal of the delayed compliance inspection listed in subsection 6-436(c) shall be determined by the buyer and seller. Buyer and seller shall provide the department with a signed statement indicating responsibility for completing the compliance portion of the certification and for upgrading a SSTS found to be noncompliant.
- 5) Neither the issuance of permits, certificates of compliance, nor notices of non-compliance as required shall be construed to represent a guarantee or warranty of the system's operation or effectiveness. Such certificates signify that the SSTS in question is or has been designed and installed in compliance or noncompliance with the provisions of these standards and regulations.

(Ord. of 3-26-2013, Div. 6, § 2.05)