

TOWNSHIP OF MARTIC
LANCASTER COUNTY, PENNSYLVANIA

ORDINANCE NO. 97-01

AN ORDINANCE TO AMEND THE MARTIC TOWNSHIP ON-LOT SEWAGE SYSTEM ORDINANCE TO REVISE PENALTIES PROVISIONS IN ACCORDANCE WITH ACT 172 OF 1996.

BE AND IT IS HEREBY ORDAINED AND ENACTED by the Board of Supervisors of the Township of Martic, Lancaster County, Pennsylvania, as follows:

Section 1. The Martic Township On-Lot Sewage System Ordinance, Ordinance No. B4-88, as amended, Section 12, Penalties, Subsection B, shall be amended to provide as follows:

B. For each violation of the provisions of this Ordinance, the owner, agent, lessee, or contractor or any other person who commits, takes part in, or assists in any such violation shall be liable upon conviction thereof in a summary proceeding to pay a fine of not less than two hundred (\$200.00) dollars nor more than one thousand (\$1,000.00) dollars for each offense, together with the costs of prosecution. Each day or portion thereof in which a violation exists shall be considered a separate violation of this Ordinance, and each Section of this Ordinance which is violated shall be considered a separate violation. In default of payment of such fine, such person shall be liable to imprisonment for a period not exceeding thirty (30) days.

Section 2. All other sections, parts and provisions of the Martic Township On-Lot Sewage System Ordinance, Ordinance No. B4-88, as amended, shall remain in full force as heretofore enacted and amended.

Section 3. The provisions of this Ordinance are severable, and if any section, sentence, clause, part or provision hereof shall be held to be illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Board of Supervisors that this Ordinance would have been enacted if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

Section 4. This Ordinance shall take effect and be in force five (5) days after enactment as provided by law.

DULY ORDAINED AND ENACTED this 3RD day of FEBRUARY, 1997, by the Board of Supervisors of the Township of Martic, Lancaster County, Pennsylvania, in lawful session duly assembled.

TOWNSHIP OF MARTIC
Lancaster County, Pennsylvania

Attest: Jane R. Caldwell
~~(Assistant)~~ Secretary

By: Frank H. Peiffer
~~(Vice)~~ Chairman
Board of Supervisors

[TOWNSHIP SEAL]

CERTIFICATE

I, the undersigned, (~~Assistant~~) Secretary of the Township of Martic (the "Township"), certify that: the foregoing is a true and correct copy of an Ordinance of the Board of Supervisors of the Township which was duly enacted by affirmative vote of a majority of the members of the Board of Supervisors of the Township of Martic at a meeting duly held on the 3RD day of FEBRUARY, 1997; such Ordinance has been duly recorded in the Ordinance Book of the Township; such Ordinance has been duly published as required by law; and such Ordinance remains in effect, unaltered and unamended, as of the date of this Certificate.

I further certify that the Board of Supervisors of the Township of Martic met the advance notice requirements of Act No. 1986-84 of the General Assembly of the Commonwealth of Pennsylvania, approved July 3, 1986, by advertising said meeting and by posting prominently a notice of said meeting at the principal office of the Township or at the public building in which said meeting was held, all in accordance with such Act.

IN WITNESS WHEREOF, I set my hand and affix the official seal of the Township, this 3RD day of FEBRUARY, 1997.



(Assistant) Secretary

[TOWNSHIP SEAL]

LAW OFFICES

MORGAN, HALLGREN, CROSSWELL & KANE, P.C.

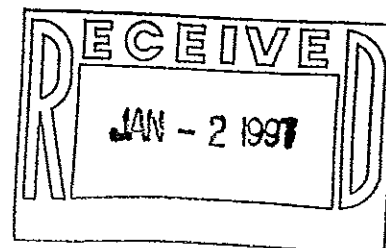
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P. O. BOX 4686
LANCASTER, PENNSYLVANIA 17604-4686

700 NORTH DUKE STREET
—
TELEPHONE 299-5251
AREA CODE 717
TELECOPIER (717) 299-6170

December 30, 1996

James R. Caldwell, Secretary
Martic Township
370 Steinman Farm Road
Pequea, PA 17565



Re: Amendment to Second Class Township Code, as reenacted by
Act 60 of 1995
Our File No. 8984

Dear Jim:

On December 18, 1996, Governor Ridge signed House Bill 685 into law as Act 172 of 1996. Act 172 will become effective 60 days after signature by Governor Ridge, i.e. February 17, 1997. Act 172 has amended Section 1601 of the Second Class Township Code, as reenacted by Act 60 of 1995, to further revise the penalties which may be imposed for violations of Township Ordinances.

Under new Section 1601(c.1)(2), ordinances regulating building, housing, property maintenance, health, fire, public safety, parking, solicitation, curfew, water, air or noise pollution shall be enforced through summary criminal procedures and shall have a maximum fine of \$1,000.00. Section 1601(c.1)(2) basically revives the provisions of the repealed Second Class Township Code concerning these types of ordinances. Under new Section 1601(c.1)(1), all other Township ordinances are to be enforced by the direct assessment of a penalty by the Township and, if the penalty is not voluntarily paid to the Township, through civil enforcement proceedings where the maximum civil penalty may be \$600.00 per violation. If the Township institutes a civil enforcement proceedings after a person refuses to pay the penalty assessed by the Township, the Township will not have to pay a filing fee and will be able to recover its attorneys' fees as costs.

Unfortunately, the Legislature penalized townships like Martic in Act 172. Section 1601(c.1)(3) provides that ordinances enacted before the effective date of Act 60 of 1995 are to be considered automatically amended to comply with Act 172. Ordinances enacted or amended after the effective date of Act 60 are not considered automatically amended, so they must be amended to be brought into compliance with Act 172. Because the Township amended some of its Ordinances and enacted new ordinances addressing certain issues, the Township must again amend the penalty provisions of those Ordinances to comply with the new requirements of Act 172.

NOTE- PLEASE SEE LAST PAGE FOR APPLICABLE ORDS.

James R. Caldwell, Secretary
December 30, 1996
Page 2

In 1996 the Township enacted Ordinance No. 10-02-96, which amended the violation and penalty section and added several sections concerning maintenance of sewage systems to the Township On-Lot Sewage Disposal System Ordinance; Ordinance No. A9-3-96, which amended the violation and penalty section of the Holding Tank Ordinance; and Ordinance No. A9-1-96 which amended provisions concerning violations and penalties in the Township Storm Water Management Ordinance. We believe that ordinances regulating storm water management and sewage disposal would be considered both property maintenance and water pollution ordinances, and under Act 172 the Township's On-Lot Sewage Disposal System, Holding Tank and Storm Water Management Ordinances must be enforced through summary criminal proceedings after February 17, 1997. Unfortunately, Section 12.B of the On-Lot Sewage Disposal Ordinance, as amended by Ordinance No. 10-02-96, Section 11.B of the Holding Tank Ordinance, as amended by Ordinance No. A9-3-96, and Section 602.2 of the Storm Water Management Ordinance, as amended by Ordinance No. A9-1-96, do not comply with Section 1601(c.1) of Act 60 of 1995, as amended by Act 172.

By Ordinance No. A9-4-96, the Township amended the penalty provisions of its Driveway Ordinance to provide for enforcement through civil enforcement actions with a minimum penalty of \$100.00 and a maximum penalty of \$600.00. This penalty provision complies with Section 1601(c.1), as amended by Act 172, and no action is required. Similarly, by Ordinance No. A9-2-96, the Township amended its Anti-Litter Ordinance to provide for enforcement through civil enforcement procedures with a minimum penalty of \$100.00 and a maximum penalty of \$600.00. We do not believe that this ordinance is necessarily a "public safety" ordinance, so it may be enforced through civil enforcement proceedings. Therefore, the Township does not have to amend the Anti-Litter Ordinance.

The Township enacted the Martic Township Street Excavation and Occupancy Ordinance at its meeting on October 7, 1996. We have reviewed the provisions of this Ordinance. Section 9 provides for civil penalties with a minimum penalty of \$100.00 and a maximum penalty of \$1,000.00. Act 172 of 1996 provides that the maximum penalty in a civil enforcement action is \$600.00. Therefore, the maximum penalty in the Street Excavation and Occupancy Ordinance does not comply with Act 172. However, Section 12 of the Street Excavation and Occupancy Ordinance provides for severability of any invalid provisions, and under rules of interpretation the court would consider this ordinance to now have a maximum civil penalty of \$600.00. Therefore, we do not believe that it is necessary to take any action to amend the Street Excavation and Occupancy Ordinance at this time. If the Township desires to make other changes to this Ordinance in the future, we believe the penalty provision should be changed at that time.

James R. Caldwell, Secretary
December 30, 1996
Page 3

At its meeting on October 7, 1996, the Board of Supervisors also enacted the Martic Township Nuisance and Solid Waste Ordinance. In accordance with Act 60 of 1995 as it existed at that time, Section 7 of that Ordinance provides for civil enforcement proceedings with a minimum penalty of \$100.00 and a maximum penalty of \$1,000.00. We believe that parts of this Ordinance would be considered property maintenance regulations and therefore must be enforced through summary criminal proceedings. The provisions of the Ordinance, such as Section 6, Protection of Public Property, could be considered a public safety ordinance also enforceable through summary criminal proceedings. We therefore believe that it would be advisable for the Township to amend the penalty provisions of this Ordinance.

I will await the Township's direction before taking any further action concerning Act 172 of 1996. If you have any questions, please contact me.

Very truly yours,


Josele Cleary

JC:ch
MUNII\ST214486

LAW OFFICES

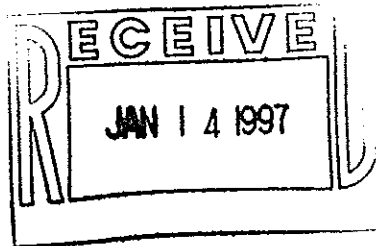
MORGAN, HALLGREN, CROSSWELL & KANE, P.C.

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TELECOPIER (717) 299-6170

January 13, 1997



James R. Caldwell, Secretary
Martic Township
370 Steinman Farm Road
Pequea, PA 17565

Re: Act 172 of 1996
Our File No. 8984

Dear Jim:

As we discussed, I have reviewed the Township's Ordinances which were amended to comply with Section 1601 of the Second Class Township Code, as re-enacted by Act 60 of 1995. Act 172 of 1996 has amended Section 1601 to require that certain types of ordinances be enforced through summary criminal proceedings, including property maintenance and water pollution ordinances.

We believe that the Township's On-Lot Sewage System Ordinance and Holding Tank Ordinance fall within the categories of property maintenance and water pollution ordinances. Both ordinances have extensive provisions governing the initial installation of pollution controlling facilities on a property, and both ordinances contain requirements that these facilities be permanently maintained. Although it would be more convenient for the Township to enforce these ordinances by means of civil enforcement actions, we believe that Act 172 requires that they be enforced through summary criminal proceedings. Because the Sewage Enforcement Officer is considered to be a law enforcement officer, he will be able to issue the citations necessary to commence enforcement proceedings.

We have prepared two ordinances to amend the penalty provisions of the On-Lot Sewage System Ordinance and Holding Tank Ordinance. Enclosed please find these ordinances for the Township's review. Please let us know when the Board of Supervisors desires to consider these ordinances.

The Anti-Litter Ordinance, the Storm Water Management Ordinance, and the Nuisance and Solid Waste Ordinance are arguably property maintenance ordinances, and the Storm Water Management Ordinance also mandates the installation of facilities which are designed in part to reduce water pollution. However, all three Ordinances also address issues which are arguably not within the categories which Act 172 requires be enforced through summary criminal proceedings. There is a rule of statutory construction which states that penal provisions of statutes are to be strictly construed, which also impact the analysis of this issue.

The Anti-Litter Ordinance prohibits, inter alia, littering in public places, sweeping any substance into the street, throwing any substance from a vehicle, operating trucks which spill their contents, placing handbills on

James R. Caldwell, Secretary
January 13, 1997
Page 2

vehicles, posting notices on utility poles. Although a few of its provisions could be characterized as property maintenance regulation, the majority appear to be more related to general public protection of public property and public convenience. It is therefore arguable that the Anti-Litter Ordinance is not a "building, housing, property maintenance, health, fire, public safety, parking, solicitation, curfew, water, air or noise pollution ordinance" required to be enforced through summary criminal proceedings. Of course, we cannot guarantee that a court would not determine that the Ordinance should be enforced through criminal proceedings.

The Storm Water Management Ordinance is more problematic. In essence, it requires submission of a plan whenever a landowner proposes earth disturbance activities, designing storm water management facilities to meet the Ordinance standards, installing the storm water management facilities in accordance with the plan, and permanently maintaining the facilities. This Ordinance can be classified as a building and property maintenance ordinance as well as a public safety ordinance. However, in Section 2704 of Act 60, the General Assembly specifically authorized townships to "enact storm water management ordinances". The Township may argue that the General Assembly recognized storm water management ordinances as a separate category of ordinance in Section 2704 of Act 60 and did not include that category within Section 1601(c.1)(2) of Act 172. The Township may also assert that a storm water ordinance most closely resembles a subdivision and land development ordinance, which is also enforced through civil proceedings under Article V of the Pennsylvania Municipalities Planning Code.

As indicated above, penal provision in ordinances are required to be strictly construed. We cannot say whether a defendant in a civil enforcement action would be successful if he or she asserted as a defense that the Township is required to use summary criminal proceedings to enforce its Storm Water Management Ordinance, but we believe that there is arguably stronger legal reasoning that a storm water management ordinance should be enforced through civil proceedings.

Based upon the above analysis and the Township's preference to enforce its Ordinances through civil enforcement actions rather than summary criminal proceedings, we have not prepared ordinances to revise the penalty provisions of the Anti-Litter Ordinance and the Storm Water Management Ordinance. Please note that the Township should consider the maximum penalty recoverable under each Ordinance to be \$600.00 per violation in accordance with Act 172. Ordinance No. A9-2-96 which amended the Anti-Litter Ordinance provided for a \$600.00 penalty, but Ordinance No. A9-1-96 which amended the Storm Water Management Ordinance provided for a penalty of \$1,000.00. Under the severability clause in Ordinance No. A9-1-96, the penalty in excess of the statutory limits should be considered reduced to the statutory maximum of \$600.00.

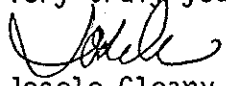
The Nuisance and Solid Waste Ordinance prohibits nuisances (all of which relate to maintenance of property), prohibits depositing waste on the defendant's property, public property, and property of others, and prohibits destruction of public property. Some of the provisions of the Nuisance and Solid Waste Ordinance

James R. Caldwell, Secretary
January 13, 1997
Page 3

nance overlap provisions of the Anti-Litter Ordinance. The prohibition of nuisance conditions relates both to property maintenance and public safety. See Section 3.11 which includes and use of land or structures which "causes injury or damage to the residents of the Township". Section 6, Protection of Public Property, is also arguably a public safety measure because it prohibits removal of any sign or removal of a "barricade erected as a warning of danger".

Although we understand that the Township would prefer to enforce the Nuisance and Solid Waste Ordinance through civil enforcement proceedings, we believe that the majority of the Ordinance regulates either property maintenance or public safety. The Nuisance and Solid Waste Ordinance does establish the position of Code Enforcement Officer, and a duly appointed Code Enforcement Officer should have the power to issue citations necessary to commence summary criminal proceedings. We therefore have prepared an ordinance to amend the Nuisance and Solid Waste Ordinance to provide for enforcement through summary criminal proceedings, which is also enclosed. Please let me know when the Board of Supervisors desires to consider this ordinance.

If you have any questions concerning this matter, or if you believe that any changes should be made to any of the enclosed ordinances, please contact me.

Very truly yours,

Josele Cleary

JC:ch
MUNI\ST214515

Enclosures

LAW OFFICES

MORGAN, HALLGREN, CROSSWELL & KANE, P.C.

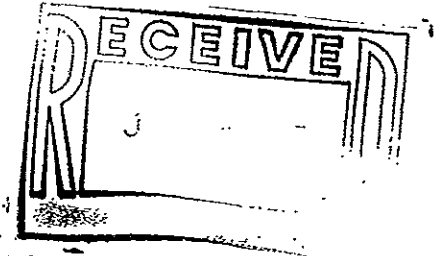
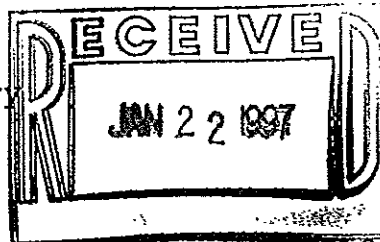
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TELECOPIER (717) 299-6170

January 17, 1997

James R. Caldwell, Secretary
Martic Township
370 Steinman Farm Road
Pequea, PA 17565



Re: Ordinances to comply with Act 172 of 1996
Our File No. 8984

Dear Jim:

In accordance with our conversation on Wednesday, January 15, 1997, we have advertised the proposed ordinances to amend the On-Lot Sewage System Ordinance, Holding Tank Ordinance, and Nuisance and Solid Waste Ordinance to bring the penalty provisions of each ordinance into compliance with Act 172 of 1996 for consideration at the February 3, 1997, meeting of the Board of Supervisors. In order to save the Township legal advertising costs, we have prepared a single legal advertisement for all three ordinances. Enclosed please find a copy of this legal advertisement and a copy of the letter to Lancaster Newspapers, Inc., requesting that this advertisement be published in accordance with the requirements of the Second Class Township Code.

Enclosed please find the original and two (2) copies of each proposed ordinance. If the ordinances are enacted by the Board of Supervisors, please ensure that the ordinance numbers are inserted on page 1 of the original and both copies of each ordinance. Please also ensure that the ordinances are properly signed by the Chairman or Vice Chairman of the Board of Supervisors. You should attest to these signatures as Township Secretary and affix the Township Seal on the last page of each of the ordinances. Please complete the certification pages for all of the copies of each ordinance and return them to me. Because only a summary of each ordinance was advertised, the Second Class Township Code, as reenacted by Act 60 of 1995, requires that a certified copy be filed at the Lancaster County Courthouse, and we will file one of the certified copies of each ordinance following receipt thereof from the Township. We will retain one copy of each ordinance for our files.

James R. Caldwell, Secretary
January 17, 1997
Page 2

If you have any questions concerning this matter, please contact me.

Very truly yours,



Josele Cleary

JC:sle
MUNI\ST067695

Enclosures

LAW OFFICES

MORGAN, HALLGREN, CROSSWELL & KANE, P.C.

GEORGE J. MORGAN
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January 17, 1997

Ellie Gebhard, Classified Ads
Lancaster Newspapers, Inc.
8 West King Street
P.O. Box 1328
Lancaster, PA 17608

Re: Ordinances amending penalty provisions/Martic Township
Our File No. 8984

Dear Ellie:

Please publish the enclosed legal notice in the Friday, January 24, 1997, editions of the Intelligencer Journal and the Lancaster New Era. Thereafter, please send the proof of publication for the advertisement and your invoice directly to the following person:

James R. Caldwell, Secretary
Martic Township
370 Steinman Farm Road
Pequea, PA 17565
(717) 284-2167

I am also enclosing the full text of each of the proposed ordinances to which the enclosed legal notice relates as required by the Second Class Township Code. The full text of the proposed ordinances should be available for public inspection by anyone who cares to do so.

If you have any questions regarding this, please contact me.

Very truly yours,


Josele Cleary

JC\sle
MUNI\ST067694

Enclosures

cc: Martic Township (w/enclosures)

Notice is hereby given that the Board of Supervisors of the Township of Martic, Lancaster County, Pennsylvania, at its regular public meeting on Monday, February 3, 1997, at 7:30 p.m., prevailing time, at the Martic Township Municipal Building, 370 Steinman Farm Road, Pequea, Pennsylvania, shall consider, and subsequently, at that meeting or at a public meeting held within 60 days of the date of publication of this advertisement, if appropriate, shall enact any or all of three ordinances, the captions of which are as follows:

AN ORDINANCE TO AMEND THE MARTIC TOWNSHIP ON-LOT SEWAGE SYSTEM ORDINANCE TO REVISE PENALTIES PROVISIONS IN ACCORDANCE WITH ACT 172 OF 1996.

AN ORDINANCE TO AMEND THE MARTIC TOWNSHIP HOLDING TANK ORDINANCE TO REVISE PENALTIES FOR VIOLATIONS OF THE ORDINANCE IN ACCORDANCE WITH ACT 172 OF 1996.

AN ORDINANCE OF THE TOWNSHIP OF MARTIC TO AMEND THE MARTIC TOWNSHIP NUISANCE AND SOLID WASTE ORDINANCE TO REVISE PENALTY PROVISIONS IN ACCORDANCE WITH ACT 172 OF 1996.

The proposed ordinances may be summarized as follows. Section 1 of each ordinance amends the penalty provision of the Martic Township On-Lot Sewage System Ordinance (Ordinance No. B4-88), the Martic Township Holding Tank Ordinance (Ordinance No. A9-1-92) and the Martic Township Nuisance and Solid Waste Ordinance (Ordinance No. 10-01-96) respectively, to bring the penalty provisions of such ordinances into compliance with the amendments to Section 1601 of the Second Class Township Code made by Act 172 of 1996. Sections 2, 3 and 4 of each ordinance reaffirm all other parts and provisions of the ordinance being amended, provide for severability of any invalid provisions of the amending ordinance, and set forth the effective date. A copy of each of the proposed ordinances is available for public inspection at the offices of this newspaper and at the Martic Township Municipal Building, 370 Steinman Farm Road, Pequea, Pennsylvania, Mondays through Fridays from 9:00 a.m. until 12:00 noon and Monday evenings from 5:30 p.m. until 7:30 p.m.

A copy of each ordinance may be obtained for the cost of reproduction at the Martic Township Municipal Building during the above hours.

MORGAN, HALLGREN, CROSSWELL &
KANE, P.C.
Township Solicitor



PROOF OF PUBLICATION OF NOTICE IN

State of Pennsylvania }
 } ss:
 County of Lancaster }

Dolly J. Benner of the County and State aforesaid, being duly sworn, deposes and says that the Intelligencer Journal-Lancaster New Era, a daily newspaper of general circulation published at Lancaster, County and State aforesaid, was established 1794-1877 since which date said daily newspaper has been regularly issued in said county, and that a copy of the printed notice or publication is attached hereto exactly the same as was printed and published in the regular editions and issues of said daily newspaper on the following dates, viz:

and the 24TH day of JAN. A.D. 1997

Affiant of Lancaster Intelligencer of general and also of the foregoing true.

Notice is hereby given that the Board of Supervisors of the Township of Martic, Lancaster County, Pennsylvania, at its regular public meeting on Monday, February 3, 1997, at 7:30 p.m., prevailing time, at the Martic Township Municipal Building, 370 Steinhilber Farm Road, Pequea, Pennsylvania, shall consider, and subsequently, at that meeting or at a public meeting held within 60 days of the date of publication of this advertisement, if appropriate, shall enact any or all of three ordinances, the captions of which are as follows:

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AN ORDINANCE TO AMEND THE MARTIC TOWNSHIP HOLDING TANK ORDINANCE TO REVISE PENALTIES FOR VIOLATIONS OF THE ORDINANCE IN ACCORDANCE WITH ACT 172 OF 1996.

AN ORDINANCE OF THE TOWNSHIP OF MARTIC TO AMEND THE MARTIC TOWNSHIP NUISANCE AND SOLID WASTE ORDINANCE TO REVISE PENALTY PROVISIONS IN ACCORDANCE WITH ACT 172 OF 1996.

The proposed ordinances may be summarized as follows: Section 1 of each ordinance amends the penalty provision of the Martic Township On-Lot Sewage System Ordinance (Ordinance No. B4-88), the Martic Township Holding Tank Ordinance (Ordinance No. A9-1-92) and the Martic Township Nuisance and Solid Waste Ordinance (Ordinance No. 10-01-96) respectively, to bring the penalty provisions of such ordinances into compliance with the amendments to Section 1601 of the Second Class Township Code made by Act 172 of 1996. Sections 2, 3 and 4 of each ordinance reaffirm all other parts and provisions of the ordinance being amended, provide for severability of any invalid provisions of any ordinance, and set forth the effective date. A copy of each of the proposed ordinances is available for public inspection at the offices of this newspaper and at the Martic Township Municipal Building, 370 Steinhilber Farm Road, Pequea, Pennsylvania, Mondays through Fridays from 9:00 a.m. until 12:00 noon and Monday evenings from 5:30 p.m. until 7:30 p.m.

A copy of each ordinance may be obtained for the cost of reproduction at the Martic Township Municipal Building during the above hours.

MORGAN, HALLGRAN, CROSSWELL & KANE, P.C.
 Township Solicitor

That he is the Billing Clerk duly authorized by _____, a corporation, publisher of said Lancaster New Era, a newspaper
 to verify the foregoing statement under oath, affiant is not interested in the subject matter of advertisement and that all allegations in the time, place and character of publication are

Dolly J. Benner
Deis F. Jagers
 (SIGNATURE)

COPY OF NOTICE OR PUBLICATION

Sworn and subscribed to before me this
 24TH day of JAN. 1997

Beverly D. Pfeiffer
 Notary Public

My commission expires _____

NOTARIAL SEAL
 Beverly A. Pfeiffer, Notary Public
 Lancaster City, Lancaster County, PA
 My Commission Expires July 5, 1997