

MONTCALM COUNTY

ORDINANCE NO. 2006-01

AN ORDINANCE TO REGULATE THE CONSTRUCTION OF PRIVATE ROADS AND DRIVES WITHIN THE COUNTY TO PROVIDE FOR SAFE, CONVENIENT AND ADEQUATE ACCESS TO LOTS.

AMENDED ON JULY 11, 2005
AMENDED ON JANUARY 9, 2006
AMENDED ON NOVEMBER 10, 2008

THE COUNTY OF MONTCALM, MICHIGAN ORDAINS:

Section 1. Name.

This Ordinance shall be known and cited as the Montcalm County Private Road Ordinance ("Ordinance")

Section 2. Purpose and Jurisdiction.

- A. The County hereby finds that unobstructed, safe and continuous access to lots for residential purposes is necessary and determines that it is in the best interest of the County in the protection of the public health, safety and welfare to regulate the construction, improvement, extension, relocation, and use of private roads and easements providing access to existing and future lots.
- B. These provisions have been enacted to ensure that:
 - 1. Private roads will not be detrimental to the public health, safety, or general welfare.
 - 2. Private roads will not adversely affect the long term development policies of the County.
 - 3. Private roads will be designed and constructed with adequate width, surface, and grade to ensure safe passage and maneuverability of private vehicles, police, fire, ambulance, and other safety vehicles.
 - 4. Private roads will be constructed so as to protect against or minimize soil erosion and prevent damage to the lakes, streams, wetlands, and the natural environment of the County.
- C. This Ordinance shall apply to the areas of land that are located within Townships of the County that are not zoned or do not have provisions for the regulation of private roads for purposes as described above under Item A. This Ordinance shall not apply to those Townships that are zoned and have regulations regarding private roads

Section 3. Definitions.

- A. ***Appeals Board*** - For the purpose of appeals and variances from the provisions of this Ordinance, the Economic Development and Physical Resource Committee of the County Board shall act as the Appeals Board.
- B. ***Building Official*** - The Building Official as designated by the County Board to enforce the State Construction Code, as amended. The Building Official is responsible for administering this Ordinance.
- C. ***Condominium Act*** - Public Act 59 of the Michigan Public Acts of 1978, as amended.
- D. ***Condominium Documents*** - The master deed and by-laws, recorded pursuant to the Condominium Act, and any other instrument referred to in the master deed or bylaws that affect the rights and obligations of a co-owner in the condominium.
- E. ***Condominium Project*** - A plan or project consisting of not less than two (2) condominium units established in conformance with the Condominium Act.
- F. ***County***- County of Montcalm, State of Michigan.
- G. ***County Board*** - The Montcalm County Board of Commissioners.
- H. ***Drain Commissioner*** - The Drain Commissioner of Montcalm County.
- I. ***Easement*** - Any private or public way that provides a means of access to or through property of another for purposes of ingress, egress, utilities, drainage and similar uses.
- J. ***Frontage*** - The continuous linear distance of that portion of a lot abutting upon a public road right-of-way or private road easement.
- K. ***Land Division Act*** - Public Act 288 of the Michigan Public Acts of 1967, as amended.
- L. ***Lot of Record*** - A lot of record is a portion of land described as one of the following existing at the time of or following the adoption of this Ordinance: a platted lot as described on an approved and recorded subdivision plat; a parcel described by metes and bounds whereas the deed or plat is recorded in the Montcalm County Register of Deeds (if a parcel is created after March 31st, 1997 said parcel must be an approved land division under the Land Division Act); and a unit as described in an approved and recorded condominium subdivision plan under the Condominium Act. For the purposes of this Ordinance all lots of record shall be denoted by the term "lot", including platted lots, parcels and units.
- M. ***Master Deed*** - The condominium document recording the condominium project to which is attached as exhibits and incorporated by reference the approved by-laws for the project and the approved condominium plan for the project.
- N. ***Person*** - Shall denote any individual, corporation, partnership, association or other legal entity.
- O. ***Plan*** - Drawings and illustrations describing the intended construction of a private road pursuant to the provisions of this Ordinance.
- P. ***Private Drive*** - A privately controlled and maintained easement, designed and maintained in compliance with the provisions of this Ordinance, that provides the means of access and frontage pursuant to underlying zoning district for two (2) to four (4)

abutting residential lots. The term "drive" shall be synonymous with the terms street, avenue, place, way, lane, or boulevard.

- Q. **Private Driveway** – A privately controlled and maintained accessible ingress and egress extending from a public right-of-way or private road easement to one (1) lot to access buildings or structures. A private driveway is not intended as a means to meet minimum lot frontage or lot width provisions of local ordinance in the establishment of lots of record.
- R. **Private Road** - A privately controlled and maintained easement, designed and maintained in compliance with the provisions of this Ordinance, that provides the means of access and frontage pursuant to underlying zoning district for five (5) or more abutting residential lots. The term "road" shall be synonymous with the terms street, avenue, place, way, lane, or boulevard.
- S. **Road Commission** - The Road Commission for Montcalm County (RCMC).
- T. **Township** - The political subdivision of the State of Michigan wherein the private road is proposed or exists.

Section 4. Permits.

- A. No person shall construct, implement, commence use, or construct a private road, drive or driveway after the effective date of this Ordinance without first applying for and having obtained a permit from the Building Official signifying compliance with this Ordinance.
- B. No person shall expand, extend, enlarge, create additional lots or otherwise modify beyond typical maintenance a private road, drive or driveway approved under this Ordinance without obtaining another permit from the Building Official and be subject to the provisions of this Ordinance.
- C. No permit will be considered for a private road, drive or driveway within a proposed subdivision plat that is subject to the platting requirements of the Land Division Act. Such subdivision plats require a public road to be implemented pursuant to the rules and regulations of the Road Commission to provide safe, unrestricted and dedicated access to lots.
- D. The Building Official shall not issue building permits for construction of any building or structure on lots served by a private road, drive or driveway until construction of the private road, drive or driveway has been completed and the Building Official has certified that the private road, drive or driveway has been reviewed, approved and constructed as specified by this Ordinance.
- E. Other necessary permits may be required by other agencies or departments that may have jurisdiction as it pertains to the construction of a private road, drive or driveway in the location proposed. This may include, but not be limited to, the following: Soil Erosion and Sedimentation Control permits from the Drain Commissioner, flood plain and wetland use permits from the Michigan Department of Environmental Quality, and/or permits to obtain access for the private road from a public road by the Road Commission.
- F. A driveway permit for ingress and egress onto or from a private road, drive or driveway shall be obtained from the Building Official prior to issuance of any building permit for

construction on lots having their primary access onto an approved private road, drive or driveway. The Building Official shall utilize to the extent possible the standards utilized by the Road Commission in permitting driveways.

- G. Any permit for a private road, drive or driveway granted shall expire one (1) year after it is granted, unless construction is completed within that time. Prior to its expiration, a permit may be renewed for one (1) additional term of one (1) year by application to the Building Official.

Section 5. Private Road Application.

The application for a permit for a private road, drive or driveway shall be submitted and processed under the following procedures:

- A. An application shall be submitted to the Building Official and shall contain the following:
 - 1. A completed form as provided by the Building Official to obtain basic information regarding the application by a fee as established by the County Board.
 - 2. A detailed written description of the development anticipated to be served by the private road, drive or driveway. Such description should include use, intensity of use, and characteristics of use.
 - 3. The applicant shall list other necessary permits required by other agencies, departments or jurisdictions as it pertains to use and construction of the private road, drive or driveway in location proposed. The Building Official shall provide the applicant information regarding other agencies and jurisdictions that may be applicable to the review and approval process.
 - 4. Six (6) copies of a plan, drawn to scale between one (1) inch equals twenty (20) feet and one (1) inch equals one-hundred (100) feet, prepared by a registered engineer and bearing the stamp of the registered engineer, showing a general vicinity sketch, precise location, grade, route, elevation, dimensions, and design of the private road, drive or driveway and any proposed extensions thereto, existing and proposed curb cuts, and the location and distance to any public road which the private road is to intersect. Plans for private drives and private driveways are not required to be prepared by a registered engineer.
 - 5. A survey of the easement by a registered land surveyor, together with surveys for each lot to be served by the private road, drive or driveway.
 - 6. The location of all public utilities, including, but not limited to, water, sewer, telephone, gas, electricity, and television cable to be located within the private road, drive or driveway easement or within twenty (20) feet of either side thereof. Copies of the instruments describing and granting such easements shall be submitted with the application.
 - 7. The location of any lakes, streams, wetlands, and drains within the private road, drive or driveway easement or within one-hundred (100) feet thereof.
 - 8. The location of any other buildings and structures located within one-hundred (100) feet of the private road, drive or driveway easement.

B. Review procedures are as follows:

1. The application shall be reviewed by the Building Official for compliance with this Ordinance. The Building Official shall consider the request based on the design requirements of Section 7, the standards of approval in Section 8, and all other relevant provisions of this Ordinance and other County and Township ordinances having authority.
2. The Building Official may elect to have plans and supporting documentation reviewed by the County's attorney, engineer, or planner prior to approval of the application for the permit for a private road.
3. The Building Official shall approve, approve with conditions, or deny the request. Whether approved or denied, the Building Official shall state the basis for the decision and any conditions which are to be imposed to ensure the intent of the Ordinance is met.
4. If the request is denied by the Building Official, the applicant may appeal the decision pursuant to the provisions herein for appeal.

Section 6. Maintenance and Repairs.

Private roads, drives and driveways shall be maintained in a manner that complies with the provisions of this Section.

1. All private roads, drives and driveways shall be continuously maintained in such a way that they will not constitute a danger to the health, safety, and welfare of the inhabitants of the County and Township and are readily accessible to, and usable by emergency vehicles in all types of weather.
2. All costs for maintenance and repair of the private road, drive and driveway shall be the responsibility of the property owners or a property owners association served by the private road.
3. The applicant of the proposed private road, drive and driveway shall provide the Building Official with a recordable maintenance or restrictive covenant agreement binding the owners and future owners of property accessed by the private road, drive or driveway to provide that the private road, drive or driveway shall be regularly maintained, repaired, and snow plowed so as to ensure safe travel at all times and the cost thereof paid.
4. The applicant agrees, by filing an application for and receiving a permit under this Ordinance, that they will ensure that any building, structure or lot thereafter created, constructed or utilized via access by the private road, drive or driveway shall also be subject to the road maintenance or restrictive covenant agreement and that said agreement shall be recorded and shall run with the land.
5. Once approved by the Building Official, a copy of said agreement as recorded with the Montcalm County Register of Deeds shall be furnished to the Building Official prior to the issuance of the private road permit.

Section 7. Road Construction Performance Guarantee.

The Building Official shall, as a condition of the private road permit, require that the applicant provide a performance guarantee, in accordance with the provisions of the document in Appendix A- (Pages 1 through 5).

Section 8. Frontage and Access to Public Road.

- A. All residential lots utilizing a private road, drive or driveway for access shall have frontage on the private road, drive or driveway easement. The minimum width of that frontage is that width necessary to meet the provisions of the Land Division Act for lots created by land division to not exceed a lot depth to width ratio of four (4) to one (1).
- B. For lots abutting a private road, drive or driveway cul-de-sac, the minimum required lot width may be measured at the required front setback line. However, a minimum frontage of sixty-five (65) feet shall be maintained at the private road easement. A lot shall be considered to be abutting a cul-de-sac if the lot has more than one-half (1/2) its required frontage on the cul-de-sac. The cul-de-sac shall be determined to commence at the intersection of the radius of the cul-de-sac with the easement line.
- C. All private roads, drives or driveways shall have direct access to a public road.
- D. Clear vision areas at intersections of private roads, drives or driveways and public roads shall comply with the published standards and regulations of the Road Commission for such intersections.

Section 9. Design Requirements for Private Roads and Private Drives.

- A. The construction of a private road or drive shall conform to the Road Commission construction standards for local roads, excepting bed and shoulder width, as well as grade requirements and as otherwise provided in this Ordinance. The following design requirements are applicable to every application and shall be adequately described on the plan submitted for approval:
 - 1. No private road or drive shall extend for a distance of more than one-thousand three-hundred and twenty (1320) feet in length from the public road right-of-way from which the private road or drive obtains access to the public road system without a second direct access thereby available from another public road. Such measurement shall be taken along the centerline of the private road.
 - 2. All private roads shall have a recorded permanent easement with a minimum width of at least sixty-six (66) feet. The easement shall expressly permit public and private utilities to be installed within the easement. Easement width of private drives shall be a minimum width of at least fifty (50) feet.
 - 3. The area in which the private road is to be located shall have a minimum cleared width of thirty-six (36) feet and centered on the centerline of the easement. The area in which a private drive is to be located shall have a minimum cleared width of twenty (20) feet. These clearings shall always be maintained.

4. Drive surface widths shall conform to the following:
 - a.) Private road servicing five (5) to six (6) lots:
 - Drive Surface Width: Twenty-two (22) feet
 - Materials: Road surface may be gravel, but shall meet the minimum construction standards of the Road Commission for gravel roads.
 - b.) Private road servicing seven (7) or more lots:
 - Drive Surface Width: Twenty-two (22) feet
 - Materials: Road surface must be paved with bituminous aggregate and shall meet the minimum construction standards of the Road Commission for paved local roads.
 - c.) Private Drive:
 - Drive Surface Width: Sixteen (16) feet
 - Materials: Road surface must be gravel at least six (6) inches thick.
5. Any private road or drive which terminates at a dead-end shall have a means for vehicle turnaround by use of a cul-de-sac with a minimum seventy five (75) feet easement radius and fifty (50) foot drive surface radius.
6. The road surface shall have a minimum crown of .02 foot per foot from the centerline of the private road to the outside edge thereof.
7. A gravel shoulder at least two (2) feet wide, composed of six (6) inches of compacted gravel, shall be provided on each side of the private road or drive driving surface and shall slope one-half (1/2) inch per foot from the outside edge of the road surface to the toe of the slope.
8. The maximum longitudinal road grade shall not exceed five (5) percent. The Building Official may allow up to a ten (10) percent grade if the applicant produces written justification, satisfactory to the Building Official, that an increase in the road grade is necessary due to site conditions and will not adversely affect public health, safety and welfare. The Building Official may seek written recommendations from the Road Commission or a consultant engineer.
9. The minimum distance between intersections of public road rights-of-way and/or private road or drive easements shall not be less than three hundred (300) feet, as measured along the right-of-way or easement line thereof.
10. The private road or drive shall be constructed with such storm water runoff, culverts, and drainage contours as required by the Road Commission and Drain Commissioner to ensure adequate drainage and runoff. In the event that the proposed drainage and storm water management plan does not result in outlet to a County drain, the Building Official may seek review by an engineering consultant to ensure the intent of the published rules of the Drain Commissioner are satisfied.
11. The method and construction technique to be used in the crossing of any natural

stream, wetland, or drainage course shall satisfy the requirements of the Road Commission and Drain Commissioner and any other agency having jurisdiction thereof. All appropriate permits shall be obtained and maintained for such crossings.

12. The private road or drive shall be given a name and street signs shall be installed in accordance with the standards and approval of the Montcalm County Addressing Ordinance. The private road or drive addresses shall be posted in a conspicuous place at the intersection of the private road or drive at the public road in letters at least three (3) inches high. Private roads or drives serving three (3) or more lots shall have a standard stop sign where the private road or drive abuts the public road.

Section 10. Design Requirements for Private Driveways.

The construction of private driveways shall conform to the Road Commission for Montcalm County standards for residential driveways. A permit from the Road Commission for Montcalm County is required for driveways which intersect with a road maintained by the RCMC.

Section 11. Approval Standards and Conditions.

- A. Prior to approving a permit for a private road, drive or driveway, the Building Official shall determine the following:
 1. The proposed private road, drive or driveway will not be detrimental to the public health, safety, or general welfare and has been designed to meet the intent and purpose of this Ordinance as described in Section 3, above.
 2. That the private road, drive or driveway is designed and constructed to the standards set forth in Section 7, above, with such private road, drive or driveway having a width, surface, and grade to ensure safe passage and maneuverability of private and public safety vehicles, such as police, fire and ambulance.
 3. That the private road, drive or driveway is constructed so as to protect against or minimize soil erosion and prevent damage to the lakes, streams, wetlands, and natural environment of the Township.
 4. The Building Official may require that the applicant comply with reasonable conditions relative to the design and construction of the private road, drive or driveway.

Section 12. Inspections/Certificate of Compliance.

- A. Upon completion of construction of the private road, the Engineer responsible for the private road design shall inspect the completed construction to determine whether it complies with the approved plans, specifications, permit, and this Ordinance.
- B. The applicant, at their expense, shall provide the Building Official with three (3) sets of "as built" drawings bearing a seal and statement from an Engineer certifying that the private road has been completed in accordance with the requirements of the permit and this Ordinance.

- C. If the completed private road does not satisfy the requirements of the permit or this Ordinance, the applicant(s) shall be notified of the noncompliance in writing and the deficiencies shall be corrected before building permit(s) will be issued for lots on the private road.

Section 13. Fees.

Fees for the permits required hereunder shall be set by the County Board from time to time by resolution. Additionally, the County Board may require that the applicant(s) put sufficient funds in escrow to cover the costs of having the Road Commission, Drain Commissioner, attorney, consultant engineer or planner, or any other professional deemed necessary to review the private road plans, specifications, maintenance agreements, and to do the necessary inspections.

Section 14. Existing Nonconforming Private Roads and Access Easements.

- A. The County recognizes there are existing private roads which were lawful prior to the adoption of this Ordinance that do not fully comply with the standards herein. Such private roads are declared to be legal nonconforming private roads. Private roads implemented, constructed, commenced or utilized unlawfully prior to the adoption of this Ordinance are declared to be illegal nonconforming private roads.
- B. The intent of this Ordinance is to permit legal nonconforming roads and easements to continue and undergo routine maintenance for safety purposes. New construction is permitted to occur on existing lots of record which front along the legally nonconforming private road after the effective date of this Ordinance. It shall be the responsibility of the land owner(s) to maintain the nonconforming private road or access easement for the purposes of public health, safety and welfare. No new construction on lots created after the effective date of this Ordinance shall be permitted on illegal nonconforming private roads.
- C. The physical extension, reconstruction, widening of a nonconforming private road or increase in the number of lots served by a nonconforming private road is not permitted unless provisions are made to upgrade such road to comply with the standards herein and a permit is applied for and received pursuant to this Ordinance.

Section 15. Board of Appeals.

- A. Any person requesting a variance from the required standards of this Ordinance and/or directly affected by a denial of a permit under the Ordinance shall have the right to appeal to or seek variance from the Appeals Board.
- B. A written application for appeal is filed within twenty (20) days after the day of the permit denial. An application for appeal shall be based on a claim that the Ordinance has been incorrectly interpreted and that the provisions of this Ordinance do not fully apply. A variance may also be sought based on the claim that the requirements of this Ordinance are adequately satisfied by other means or that the strict application of any requirement of this Ordinance would cause an undue hardship. All appeals and variance petitions shall be accompanied by payment of such fees as shall from time to time be established by resolution of the County Board.
- C. The Appeals Board shall meet upon notice from the chairman, within twenty (20) days of the filing of an appeal, or at stated periodic regularly scheduled meetings.
- D. All hearings before the Appeals Board shall be open to the public and all meetings and

notices of meetings of the Appeals Board shall comply with the Open Meetings Act (MCL 15.261 *et seq.*). The appellant, the appellant's representative, the Building Official and any person whose interests are affected shall be given an opportunity to be heard.

- E. A quorum shall consist of not less than two-thirds (2/3) of the Appeals Board membership. When the full Appeals Board is not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.
- F. The Appeals Board shall adopt and make available to the public, through the secretary, procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received. The Appeals Board shall modify or reverse the decision of the Building Official only by a concurring vote of a majority of the total number of appointed Appeals Board members.
- G. The decision of the Appeals Board shall be recorded. Copies shall be furnished to appellant and to the Building Official. The Building Official shall take immediate action in accordance with the decision of the Appeals Board.

Section 16. Violation, Penalties, Civil Infraction.

- A. Any person, firm or corporation who violates any provision of this Ordinance, or the terms or conditions of a permit, is responsible for a municipal civil infraction, and shall be subject to payment of a civil fine of not less than fifty (50) dollars , plus costs and other sanctions, for each infraction (as authorized by Section 10b of Act No. 156 of the Public Acts of 1851, as amended). Repeat offenses under this Ordinance shall be subject to increased fines as provided by this Section. As used in this Section, "repeat offense" means a second (or any subsequent) violation of the same requirement or provision of this Ordinance (i) committed by a person within any ninety (90) day period and for which the person admits responsibility or is determined to be responsible. The increase fine for a repeat offense under this Ordinance shall be as follows:
 - 1. The fine for any offense that is a first repeat offense shall be not less than two-hundred and fifty (250) dollars, plus costs.
 - 2. The fine for any offense which is a second repeat offense, or any subsequent repeat offense, shall be not less than five hundred (500) dollars each, plus costs.
- B. Each day on which any violation of this Ordinance occurs or continues constitutes a separate offense subject to separate sanctions. Failure to answer a citation or notice to appear in court for a municipal civil infraction is a misdemeanor violation punishable by a fine of not more than five hundred (500) dollars, plus other costs, or by imprisonment for a term not to exceed ninety (90) days, or both fine and imprisonment.
- C. Failure to comply with an order, judgment or default in payment of a civil fine, costs, damage, or expenses so ordered may result in enforcement actions, including but not limited to imprisonment, collections, placement of liens or other remedies as permitted by Chapter 87 of Act 236 of the Public Acts of 1961, as amended.
- D. A municipal infraction is not a lesser included offense of a criminal offense or an ordinance violation that is not a civil infraction.

- E. Nothing in this Section shall be construed to limit the remedies available to the County in the event of a violation by a person of this Ordinance or a permit, including seeking injunctive relief to compel compliance.
- F. The Building Official or their assign is hereby designated as the authorized County official to issue municipal civil infraction citations directing alleged violators to appear in court.

Section 17. Severability.

Should any section, clause or provision of the Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the Ordinance as a whole or any part thereof, other than the parts so declared to be invalid.

Section 18. Non-Repeal.

This Ordinance shall not be construed to repeal by implication any other ordinance of Montcalm County pertaining to the same subject matter.

Section 19. Effective Date.

This Ordinance shall become effective upon publication in a newspaper circulating within Montcalm County, Michigan.

Moved by Commissioner Retzloff, seconded by Commissioner Johansen, the foregoing Ordinance be adopted.

YEAS: Commissioners Walker, Retzloff, Johansen, Paepke, Baker, Carr, Caris, and McCrackin.

NAYS: Commissioner Lindeman

ABSENT:

ORDINANCE DECLARED ADOPTED.

Patrick Q. Carr, Chairperson

Montcalm County Board of County Commissioners

CERTIFICATION

I hereby certify the foregoing Resolution as adopted by the County Board of County Commissioners of Montcalm County at a regular meeting held on November 10, 2008. I hereby further certify the said regular meeting was conducted and public notice of said regular meeting was given pursuant to and in full compliance with the Open Meetings Act, being Public Act 267, of the Public Acts of Michigan of 1976, and that minutes were kept and will be or have been made available as required by said Act.

Kristen Millard, County Clerk