

BEAR LAKE TOWNSHIP RESOLUTION

**AT A REGULAR MEETING OF THE BEAR LAKE TOWNSHIP
BOARD CALLED TO ORDER BY SUPERVISOR WM. JACKSON ON
October 7, 2003 AT 7:00 PM:**

THE FOLLOWING RESOLUTION WAS OFFERED:

MOVED by Trustee, Charlotte Koski
SUPPORTED by Treasurer, Dolores Ridky

THAT,

**The Bear Lake Township Board adopts Ordinance No. 10-01 of
2003 The Bear Lake Township Private Road Ordinance to be
published in the Kalkaska paper.**

ROLL CALL VOTE FOR APPROVAL:

JACKSON, RIDKY, DORRANCE, KOSKI and ROSENBERG

YEAS: 5

NAYS: 0

ABSENT:

**IT IS THE CONSENSUS OF THIS LEGISLATIVE BODY THAT
THIS RESOLUTION BE ADOPTED.**

State of Michigan)

County of Kalkaska)

I hereby certify that the foregoing is a true and complete copy of
a resolution offered and adopted by the
BEAR LAKE TOWNSHIP BOARD at a REGULAR meeting held
On October 7, 2003.

SEAL

Signed

Carol A. Rosenberg

Carol A. Rosenberg
Township Clerk

Address: 198 E. Bear Lake Rd.
Kalkaska, MI. 49646

**BEAR LAKE TOWNSHIP
Private Road Ordinance**

Ordinance No. 10-01 of 2003

AN ORDINANCE PURSUANT TO ACT 246 OF THE PUBLIC ACTS OF 1945,
AS AMENDED, TO PROVIDE FOR PRIVATE ROAD REGULATIONS AND TO
PROVIDE PENALTIES FOR VIOLATIONS THEREOF

BEAR LAKE TOWNSHIP HEREBY ORDAINS:

Section 1. Title.

This Ordinance shall be known and cited as the Bear Lake Township Private Road Ordinance.

Section 2. Purpose.

The purposes of this Ordinance are to regulate the layout, construction, and maintenance of newly constructed private roads and newly constructed extensions of existing private roads and to provide means to insure compliance with the provisions of this Ordinance. It is not the purpose of this Ordinance to require the existing portions of private roads to conform with the layout and construction standards of this Ordinance. These regulations are specifically enacted to insure that:

- (a) Newly constructed private roads and newly constructed extensions of existing private roads will not be detrimental to the public health, safety, or general welfare.
- (b) Proposed private roads and newly constructed extensions of existing private roads will not adversely affect the long-term development plans or policies within Bear Lake Township.
- (c) Newly constructed private roads will be designed and constructed with width, surface, and grade to assure safe passage and maneuverability of private vehicles, police, fire, ambulance, and other emergency vehicles.
- (d) Newly constructed private roads and newly constructed extensions of existing private roads will be constructed to protect against or minimize soil erosion and prevent damage to the lakes, streams, wetlands, and natural environment within the Township.
- (e) Owners of lots that are served by private roads understand their responsibilities to participate in the maintenance of such roads.

Section 3. Definitions. As used in this Ordinance,

- (a) "Ditch" means that portion of the road lying contiguous to and outside of the shoulders which is lower in elevation than the shoulders and is designed and used to disperse surface water runoff from the road surface and shoulders.
- (b) "Lot" means a measured portion of a parcel or tract of land which is described and fixed in a recorded plat and a site condominium unit which is fixed in a condominium master deed.
- (c) "Major Private Road" means a private road servicing eight (8) or more residential lots or parcels of land and a private road servicing more than one (1) place of business.
- (d) "Minor Private Road" means a private road servicing no less than two (2) and no more than seven (7) residential lots or parcels of land.
- (e) "Owner" means a person holding any legal, equitable, option or contract interest in a lot or parcel of land.
- (f) "Parcel" means a continuous area or acreage of land of any size, shape or nature, which is described by metes and bounds.
- (g) "Person" means an individual, firm, corporation, association, partnership, estate, trust, limited liability company, or other legal entity.
- (h) "Private Road" means a road that is privately owned and maintained.
- (i) "Public Road" means a road under the jurisdiction of the Kalkaska County Road Commission or the Michigan Department of Transportation.
- (j) "Right-of-way" means the interest in property granting to persons the legal right to travel across and use the property of another person for purposes including but not limited to vehicular travel, sanitary and storm sewers, electric and telephone lines, natural gas lines, and other public utility facilities.
- (k) "Road" means the entire width between the boundary lines of every right-of-way that allows vehicular access to more than one (1) residential lot or parcel of land or to more than one (1) place of business.
- (l) "Road surface" means that portion of the right-of-way lying between the shoulders that is designed specifically for vehicular travel.
- (m) "Shoulder" means that portion of the road contiguous to the road surface generally extending the contour of the road surface and not designed for vehicular travel, but maintained for the temporary accommodation of disabled or stopped vehicles permitted on the road surface.
- (n) "Township Board" means the Bear Lake Township Board.

Section 4. Authority/Application Requirements/Review Procedures.

- (a) **Authority.** Private roads shall be permitted provided they conform to the requirements of this Ordinance. No private road shall be constructed or relocated after the effective date of this Ordinance unless an application for a private road permit has been completed and filed with the township assessor and subsequently approved in accordance with the procedures of this Ordinance.

*** (b) Application Requirements.**

- (1) **Application.** All applications for a private road permit shall be submitted on forms provided by the township assessor.
- (2) **Plans and Agreements Required.** For major private roads, ten (10) sets of the following applicable materials shall be submitted to the township assessor at least forty-five (45) days prior to the date the application will be reviewed by the Township Board. For minor private roads, one (1) set of the applicable materials shall be submitted. Except as otherwise provided, all plans for major private roads shall be sealed by a registered professional engineer licensed in the State of Michigan.

(A) Construction Plans.

- (i) **Major Private Roads.** An application for a major private road shall contain detailed construction plans at a scale of 1" = 100' (one inch equals one hundred feet) or larger and shall include the following:
- (a) Detailed survey drawings showing the right-of-way, the proposed location of the road surface and shoulders, road name, and all parcels being serviced by the private road.
 - (b) Existing conditions, including topography at two (2) foot contour intervals, existing and proposed drainage courses and facilities and any structures that may be affected by the proposed road.
 - (c) The proposed gradients of the road, a grading plan illustrating cuts and fills, the location of drainage facilities and structures, and other pertinent information as may be requested by the Township.
 - (d) Utility easements shall be shown on the construction plan, and such utility easements shall include the legal authority to place sanitary and storm sewer, water, gas, telephone, electric, cable TV, and other

public utilities within the easements for the benefit of the lots and parcels being serviced by the private road.

- (e) Layout and construction specifications for the road surface, shoulders, ditch profiles and slope requirements meeting the standards of Figure 1, typical road cross sections.

- (ii) **Minor Private Roads.** An application for a minor private road shall contain a survey prepared by a land surveyor licensed by the State of Michigan which depicts the width and locations of the proposed right-of-way, road surface, and shoulders.

(B) **Drainage Plan.**

- (i) **Major Private Roads.** An application for a major private road shall contain a drainage plan satisfying the requirements of the Kalkaska County Soil Erosion and Sedimentation Control Officer and shall be prepared by a registered professional engineer licensed in the State of Michigan, which plan shall be designed to control erosion and retain storm water on-site or direct it to a proper drainage course. The drainage plan shall indicate the manner in which surface drainage is to be discharged and shall utilize to the greatest extent possible existing ditches, natural watercourses, and constructing tributaries thereto. A drainage easement twenty (20) feet or more in width shall be provided when the drain crosses private property within or adjacent to the project. The drainage plan shall conform to the requirements of all agencies having jurisdiction.

- (ii) **Minor Private Roads.** An application for a minor private road shall contain a drainage plan designed to control erosion and retain storm water on-site or direct it to a proper drainage course, making use, to the greatest extent possible, of existing ditches, natural watercourses, and constructing tributaries thereto. The drainage plan shall conform to the requirements of all agencies having jurisdiction.

(C) **Road Maintenance Agreement.** An application for all private roads shall contain a proposed road maintenance agreement, which agreement shall include all of the following requirements:

- (i) That all decisions regarding road improvements and maintenance be approved by a majority vote of those having ownership in lands that are served by the private road.

- (ii) That the owner of each parcel served by the private road be responsible for payment of the costs apportioned to his or her lot or parcel.
- (iii) That the owners of each lot or parcel served by the private road have the right to commence legal or equitable action against a delinquent lot or parcel owner to foreclose a lien or otherwise collect the sums owed.
- (iv) That the agreement be in the form necessary for recording and actually recorded in the Kankaska County Register of Deeds Office, that it run with the land and bind and benefit the present and future owners of each lot or parcel served by the private road, in perpetuity.
- (v) That the owners of the land served by the private road be responsible to grade, drain, and otherwise maintain the private road in accordance with the requirements of this Ordinance.
- (vi) That a statement indicating that the owners of the land served by the private road have not requested the Kankaska County Road Commission to accept the road as a public road. As such, the road shall be private and the county road commission shall have no obligation to maintain the road in any manner. This provision, however, shall not prevent the future upgrading of the road to county road commission standards nor preclude a request in the future that the road be taken over by the county road commission.

(c) **Application Review Procedures.**

- (1) **Township Assessor Review.** The township assessor shall review all applications and plans for private roads to determine whether they are complete. In the event an application and plans are incomplete, the township assessor shall inform the applicant of any deficiencies in writing.
- (2) **Agency Review.** When it is determined that an application and plans for a major private road are complete, the township assessor shall transmit one (1) copy of the application and plans to each of the following agencies impacted or affected by the proposed major private road for their review and comment:
 - (A). Kankaska County Zoning Department.
 - (B). Kankaska County Road Commission.
 - (C). Kankaska County Health Department.

- (D). Kalkaska County Drain Commissioner.
- (E). Kalkaska County Soil Erosion Control Office.
- (F). Kalkaska School District - Superintendent of Schools.
- (G). Crawford Ausuable School District - Superintendent of Schools.
- (H). Bear Lake Township Fire Chief.
- (I). Kalkaska County Sheriff Department.

The township assessor shall forward a copy of the application and plans to the Michigan Department of Transportation (MDOT) if the private road connects to a state highway. Comments and recommendations from the above agencies shall be provided to the Township Board prior to the date of the meeting at which the application is to be reviewed. If no comments or recommendations are received from the above agencies within thirty (30) days of the date the application and plans were transmitted, then it shall be deemed that the agency failing to respond has no objections to the proposed private road.

- (3) **Inspections.** The township assessor shall inspect or shall arrange for inspections by the township's consulting engineer during construction and upon completion of the private road. The applicant shall be responsible for the costs of these inspections.
- (4) **Township Board Review/Action.** After reviewing all of the materials and recommendations submitted and after receiving the inspection report from the township assessor, the Township Board shall approve, or approve with conditions, the application for a private road if it finds that all of the applicable layout and construction standards of Section 5 have been satisfied. When approval is granted by the Township Board, a preliminary private road permit shall be issued by the township assessor. If the application is denied or if conditions are issued by the Township Board, they shall be given in writing to the applicant.
- (5) **Conditions.** When granting approval for a private road, the Township Board may attach reasonable conditions to the approval. The conditions may include conditions necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall meet all of the following requirements:
 - (A) Be designed to protect natural resources, the health, safety, and welfare and the social and economic well being of those who will

use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.

- (B) Be related to the valid exercise of the police power, and purposes which are affected by the proposed use or activity.
- (C) Be necessary to meet the purposes of this Ordinance, be related to the standards established in this Ordinance, and be necessary to insure compliance with those standards.
- (6) **Final Approval.** The Township Board shall grant approval of a final private road permit upon inspection by the township assessor and/or the township's consulting engineer and a finding that the road was constructed according to the approved plans.
- (7) **Failure to Perform.** Failure by the applicant to begin construction of the private road according to approved plans on file with the Township within one (1) year from the date of approval shall void the approval, and a new approval shall be required before any construction begins. The new application shall be reviewed subject to any changes made in this Ordinance regarding the layout and construction standards for private roads.
- (8) **Notice of Easements.** All purchasers of property where a private road provides access to the premises shall, prior to closing of the sale, receive from the seller a notice of easement, in recordable form, conforming to the following:

"This parcel of land has private road access across a permanent easement which is of record and a part of the deed. This notice is to make the Purchaser aware that this parcel of land has ingress and egress over this easement only. Neither the County nor the Township has any responsibility for the maintenance or upkeep of any improvement across this easement. This is the responsibility of the owners of record. The United States Postal Service and the local school district are not required to traverse this private road and may provide service only to the nearest public access (Michigan Public Act 134 of 1972, as amended)."

Section 5. Private Road Standards. All private roads shall meet the following applicable layout and construction standards:

- (a) **Layout Standards.** All private roads shall be laid out to meet all of the following standards:
 - (1) **Minimum Right-of-Way Width.** The minimum width of all private road rights-of-way shall be sixty-six (66) feet, unless the Township Board grants a variation pursuant to Section 13 of this Ordinance.

- (2) **Utility Easements.** All private roads shall provide for utility easements benefitting the parcels serviced by the private road, which utility easements may be located in the private road right-of-way.
 - (3) **Road Names and Signs.** All private roads shall have a road name approved by the Township Board. Proposed names shall be submitted with the application for the private road. Addresses shall be assigned by the Kalkaska County Equalization Department. In the event a road name is requested by the applicant which, in the opinion of the County Equalization Director, duplicates a road name elsewhere in the county, a name change shall be initiated by the applicant to eliminate the duplication. The applicant shall furnish and erect road name signs at all intersections within the project and entrances thereto, to assist in the location of the property by emergency vehicles. The design and color of the road name signs shall be consistent with the specifications of the Kalkaska County Road Commission.
 - (4) **Traffic Control Signs.** Traffic control signs for all private roads shall be placed in accordance with the Michigan Manual of Uniform Traffic Control Devices. Signs marked "Private Road" shall be erected and maintained by the applicant at the entrance to all private roads.
- (b) **Construction Standards.**
- (1) **Major Private Roads.** All major private roads shall be constructed to meet the applicable construction standards promulgated by the Kalkaska County Road Commission.
 - (2) **Minor Private Roads.** All minor private roads shall be constructed to meet all of the following standards:
 - (A) **Road Surface Width.** The minimum road surface width shall be twenty feet (20').
 - (B) **Road Surface Location.** The center line of the road surface shall be the center line of the right-of-way.
 - (C) **Road Surface Clearance.** There shall be no obstructions, including but not limited to tree limbs, bridges, or other natural or man-made barriers, within fourteen feet (14') of the road surface.
 - (D) **Road Surface Grade and Material.** The grade of the road surface and the type and amount of the material used for the road surface shall be sufficient to assure safe passage and maneuverability of private vehicles, police, fire, ambulance, and other emergency vehicles.

- (E) **Shoulders.** The minor private road shall include shoulders (in addition to the road surface) no less than two feet (2') in width on each side of the road surface.
- (F) **Ditches.** The minor private road shall include ditches no less than two feet (2') in width and no less than one foot (1') in depth on each side of the shoulders.

Section 6. Nonconforming Private Roads; Extensions.

Private roads existing and used at the time of adoption of this Ordinance that do not conform with the layout and construction standards of this Ordinance may continue to be used; provided, however, that any extension of a private road shall conform with the layout and construction standards of the private road being extended or shall be laid out and constructed so that the private road extension shall be in a safe and passable condition, whichever standard is less burdensome.

Section 7. Performance Guarantees.

For all major private roads, any site improvements affecting drainage structures, soil erosion control measures, or other special construction features as may be required by the Township Board or as proposed by the applicant, shall be guaranteed by a deposit with the township clerk, of cash, a certified check, a certificate of deposit or irrevocable bank letter of credit, whichever the applicant selects, or a surety bond acceptable to the Township, to insure the faithful completion of the improvements specified. The Township shall release funds on a pro rata basis as work is completed, subject to the township assessor's or consulting engineer's inspection and approval of the work. The amount of the deposit shall be set by the Township based on reliable estimates of the cost of completing the work.

Section 8. Fees and Escrow Account.

The application fee for a private road shall be as established by resolution of the Township Board. If the Township Board determines that the basic fee is not adequate to cover the cost of inspections and application review by the township assessor or the township's consulting engineer, planner and/or attorney, the applicant shall deposit with the township clerk such additional fees in an amount determined by the Township Board equal to the additional costs. The additional fees shall be held in escrow in the applicant's name and shall be used to pay these additional costs. Failure of the applicant to make any escrow deposit required under this Ordinance shall be deemed to make the application incomplete thereby justifying the denial of the application. Any unexpended funds held in escrow shall be returned to the applicant following approval of the final private road permit by the Township Board. Any actual costs incurred by the Township in excess of the amount held in escrow shall be billed to the applicant and shall be paid within thirty (30) days of the date the written bill was sent to the applicant.

* **Section 9. Violations and Penalties.**

Any person who violates any provision of this Ordinance shall be responsible for a municipal civil infraction as defined in Public Act 12 of 1994, amending Public Act 236 of 1961, being Sections 600.101-600.9939 of Michigan Compiled Laws, and shall be subject to a fine of not more than Five Hundred and 00/100 (\$500.00) Dollars. Each day this Ordinance is violated shall be considered as a separate violation. Any action taken under this Section shall not prevent civil proceedings for abatement or termination of the prohibited activity.

* **Section 10. Enforcement Officer.**

The township assessor is hereby authorized to administer and enforce this Ordinance. The township assessor is also hereby designated as the authorized Township official to issue municipal civil infraction citations directing alleged violators of this Ordinance to appear in court.

* **Section 11. Nuisance Per Se.**

A violation of this Ordinance is hereby declared to be a nuisance per se and is declared to be offensive to the public health, safety and welfare.

* **Section 12. Separate Court Action.**

In addition to enforcing this Ordinance through the use of a municipal civil infraction proceeding, the Township may initiate proceedings in the Circuit Court to abate or eliminate the nuisance per se or any other violation of this Ordinance.

Section 13. Variations.

(a) **Variations.** The Township Board shall have the authority to approve variations from the layout and construction standards of this Ordinance where it can be demonstrated by the applicant that the strict application of those standards would either preclude or unnecessarily restrict the use of the property, would be detrimental to the natural environment or would preclude coordination with adjacent properties. Before the Township Board decides to approve a variation in the layout and construction standards of this Ordinance, it shall make at least one of the following findings:

- (1) The property has an unusual shape or dimension (narrowness) that makes the strict application of the layout and construction standards impractical.
- (2) The variation is necessary to coordinate planning with adjacent properties
- (3) The variation is necessary to protect and maintain the natural landscape including existing topography and slopes, mature woodlands, wetlands, ponds, streams and lake shores.

* Amended 3 December 2003 Ord #10

- (b) **Limitations.** The Township Board shall limit the approval of variations to the areas necessary to satisfy the finding(s).

Section 14. Severability.

If any article, section, clause, or provision of this Ordinance is declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the validity of the remainder of the Ordinance as a whole or any part thereof, other than the part so declared to be unconstitutional or invalid.

Section 15. Effective Date.

This Ordinance shall become effective thirty (30) days after being published in a newspaper of general circulation within the Township.

BEAR LAKE TOWNSHIP

By: William F. Jackson 10/7/03
William Jackson

Its: Supervisor

By: Carol A. Rosenberg 10/7/03
Carol A. Rosenberg

Its: Clerk

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STATE OF MICHIGAN)
County of Kalkaska) SS
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AFFIDAVIT OF PUBLICATION

Hugh Conklin

HUGH CONKLIN

being duly sworn, says that he is the publisher of the
Leader and Kalkaskian, a
newspaper printed, published and circulated in said county
and otherwise qualified according to Supreme Court Rule;
that annexed hereto is a printed copy of a notice which was
published in said newspaper on the following date, or dates,
to wit:

October 15, 20 03
_____, 20 ____
_____, 20 ____
_____, 20 ____
_____, 20 ____
_____, 20 ____

Subscribed and sworn to before me

this 15th day _____
of October A.D. 20 03

Tammy L. O'Dell

Notary Public,

Tammy L. O'Dell
Notary Public State of Michigan
Kalkaska County
Acting in same County
My Commission Expires October 27, 2003

My commission expires: