

MONTCALM COUNTY

ORDINANCE NO. 2005-02

**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

THE COUNTY OF MONTCALM, MICHIGAN ORDAINS:

Section 1. Name.

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

Section 2. Purpose.

The County of Montcalm has determined that it is in the best interest of the public health, safety and welfare to establish an Ordinance to regulate the minimum standards for Private Roads and Private Drives to provide a safe, convenient and adequate access for servicing, fire protection, and emergency vehicles. The Ordinance shall establish minimum guidelines for the construction of roads, bridges, tunnels, culverts, signage, etc. for Private Roads and Private Drives to provide for adequate access, maneuverability and load bearing capacity. The Ordinance shall ensure that the private access ways to a parcel of land or group of parcels shall be constructed and maintained to provide minimum required protection for wetlands, drainage ditches, waterways, etc. The Ordinance shall provide minimum maintenance standards to ensure safe access to each principal building on any parcel of land that is accessed by the Private Road or Private Drive, including snow removal, for the protection of the public, emergency personnel and emergency vehicles.

Section 3. Definitions.

- A. Private Road - A non-public road servicing four (4) or more lots, parcels or principal buildings which provides access to a public road.
- B. Private Drive - A privately-controlled and maintained driveway servicing three (3) or less parcels of land, three (3) or less dwellings, duplexes or single principal buildings which provide access to a Public or Private Road.
- C. Principal Building - A structure on a parcel of property that is designed for a specific use such as a dwelling, a commercial structure or both. Accessory structures shall not be considered Principal Buildings. A single parcel of land may have more than one principal building and/or use.
- D. Building Official - The government official responsible for approving and issuing of Private Road permits. The Building Official shall be responsible to cooperate with Central Dispatch, the Drain Commissioner, the Road Commission and the DEQ to review and ensure compliance with all departments prior to issuing a Private Road permit.

Section 4. Private Road Application.

All private roads and private drives shall comply with the rules and regulations of the Montcalm County Drain Commission, the Road Commission of Montcalm County, all local zoning regulations, all other state and local laws and ordinances. To obtain a permit, the applicant shall complete a Private Road Application and shall provide the following:

A. Owners/Interested Parties: The name(s) and address(es) of the owner(s) and all other persons having any interest in the Private Road and the land across which it is to be constructed.

B. Plans: Applicants shall submit a site plan or drawing drawn to scale and prepared by a registered professional engineer or surveyor. The plans shall be submitted and approved by the Drain Commissioner prior to application to the Building Official. The plan or drawing shall be signed and sealed and shall be submitted and retained by the Building Official. A plan or drawing shall contain the following information:

1. The proposed layout of the Private Road, including the location, grade, route, elevation, dimensions and design of the Private Road, and the location of and distance to any public roads which the Private Road is to intersect.
2. The location of all lots, parcels, and principal buildings that will be serviced or within 100 feet of the Private Road if the lots, parcels and principal buildings will not be serviced by the Private Road.
3. The location of all existing and proposed utilities located within the Private Road right of way and/or within 20 feet of either side thereof.
4. The location of any streams, wetlands, trees, vegetation, drains and all other significant natural features affected by or within 100 feet of the proposed Private Road.
5. The location of any bridges, culverts, tunnels, or other types of construction pertaining to the Private Road. For any proposed bridges, culverts, other than the typical residential driveway culvert, or tunnels, the applicant shall submit sealed blue prints designed by a registered professional engineer or architect licensed by the State of Michigan and they shall be submitted to the Building Official prior to issuing a permit.

C. Maintenance: All Private Roads shall be maintained, repaired, improved and snowplowed in such a manner and to such extent that the Private Road shall be safe and convenient for travel in all weather conditions and in particular, such maintenance, repair and improvement shall be sufficient to assure that the Private Road shall be safe and convenient for travel of emergency vehicles in all weather conditions

D. Maintenance Agreements: A Maintenance Agreement shall be signed by all owners of the Private Road easement or right of way, and by all other parties having an interest therein. The Maintenance Agreement shall contain a provision binding the owners, and binding all other interested persons, of all affected lots and parcels whose primary access is provided by the Private Road,

including their successors and assigns. Such agreement shall provide for and assure that the Private Road shall be regularly maintained, repaired and snowplowed so as to assure that the street shall be safe for travel at all times. It shall be recorded with the Montcalm County Register of Deeds, and a copy of the recorded Maintenance Agreement shall be submitted to the Building Official prior to issuance of a Private Road permit. The Maintenance Agreement shall include the following minimum information:

1. **Restrictive Covenant:** A restrictive covenant shall be included in the Maintenance Agreement establishing the responsibility for maintaining the Private Road on all lots and parcels to be serviced by the Private Road.
 2. **Financing:** A feasible and practical method for the payment of all costs and expenses for the repair and maintenance of the Private Road.
- E. **Fees:** A Private Road application shall be accompanied by payment of a fee as shall be from time to time established by resolution of the Board of Commissioners. The purpose of the application fee is to provide funding for the management and enforcement of the Ordinance. The fee shall be collected by the Building Official at the time the application is submitted and is non-refundable

Section 5. Minimum Road Standards.

All Private Roads shall comply with the following construction standards and applicants for Private Road approval shall obtain all required permits prior to construction. All private roads shall be constructed to the minimum standards as established by the Road Commission of Montcalm County's current Plat Standards.

- A. **Structures:** All structures shall be located on lots so as to provide safe and convenient access for servicing, fire protection, and emergency vehicles.
- B. **Access:** All Private Road access to public roads shall comply with the Road Commission of Montcalm County, MDOT, and/or any other state and local regulations.
- C. **Ingress and Egress:** The ingress and egress of all Private Roads shall comply with the minimum standards as established in the Road Commission of Montcalm County's current Plat Standards. *(As amended by Ordinance No. 2005-___)*
- D. **Accessory Construction:** All excavation, bridges, tunnels, culverts, etc. shall be approved by the Building Official prior to issuing a Private Road permit.
- E. **Road Name:** Road name shall be approved by the Montcalm County Central Dispatch and the approval shall be submitted with the application.
- F. **Signage:** The following signage shall be provided prior to performing any construction on a Private Road. A Private Road sign complying with the Montcalm County Addressing Ordinance shall be installed at the intersections of the Private Road and public or Private Roads prior to commencement of the road construction. The sign shall state that it is a Private Road and shall be installed a minimum of six (6) feet above the adjacent road surface. Stop signs shall be installed at all intersections with a public road or another Private Road.

Section 6. Private Drives.

All private drives shall comply with Sections 4.B.1. through B.5. All private drives shall comply with all regulations as required by the Montcalm County Drain Commissioner, DEQ, and any other state and local laws, ordinances, and regulations.

Section 7. Review and Approval.

Upon receiving the Private Road Application and all necessary documentation the Building Official shall review the application to confirm compliance with all of the other required government entities. Upon approval the Building Official shall issue a Private Road Permit. No building permits shall be issued for any dwelling, or other building, structure or use, the primary access to which is to be provided by a private road, until the private road has been approved in accordance with this section and other applicable provisions of this Ordinance, and until a Private Road construction permit has been issued.

Section 8. Duration of Permit.

Any permit granted under this Ordinance shall expire one (1) year after it is granted, unless road construction is completed within that time. Prior to its expiration, a permit may be renewed for additional terms of one (1) year by application to the Building Official.

Section 9. Amendments.

Any additions, deletions, or alterations from the original recorded maintenance agreement or plans shall be recorded as amendments to the original at the Register of Deeds office and submitted to the Building Official to determine compliance with this Ordinance.

Section 10. Prohibited.

Neither the respective Township nor Montcalm County units of government shall be obligated to perform regular inspections of the easement area or provide necessary repairs or maintenance to the Private Road. Montcalm County is not responsible for the legality or enforcement of the Maintenance agreement.

Section 11. Pre-existing Private Roads.

This ordinance shall not affect any existing Private Roads constructed prior to the effective date of this Ordinance. If, after the effective date of this Ordinance, a Private Road is extended, other Private Roads are constructed to access it, or there is new development or subdivision of the existing adjoining lots, then the provisions of this Ordinance shall apply to the entire Private Road, including both the existing portion and the extended portion of the Private Road. The owners of any private road that is extended or altered shall notify the appropriate County mapping function of any such changes to maintain accurate mapping for the County.

Section 12. Board of Appeals.

A. **Application for Appeal.** Any person requesting a variance from the required standards of the ordinance and/or directly affected by a denial of a building permit request shall have the right to appeal to the Economic Development and Physical Resources Committee of the Board of Commissioners (hereafter "Board"), provided that a written application for appeal is filed within twenty (20) days after the day of the building permit denial. An application for appeal shall be based on a claim that the Ordinance has been incorrectly interpreted, the provisions of this Ordinance do not fully apply, 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 shall be accompanied by payment of such fees as shall from time to time be established by resolution of the County Board of Commissioners.

B. **Notice of Meeting.** The Board shall meet upon notice from the chairman, within twenty (20) days of the filing of an appeal, or at stated periodic meetings.

C. **Open Hearing.** All hearings before the Board shall be open to the public and all meetings and notices of meetings of the Board and its committees 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. A quorum shall consist of not less than two-thirds of the Board membership.

1. **Procedure.** The 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.

D. **Postponed Hearing.** When the full 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. **Board Decision.** The 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 Board members.

1. **Records and Copies.** The decision of the Board shall be recorded. Copies shall be furnished to appellant and to the building official.

2. **Administration.** The building official shall take immediate action in accordance with the decision of the Board.

Section 13. 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 \$50, 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 90-day period and (ii) 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 \$250, plus costs.
- (2) The fine for any offense which is a second repeat offense, or any subsequent repeat offense, shall be not less than \$500 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 \$500, plus other costs, or by imprisonment for a term not to exceed 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 8 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 County Building Official or his or her designee is hereby designated as the authorized County official to issue municipal civil infraction citations directing alleged violators to appear in court.

Section 14. 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 15. 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 16. Effective Date.

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

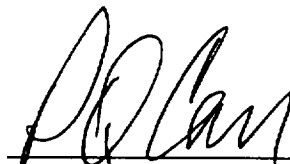
Moved by Commissioner Retzloff, seconded by Commissioner Johansen, the foregoing Ordinance be adopted.

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

NAYS: None

ABSENT: Commissioner Walker

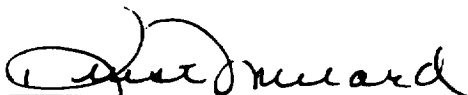
ORDINANCE DECLARED ADOPTED.



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 July 11, 2005. 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