

LAND DIVISION ORDINANCE

ENSLEY TOWNSHIP

NEWAYGO COUNTY, MICHIGAN

(ORDINANCE NO. 07-1)

Adopted: July 3, 2007

Effective: August 10, 2007

At a regular meeting of the Township Board for Ensley Township in Newaygo County, Michigan, held at the Township Hall on July 3, 2007, beginning at 8:00 p.m., the following Ordinance was offered for adoption by Township Board Member Cynthia Harwood, which motion was seconded by Township Board Member John VanderMeulen:

AN ORDINANCE TO REGULATE THE CREATION, PARTITIONING AND DIVISION OF PARCELS OR TRACTS OF LAND (AND THE ALTERATION OF BOUNDARY LINES), ENACTED PURSUANT BUT NOT LIMITED TO MICHIGAN PUBLIC ACT 288 OF 1967, AS AMENDED, BEING THE MICHIGAN LAND DIVISION ACT, ACT 359 OF 1947, AS AMENDED, AND ACT 246 OF 1945, AS AMENDED, BEING THE TOWNSHIP GENERAL ORDINANCE STATUTE; TO PROVIDE A PROCEDURE THEREFORE; TO REPEAL ANY ORDINANCE OR PROVISION THEREOF IN CONFLICT HEREWITH; AND TO PRESCRIBE PENALTIES AND ENFORCEMENT REMEDIES FOR THE VIOLATION OF THIS ORDINANCE.

THE TOWNSHIP OF ENSLEY (the "Township") IN NEWAYGO COUNTY, MICHIGAN, ORDAINS:

1. Title

This ordinance shall be known and cited as the "Ensley Township Land Division Ordinance."

2. Purpose and Scope

A. The purpose of this Ordinance is to implement the provisions of the Michigan Land Division Act (1967 PA 288, as amended, formerly known as the Subdivision Control Act) ("Act"), to prevent the creation of parcels of property and access easements which do not comply with applicable Township ordinances, zoning regulations and said Act, to minimize potential boundary disputes, to monitor the creation of new parcels and easements, to prevent illegal land divisions and to ensure that newly-created parcels are not landlocked, to prevent the creation of unusable lots due to noncompliance with the Ensley Township Zoning Ordinance or other ordinances, to assure orderly development within the community, and to otherwise provide for the health, safety and welfare of the residents and property owners of Ensley Township by establishing reasonable standards for prior review and approval of all land divisions within Ensley Township ("Township").

B. Approval of any land division pursuant to this Ordinance shall not provide, constitute, infer or imply use or zoning approval of any such division or resulting parcels or assure or imply buildability. Such use of land must still comply with the Ensley Township Zoning Ordinance and any other applicable ordinances, laws and regulations, and it remains the responsibility of the property owner to ensure such compliance.

C. It is not intended by this Ordinance to repeal, abrogate, annul, or in any other way impair or interfere with provisions of the Ensley Township Zoning Ordinance or of other laws or ordinances or of any private restrictions placed upon property by covenant, deed, or other private agreement; provided, however, that where any provision of this Ordinance imposes more stringent requirements, regulations, restrictions, or limitations upon the division or use of land, easements or buildings than are imposed or required by the provisions of any restrictions or any other law or ordinance, or any of said rules, regulations or permits, then the provisions of this Ordinance shall govern.

3. seq level1 \h \r0 Definitions

For purposes of this Ordinance, certain terms and words used herein shall have the following meaning:

A. "Act" - Public Act No. 288 of 1967, as amended (including, but not limited to, Public Act No. 591 of 1996, being the Michigan Land Division Act) (MCLA 560.101 *et seq.*)

B. "Applicant" - a natural person, firm, association, partnership, corporation, estate, entity, or combination of any of them that holds an ownership interest in land whether recorded or not.

C. "County" - Newaygo County, Michigan.

D. "Divided" or "Division" - the creation, partitioning or splitting of a parcel or tract of land by the owner thereof or by his or her heirs, executors, administrators, legal representatives, successors or assigns, for the purpose of sale, transfer or lease of more than one (1) year, or of building development that results in one or more parcels. For purposes of this definition, "divided" or "division" shall include, but not be limited to, the creation of one or more access easements, parcels or lots whether created by partition, deed, land contract, a lease over one (1) year or other written agreement, whether or not recorded with the county register of deeds records. "Divided" or "division" shall also include the adjustment, alteration, or reconfiguration of property or boundary lines.

E. "Governing body" - the Ensley Township Board.

F. "Township" - Ensley Township, Newaygo County, Michigan

G. "Township Zoning Administrator" - such person or persons as may be appointed by the Ensley Township Board to administer and enforce this Ordinance.

H. Except as expressly otherwise stated in this Ordinance, the definitions of the Act, as amended, are hereby incorporated by reference and are made a part of this Ordinance.

I. For purposes of Sections 105(b) and 109(1)(d) of the Act, the word "area" shall mean any dimensional or space requirement of the Ensley Township Zoning Ordinance, as amended, including, but not limited to, size, road frontage, private road and easement regulations and similar requirements.

J. For purposes of Sections 105(b) and 109(1)(c) of the Act, the word "width" shall be as defined in the Ensley Township Zoning Ordinance, as amended, and shall also include road, private road, and/or street frontage requirements of that Zoning Ordinance.

K. For purposes of this Ordinance, "lot" or "parcel" shall be used interchangeably.

4. Prior Approval Requirement for Land Divisions

Land in the Township shall not be divided and access easements shall not be created without the prior review and approval of the Township Zoning Administrator (or such other official as is designated by the Ensley Township Board by resolution from time to time) in accordance with this Ordinance and the Act, except that a parcel proposed for subdivision through a recorded plat pursuant to the Township's Land Subdivision Ordinance (if any) and the Act shall be exempted from this requirement. If a proposed land division involves the division of one or more existing platted lots or the reconfiguration or adjustment of a boundary line of an existing platted lot, this Ordinance (including, but not limited to, its review and approval requirements) shall be applicable.

Platted lots shall not be split or divided (nor shall platted lot lines be altered) without the prior written approval of the Township Board and in compliance with any and all other applicable Township ordinances. Anyone who desires to so alter a platted lot shall comply with all of the other requirements of this Ordinance.

5. Application for Land Division Approval

An applicant shall file all of the following with the Township Zoning Administrator (or other official designated by the Township Board) for review and approval of a proposed land division before making any division either by recorded or unrecorded deed, land contract, lease for more than one year, or for building development:

A. A completed application form (signed by all of the owners of the property), together with all required supporting materials.

B. Written proof of fee ownership of the land proposed to be divided and a signature on the application by the fee title owner of the property.

C. A survey map of the land proposed to be divided, prepared pursuant to the survey map requirements of 1970 Public Act 132, as amended (MCL 54.211), by a land surveyor licensed by the State of Michigan, and showing the dimensions and legal descriptions of the existing parcel, the parcels proposed to be created by the division(s) (including "remnant" parcels or those to be retained by the owner) and any easements, the location of all existing structures (and proposed setbacks) and other land improvements, and the accessibility of the parcels for vehicular traffic and utilities from existing public roads.

In lieu of such survey map, at the applicant's option, the applicant may waive the 45 day statutory requirement for a decision on the application until such survey map and legal description are filed with the Township and submit a

tentative preliminary parcel map drawn to scale of not less than 1" = 60' including an accurate legal description of each proposed division, and showing the boundary lines, dimensions, easements, and the accessibility of each division from existing or proposed public roads for automobile traffic and public utilities, for preliminary review, approval, and/or denial by the Township Zoning Administrator or other designated official prior to a final application under this Section 5. Additionally, the Township may waive the survey requirement for good cause shown if the materials submitted by the applicant are sufficient for an adequate and accurate legal description and to also show that all requirements of this Ordinance and the Act have been met.

D. Proof that all standards of the Act, this Ordinance and other applicable ordinances and laws have been met.

E. The history and specifications of any previous divisions of land of which the proposed division was a part sufficient to establish that the parcel to be divided was lawfully in existence as of March 31, 1997, the effective date of the Act. The Township may require that the applicant provide a title search by a title insurance company if it is reasonably necessary for the Township to determine whether the proposed land division will meet the requirements of this Ordinance and the Act.

F. Proof that all due and payable property taxes or installments of special assessments pertaining to the land proposed to be divided are paid in full.

G. If a transfer of division rights are proposed in the land transfer, detailed information about the terms and availability of the proposed division rights transfer.

H. The full fee in an amount as may from time to time be established by resolution of the Township Board for land division reviews pursuant to this Ordinance to cover the costs of review of the application and administration of this Ordinance.

6. Procedure for Review of Applications for Land Division Approval

A. Upon receipt of a complete land division application package from an applicant, the Township shall forthwith submit the same to the Township Zoning Administrator (or other designated official) for decision. The Township Zoning Administrator (or other designee) shall (i) approve, (ii) approve with reasonable conditions to assure compliance with applicable ordinances and the protection of public health, safety and welfare, or (iii) disapprove the land division applied for within 45 days after receipt of the complete application package conforming to this Ordinance's requirements (including any and all required zoning and private road approvals) and shall promptly notify the applicant in writing of the decisions and the reasons for any denial.

If the application package does not conform to this Ordinance's requirements and the Act, the Township Zoning Administrator (or other designee) shall return the same to the applicant for completion and refile in accordance with this Ordinance and the Act.

B. Any person or entity aggrieved by the decision of the Township Zoning Administrator (or designee) may, within 30 days of said decision, appeal the decision to the Township Planning Commission (or such other board or person designated by the Township Board) which shall consider and resolve such appeal by

a majority vote of said Board or by the designee at its next regular meeting or session affording sufficient time for a 20-day prior written notice to the applicant (and the property owner where other than the applicant) of the time and date of said meeting and appellate hearing. Any such appeal shall be in writing and must be filed with the Township Clerk within said thirty (30) day time limit.

C. Land division approvals shall be valid only for a period of one hundred twenty (120) days from the date of approval by the Township. If such lots, easements, or parcels proposed by the land division are not properly recorded and accepted by the County Register of Deeds within this period, the land division approval shall be considered null and void and a new application must thereafter be submitted in compliance with the requirements of this Ordinance. If an amendment to the Township Zoning Ordinance or other Township ordinance becomes effective prior to the land division being recorded and the amendment applies to any of the resulting parcels, easements, or lots in a way which would make the proposed lots, easements, or parcels violate the Township Zoning Ordinance or other Township ordinance, the land division approval shall be null and void even if the 120-day time limit has not expired.

D. The Township Zoning Administrator (or designee) shall maintain an official record of all approved and accomplished land divisions or transfers.

E. Approval of a land division does not grant or imply approval for the use of such resulting lots or parcels. Any lot, easement or parcel created by a land division must still comply with the requirements of the Ensley Township Zoning Ordinance (including, but not limited to, minimum lot area and width, road and lake frontage and width requirements, and where applicable, private road requirements) and any other applicable ordinances or regulations. Approval of a land division is not a determination that the resulting parcels comply with other ordinances, laws, or regulations.

F. If the land division involves the use or creation of a private road, approval of the private road must be obtained from the Township in accordance with the Township Zoning Ordinance prior to the approval of the land division. Additionally, the applicant must submit evidence of review and approval of the private road location and entry by the Newaygo County Road Commission.

G. The Township and its officers, officials, and employees shall not be liable for approving a land division if one or more of the resulting parcels prove unbuildable or unusable or if building permits or construction on any of the parcels are subsequently denied because of inadequate water supply, sewage disposal facilities, or any other reason. Any notice of land division approval may include a statement to this effect.

7. Standards For Approval of Land Divisions

A proposed land division shall be approved only if all of the following criteria are met:

A. All parcels and easements to be created by the proposed land division(s) must fully comply with the applicable lot (parcel) yard access and area requirements of the Ensley Township Zoning Ordinance and other applicable Township ordinances, including, but not limited to, minimum lot (parcel) frontage/width, minimum road frontage, minimum lot (parcel) area, minimum lot width to depth ratio, setback areas and maximum lot (parcel) coverage and minimum setbacks for existing buildings/structures.

B. The proposed land division(s) must comply with all requirements of the Act, this Ordinance and all other applicable ordinances.

C. All parcels created and remaining have existing adequate accessibility, or an area available therefore, to a public road for public utilities and emergency and other vehicles not less than the requirements of the Ensley Township Zoning Ordinance, major thoroughfare plan, private road regulations and this Ordinance. All proposed parcels shall have frontage on an improved public street or approved private street, at a minimum, equal to the required lot width for the zoning district in which the lot is located, as well as compliance with all applicable public or private street regulations.

D. The ratio of depth to width of any parcel created by the division (including remnant parcels) shall not exceed 4:1 unless otherwise provided by the Ensley Township Zoning Ordinance. The depth of a parcel created by a land division shall be measured within the boundaries of the particular parcel involved from the portion of the parcel abutting a public road right-of-way or private street/access easement to the most remote boundary line of the parcel from the point of commencement of the measurement or as otherwise provided for in the Ensley Township Zoning Ordinance.

E. Where accessibility is to be provided by a proposed new dedicated public road, proof that the County Road Commission or Michigan Department of Transportation has approved the proposed layout and construction design of the road and of utility easements and drainage facilities connected therewith.

F. The Township may require such additional conditions and safeguards as are deemed necessary to ensure compliance with the requirements of this Ordinance.

G. The Township Board may establish reasonable fees for Township review and approval of land divisions, easements, and condominiums hereunder. Additionally, the Township may require the applicant to reimburse the Township for fees and costs incurred by the Township Attorney and/or Township Engineer in reviewing the proposed land division, easements, or condominium units. No land division or easement approval or permit shall be effective until all such fees and reimbursements have been paid to the Township in full.

H. Within ten (10) days of the date when the applicant receives the recorded copy of the deed, land contract, memorandum of land contract or easement agreement back from the County Register of Deeds Records (with the county stamps thereon), the applicant shall provide the Township with copies of the same so that the Township can verify that the resulting lots, parcels, condominium units and/or easements created by the recordings complies with the Township approval.

8. Consequences of Noncompliance with the Land Division Approval Requirement

Any parcel or easement created in violation of or noncompliance with this Ordinance shall not be eligible for any zoning or building permits or zoning approvals such as special land use approval and site plan approval. Furthermore, no parcel, lot or easement created in violation of this Ordinance or the Act shall be utilized for any purpose whatsoever, nor shall such land division be recognized. In addition, a violation of this Ordinance shall also subject the violator to the penalties and enforcement actions set forth in Section 9 of this Ordinance, and as may otherwise be provided by law.

If a land division occurs without prior Township approval pursuant to this Ordinance, Township officials are also authorized to record an affidavit with the Newaygo County Register of Deeds records indicating that the property involved has had land divisions which do not comply with this Ordinance or the Act.

9. Penalties and Enforcement

Each and every day during which any violation continues shall be deemed a separate offense.

A violation of this Ordinance is a municipal civil infraction, for which the fine shall be not less than \$100 nor more than \$500 for the first offense, and not less than \$250 nor more than \$1,000 for subsequent offenses, in the discretion of the Court, and in addition to all other costs, damages, expenses, and other remedies provided by law. For purposes of this section, "subsequent offense" means a violation of the provisions of this Ordinance committed by the same person within twelve (12) months of a previous violation of the same provision of this Ordinance for which said person admitted responsibility or was adjudicated to be responsible; provided, however, that offenses committed on subsequent days within a period of one week following the issuance of a citation for a first offense shall all be considered separate first offenses.

Any person who aids or abets anyone in the commission of a violation of this Ordinance shall also be deemed to be in violation of this Ordinance. Furthermore, where a violation of this Ordinance occurs, both the person selling or transferring title to a property which is in violation of this Ordinance and the buyer or person receiving title to a property in violation of this Ordinance shall each be deemed to be in violation of this Ordinance, and both parties can be subject to the penalties and enforcement provisions provided herein.

Any person who violates any of the provisions of this Ordinance shall also be subject to civil action seeking invalidation of the land division and appropriate injunctive or other relief.

Any parcel, lot, easement, or land division created in violation of this Ordinance is hereby also declared to be a nuisance which is subject to abatement by the Township.

10. Severability

The provisions of this Ordinance are hereby declared to be severable and if any clause, sentence, word, section or provision is ever declared void or unenforceable for any reason by any court of competent jurisdiction, it shall not affect any portion of this Ordinance other than said part or portion thereof.

11. Repeal

All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed, except that this Ordinance shall not be construed to repeal any provision in the Township Zoning Ordinance or the Township's building codes.

12. Effective Date

This Ordinance shall take effect 30 days following its publication (or a summary thereof) in the newspaper after adoption.

YEAS: John VanderMeulen, Joann VandenBerg, and Cynthia Harwood

NAYS: Steve Knox

ABSENT/ABSTAIN: Faye Folkema

ORDINANCE DECLARED ADOPTED

Cynthia Harwood

Ensley Township Clerk

CERTIFICATION

I hereby certify that the above Ordinance was adopted by the Ensley Township Board at a regular meeting held at the Ensley Township Offices on July 3, 2007, at 8:00 p.m., pursuant to the required statutory notice and procedures.

Respectfully submitted,

Dated: July 3, 2007

Cynthia Harwood

Ensley Township Clerk