

**BEAR CREEK TOWNSHIP
EMMET COUNTY, MICHIGAN**

**PRIVATE ROAD ORDINANCE
Ordinance No. 11A-99**

(to replace prior Private Road Ordinance No. 11-99)

An Ordinance to protect the health, safety, and general welfare of the inhabitants of Bear Creek Township. The Township of Bear Creek ordains as follows: This Ordinance shall be known as the "Private Road" Ordinance.

SECTION 1.01 - PURPOSE The Township has hereby determined that as tracts and parcels of land are divided, sold, transferred, and developed, private access roads are being created to provide access to the newly divided properties which are not subject to regulation under the Michigan Subdivision Control Act of 1967 and other State regulations. The Township determines it is in the best interest of the public health, safety, and welfare to regulate the construction, improvement, extension, relocation, and use of private roads to assure that:

- A. Private roads are designed with width, surface, and grade to assure safe passage and maneuverability of private vehicles, and police, fire, ambulance, and other safety vehicles;
- B. Private roads are constructed of suitable materials to ensure minimal maintenance and safe passage;
- C. Private roads will be constructed so as to protect against or minimize soil erosion to prevent damage to the lakes, streams, wetlands, and natural environment of the Township;
- D. Private roads appropriately serve the properties and individuals they are intended to serve.

SECTION 2.01 - DEFINITIONS For purposes of this Ordinance, the following terms are defined as follows:

- A. **Access:** Any route designed to allow or having the practical effect of allowing vehicular ingress and egress to a lot or site condominium unit, whether such a route is a primary or auxiliary route.

- B. Applicant: A person, firm, association, partnership, trust, limited liability company, corporation, or other legal entity, or combination of any of them which may hold any interest in land, whether recorded or not, who is seeking approval for construction of a private road pursuant to this Ordinance.
- C. Condominium Act: Michigan P.A. 59 of 1978, as amended.
- D. Condominium Project: Any land developed under the provisions of the Condominium Act.
- E. Lot: A distinct parcel of land owned, occupied, or used, or intended to be owned, occupied, or used, separately from surrounding parcels, whether or not it is specifically designated as such in the public records. Lot as it is referred to in the Condominium Project shall mean the portion(s) of a condominium project designed and intended for separate ownership, interest and use, as described in the Master Deed, regardless of whether it is intended for residential, office, business, or recreational use, as a time-share unit, or any other type of use.
- F. Master Deed: The legal document prepared and recorded pursuant to the Condominium Act, within which are, or to which is attached as exhibits and incorporated by reference, the approved by-laws for the project and the approved condominium subdivision plan for the project.
- G. Planning Commission: The Bear Creek Township Planning Commission.
- H. Private Road: An area of land which is not a public road but which is intended for vehicular passage to and from more than one lot or site condominium unit.
- I. Public Road: An open way for passage or travel under public ownership and/or maintenance.
- J. Private Road Ordinance Administrator: The individual designated by the township board to administer this ordinance.

- K. Site Condominium Unit: A parcel of land and any corresponding building within a condominium project that is designed and intended for separate ownership interest and use, as described in the Master Deed for the condominium project.
- L. Township Board: The Bear Creek Township Board of Trustees.

SECTION 3.01 - GENERAL REQUIREMENTS AND APPLICATION TO EXISTING PRIVATE ROADS

- A. The provisions of this Ordinance shall only apply to a private road which provides access to four (4) or more existing or proposed lots or site condominium units.
- B. After the effective date of this Ordinance, a private road shall not be constructed, extended, or relocated, except in accordance with the minimum standards and requirements of this Ordinance. If an additional lot or site condominium is proposed to be served by an existing private road, the existing road shall be required to meet the requirements of this ordinance. If an existing road is proposed to be extended, then the existing portion shall be improved to meet the standards of this Ordinance. The new portion shall also comply with the standards of this Ordinance.
- C. Where a private road serving three (3) or less lots or site condominium units in existence prior to the effective date of this ordinance is to be extended or altered to serve a total of four (4) or more lots or site condominium units, the existing private road may only be extended or altered if the entire private road is improved to the requirements of this ordinance.

SECTION 4.01 - MINIMUM STANDARDS FOR PRIVATE ROADS

- A. All private roads constructed in Bear Creek Township shall be constructed in a good and workmanlike manner within a permanent right-of-way easement duly recorded with the Emmet County Register of Deeds.

- B. Such easement shall be a minimum of thirty-three (33) feet in width, unless additional right-of-way is required for adequate construction.
- C. At any dead-end or cul-de-sac, the easement shall widen to a minimum radius of eighty (80) feet.
- D. A private road shall be given a street name that is not the same or similar to any other street name in the county. All street names must first be approved by the Planning Commission and, if necessary, accepted by the Emmet County Road Commission. A street sign bearing the street name meeting Emmet County Road Commission standards as to design, location, and maintenance shall be erected and maintained by the applicant where such private road intersects any public road.
- E. A new private road or extension of an existing private road that provides or is intended to provide access to a total of 4 or 5 lots shall have a minimum width of twenty-two (22) feet. Gravel shoulders are not required, but the pavement shall be flush with the shoulder elevation. Shoulder grading shall not exceed a slope of one half of an inch per foot. The road shall have a minimum of two-tenths (0.2) of an inch per foot crown from centerline to the edge of the road. The road base shall consist of at least six (6) inch gravel base (MDOT 22A) with a twelve (12) inch sand sub-base (MDOT Class 2). The road surface shall widen at any dead-end or cul-de-sac so there is at least a sixty (60) foot radius turn-around. The road surface does not need to cover the entire radius of the turn-around providing that the road surface is at least the minimum required width of twenty-two feet throughout the turn around, with the outer edge of such road surface being at or beyond the sixty (60) foot radius of the turn-around. The top elevation of the roadway shall be a minimum of three (3) feet above the seasonal high water table. A new private road or extension of an existing private road that provides or is intended to provide access to 6 or more lots shall meet the requirements of this paragraph and shall also be paved with a minimum of two (2) inches of asphalt or equivalent dustless surface.

- F. A private road shall not exceed a grade of eight (8) percent; provided that within 30 feet of the intersection of a private road with any other private road or with any public right-of-way, a private road shall not exceed a grade of one and one-half (1 1/2) percent.
- G. A private road shall be constructed in a manner to provide effective storm water drainage and to control storm water runoff and prevent soil erosion. Soil erosion and storm water runoff control measures shall comply with Emmet County Soil and Water Conservation District standards. If a private road crosses a natural drainage course, stream or other natural body of water, the method of crossing (by bridge, culvert or other structure) must be certified by a registered professional engineer that it complies with all applicable requirements of the Emmet County Drain and Road Commissions, and of the State of Michigan.
- H. Where a private road intersects or connects with a public road, the private road shall meet all requirements and obtain any necessary permits for such intersection or connection from the municipal authority having jurisdiction over the public road.

SECTION 5.01 - ROAD MAINTENANCE

- A. Road Maintenance Agreement.

The applicant(s) and/or owner(s) of the proposed private road shall provide to the Township Planning Commission a recorded road maintenance agreement, access easement agreement, and deed restrictions in compliance with Section 6.01 (B) (5), which shall provide for the perpetual private (non-public) maintenance of such roads and/or easements to a necessary and reasonable standard to serve the parties having an interest in the private road. At a minimum, these documents shall contain the following provisions:

- (1) The method of initiating and financing such road and/or easements in order to keep the road in a reasonably good and usable condition.

- (2) A workable method of apportioning the costs of maintenance, improvements, and extensions of the private road. For new private road applications and for applications for the extension of existing private roads, the recorded road maintenance and improvement agreement shall provide that any future improvements required or desired shall be completed over the entire length of the private road and any extensions thereto.
- (3) A notice that if repairs and maintenance are not made, the Township Board may bring the road up to the design standards specified in this ordinance and assess owners of parcels on the private road for the improvements, plus an administrative fee in the amount of 20% of the total cost of the improvements.
- (4) A notice that no public funds of the Township of .Bear Creek may be used to build, repair, or maintain the private road, except as provided in subsection (A)(3), above.
- (5) Easements to the public for purposes of utilities, emergency and other public vehicles for whatever public services are necessary.
- (6) A provision that the owners of any and all of the properties using the road shall not prohibit, restrict, limit, or in any manner interfere with normal ingress and egress and use by any of the other owners. Normal ingress and egress and use shall include use by family, guests, invitees, tradesmen, and others bound to or returning from any of the properties having a right to use the road.

B. Road Maintenance and Improvement Standards.

- (1) Improvements to and maintenance of private roads shall be accomplished so as to provide for a consistent surface maintained to meet the requirements of this Ordinance throughout the entire length of the private road.

- (2) The road maintenance agreements for all private roads subject to this ordinance shall provide that any future improvements required or desired shall be completed over the entire length of the private road and any extensions thereof.

SECTION 6.01 - PROCEDURE FOR REVIEW OF PRIVATE ROADS

A. Permit Application and Fee

An application to establish, extend, relocate, or modify a private road shall be filed with the Private Road Ordinance Administrator along with a fee as set by the Township Board. The application shall contain or be accompanied by the following information:

- (1) The name(s) of the owners and any other parties having any legal interest in the private road and the property across which it is to be constructed.
- (2) Permanent parcel number or legal description of the property over which the private road is to be constructed.
- (3) A site location map drawn to scale which shows the location of the parcel containing the road to surrounding properties and roadways within one-half mile of the site.
- (4) Three (3) sealed, engineered drawings showing the location, route, dimensions, specifications and design of the private road and any proposed extensions of the road, existing or proposed curb cuts, the location and distance to any public street which the private road is to intersect, and the alignments and sight distances for all intersections or connections of the private road with public roads or other private roads.
- (5) A scaled drawing illustrating the existing and proposed lot divisions.
- (6) A road maintenance agreement, access easement agreement, and deed restrictions as described in Section 5.01.

- (7) A copy of the driveway permit application from the Emmet County Road Commission for the proposed private road.
- (8) A letter from the Emmet County Road Commission indicating there is no known duplication of the proposed private road name.
- (9) A drainage plan for the proposed private road.

B. Review of Permit Application

- (1) The permit application, drawings and other required information shall be reviewed by the Private Road Ordinance Administrator to determine compliance with the standards for private roads.
- (2) The Private Road Ordinance Administrator shall review this information and may consult with the Township Planning Commission, and the Township Fire Chief, Attorney, Engineer and Planner as deemed necessary. Such decision shall be made within 60 days of the date upon which a complete application is submitted to the Private Road Ordinance Administrator.
- (3) If the Private Road Ordinance Administrator finds that the application meets the requirements of this Ordinance, he or she shall then approve the application and issue a permit for the construction of the private road. This permit shall consist of a stamp noting approval and containing the signature of the Private Road Ordinance Administrator and the date of approval. Two copies of the private road plans shall be stamped for approval; one copy shall be kept by the applicant, and one by the Private Road Ordinance Administrator. This construction permit is not a Private Road Permit and does not authorize the construction of any structures or dwelling units. The construction permit is valid for a period of one (1) year from the date of approval. If

construction of the private road has not commenced before this date, the permit shall expire. A new permit shall be required before construction can begin.

- (4) If the Private Road Ordinance Administrator denies the application, a copy of the application, containing the reasons for the denial set forth in writing shall be returned to the applicant.
- (5) Final Compliance Requirements - Upon completion of construction of the private road, the applicant shall provide to the Private Road Ordinance Administrator: a) a letter from a registered professional engineer or the Emmet County Road Commission that the road has been constructed in compliance with the approved private road plans, and b) documentation that the road maintenance agreement, access easement and deed restrictions have been recorded with the Emmet County Register of Deeds office, and c) a driveway permit for the private road from the Emmet County Road Commission. If a private road is presented for final compliance consideration and the Private Road Ordinance Administrator in his or her discretion has concerns over whether the private road has actually been constructed in accordance with the approved private road plans, the township may have the private road inspected by an independent engineer. If such engineer concludes after inspection that the private road fully complies with the approved private road plans, the cost of such independent inspection shall be the responsibility of the Township. If such engineer concludes after inspection that the private road does not fully comply with the approved private road plans, the cost of such independent inspection shall be reimbursed to the Township by the private road applicant before the applicant will again be considered for having met the final compliance requirements of this Ordinance.

- (6) Private Road Permit Issuance - Upon approval of all items required for final compliance, the Private Road Ordinance Administrator shall issue a Private Road Permit.
- (7) Permits for Dwellings on Private Roads - A building permit shall not be issued for any building or structure that derives its access from a private road that is subject to this Ordinance unless a Private Road Permit has been issued by the Township and the road has either been completed in accordance with the approved permit or the applicant for the building permit or owner(s) of the private road right-of-way have provided the Township with cash or irrevocable letter of credit in an amount determined by the Private Road Ordinance Administrator, to insure construction of the private road in accordance with the approved private road construction permit within one (1) year from the issuance of the building permit. The letter of credit shall contain a provision that the Township shall have the right to access the letter of credit if such letter is not renewed 30 days before the expiration date of the letter.
- (8) Permits for Dwellings on Existing Private Roads and Existing Lots - A Private Road Permit shall not be required for the issuance of a building permit for a principal dwelling on an existing lot or site condominium unit which derives its access from a private road existing as of the effective date of this ordinance, except as required by Section 3.01.

SECTION 7.01 - TOWNSHIP LIABILITY The owner(s) of the private road agree by applying for and securing a permit to construct the private road that they shall indemnify and hold the Township harmless from all claims for personal injury and/or property damage arising out of the construction, maintenance,

repair, replacement, modification, or use of the private road. Such wording shall appear on the application for the permit and be signed by the applicant.

SECTION 8.01 - APPEALS AND VARIANCES Any applicant affected by a decision regarding this Ordinance shall have the right to appeal the decision to the Township Board within twenty-one (21) days. Such appeal shall be filed with the Township Clerk in writing and shall state the reasons for appeal and any documents in support thereof. The Township Board shall establish a time for hearing the appeal which shall be no later than thirty (30) days after filing. The decision of the Township Board shall be set forth in writing and be delivered to the applicant within fourteen (14) calendar days following the hearing. The decision of the Township Board shall be final. An appeal may be taken to Circuit Court. The Township Board may grant variances only upon a finding, from reasonable evidence, that the following facts and conditions exist:

- (A) That the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the intent and purpose of this Ordinance or the public interest. The possibility of increased financial return shall not of itself be deemed sufficient for a variance;
- (B) That the condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent in nature as to make reasonably practicable the formation of a general regulation for such conditions or situations;
- (C) That by reason of exceptional narrowness in width, breadth, length, or shape of a specific piece of property on the effective date of the Ordinance, or by reason of unusual topographic conditions, or other extraordinary situation or condition of the land, building or structure or of the use of property immediately adjoining the property in question, the literal enforcement of

the requirements of this Ordinance would involve practical difficulties or would cause undue hardship;

- (D) Where practical difficulties or unnecessary hardship in the way of carrying out the strict letter of this Ordinance are observed, public safety secured, and substantial justice done.

SECTION 9.01 - PENALTIES

- A. This Ordinance shall be enforced by the Private Road Ordinance Administrator, the Township Supervisor, or such other person or persons who may be designated from time-to-time by the township board.
- B. A violation of this Ordinance is a municipal civil infraction, for which a citation may be issued. The fine for such a municipal civil infraction shall not be more than \$500.00, in addition to all other costs, damages, expenses, and other fees and remedies provided or allowed by law. Each day that a violation occurs shall be considered a separate violation.
- C. The issuance of a citation for a municipal civil infraction shall not in any way limit the Township from seeking enforcement of this Ordinance in any other manner, including, but not limited to an action for temporary and permanent injunctive relief and to recover any costs, expenses, damages, and fees, including attorney fees, that may be permitted or allowed by law in connection with the enforcement of this Ordinance.

SECTION 10.01 - SEVERABILITY If any provision of this Ordinance or the application thereof to any person or circumstance shall be found to be invalid by any court, such invalidity shall not affect the remaining provisions of the Ordinance which shall be given effect.

SECTION 11.01 - FEES - Fees to be charged pursuant to this ordinance shall be as set, or from time to time amended, by a resolution of the Township Board.

SECTION 12.01 - EFFECTIVE DATE This Ordinance shall take effect thirty (30) days after publication in the manner provided by law.

SECTION 13.01 - REPEALER All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed to the extent necessary to give this ordinance full force and effect.

CLERK'S CERTIFICATION

I hereby certify this Ordinance was adopted by the Bear Creek Township Board at a regular meeting held on

Feb. 7, 2001, and that the vote was as follows:

FOR:

AGAINST

I further certify this Ordinance or, a summary thereof, was published in the Petoskey News-Review on

Feb. 15, 2001.

Judy Mays
Bear Creek Township Clerk

