

**ELK RAPIDS TOWNSHIP
ANTRIM COUNTY, MICHIGAN
ORDINANCE NO. 2-2011**

AN ORDINANCE TO AMEND THE LAND DIVISION ORDINANCE IN ACCORD WITH THE LAND DIVISION ACT OF MICHIGAN

ELK RAPIDS TOWNSHIP, ANTRIM COUNTY, MICHIGAN, ORDAINS:

A New Land Division Ordinance. The Elk Rapids Township Land Division Ordinance shall be replaced with the following Amended Land Division Ordinance.

**TOWNSHIP OF ELKRAPIDS
ANTRIM COUNTY, MICHIGAN**

LAND DIVISION ORDINANCE

An ordinance to regulate partitioning or division of parcels or tracts of land, enacted pursuant but not limited to Michigan Public Act 288 of 1967, 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.

Section 1 – TITLE

This ordinance shall be known and cited as the Elk Rapids Township Land Division Ordinance.

Section 2 - PURPOSE

The purpose of this ordinance is to carry out the provisions of the state Land Division Act (1967 PA 288, as amended, formerly known as the Subdivision Control Act), to prevent the creation of parcels of property which do not comply with applicable ordinances and said Act, to minimize potential boundary disputes, to maintain orderly development of the community, and otherwise provide for the health, safety and welfare of the residents and property owners of the municipality by establishing reasonable standards for prior review and approval of land divisions within the municipality.

Section 3 - DEFINITIONS

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

- A. "Applicant" – a natural person, firm, association, partnership, corporation, or combination of any of them that holds an ownership interest in land whether recorded or not.
- B. "Divided" or "Division" – the partitioning or splitting of a parcel or tract of land by the proprietor thereof or by his or her heirs, executors, administrators, legal representatives, successors or assigns, for the purpose of sale or lease of more than one year, or of building development that results in one or more parcels of less than 40 acres or the equivalent, and that satisfies the requirements of sections 108 and 109 of the State Land Division Act.
- C. "Exempt split" or "exempt division" – the partitioning or splitting of a parcel or tract of land by the proprietor thereof, or by his or her heirs, executors, administrators, legal representatives, successors or assigns, that does not result in one or more parcels of less than 40 acres or the equivalent; provided all resulting parcels are accessible for vehicular travel and utilities from existing public roads through existing adequate roads or easements, or through areas owned by the owner of the parcel that can provide such access.
- D. "Forty acres or the equivalent" – either 40 acres, a quarter-quarter section containing not less than 30 acres, or a government lot containing not less than 30 acres.
- E. "Governing body" – the legislative body of a township board of a township (Township Board).

Section 4 - PRIOR APPROVAL REQUIREMENT FOR LAND DIVISIONS

Land in the municipality shall not be divided without the prior review and approval of the township assessor and township zoning administrator, or other official(s) designated by the governing body, in accordance with this ordinance and the State Land Division Act; provided that the following shall be exempted from this requirement:

- A. A parcel proposed for subdivision through a recorded plat pursuant to the municipality's Subdivision Control Ordinance and the State Land Division Act.
- B. A lot in a recorded plat proposed to be divided in accordance with the municipality's Subdivision Control Ordinance and the State Land Division Act.
- C. An exempt split as defined in this Ordinance.

Section 5 - APPLICATION FOR LAND DIVISION APPROVAL

An applicant shall file all of the following with the municipal Clerk or other official designated by the governing body for review and approval of a proposed land division before making any division either by deed, land contract, lease for more than one year, or for building development:

- A. A completed application form on such form as may be provided by the municipality.

- B. Proof of fee ownership of the land proposed to be divided.
- 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 and the parcels proposed to be created by the division(s), the location of all existing structures 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 municipality and submit a tentative preliminary parcel map drawn to scale of not less than that provided for on the application form including an accurate legal description of each proposed division, and showing the boundary lines, dimensions, 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 locally designated official prior to a final application under Section 5.

The governing body of the municipality or its designated agent delegated such authority by the governing body, may waive the survey map requirement where the foregoing tentative parcel map is deemed to contain adequate information to approve a proposed land division considering the size, simple nature of the divisions, and the undeveloped character of the territory within which the proposed divisions are located. An accurate legal description of all the proposed divisions, however, shall at all times be required.

- D. Proof that all standards of the State Land Division Act and this Ordinance 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 the parcel to be divided was lawfully in existence as of March 31, 1997, the effective date of the State Land Division Act.
- F. Proof that all due and payable taxes or installments of special assessments pertaining to the land proposed to be divided are paid in full.
- G. If transfer of division rights are proposed in the land transfer, detailed information about the terms and availability of the proposed division rights transfer.
- H. Unless a division creates a parcel which is acknowledged and declared to be "not buildable" under Section 8 of this Ordinance, all divisions shall result in "buildable" parcels containing sufficient "buildable" area outside of unbuildable wetlands, flood plains and other areas where buildings are prohibited therefrom, and with sufficient area to comply with all required setback provisions, minimum floor areas, off-street parking spaces, on-site sewage disposal and water well locations (where public water and sewer service is not available), and maximum allowed area coverage of buildings and structures on the site.

- I. The fee as may from time to time be established by resolution of the governing body of the municipality for land division reviews pursuant to this ordinance to cover the costs of review of the application and administration of this Ordinance and the State Land Division Act.

Section 6 - PROCEDURE FOR REVIEW OF APPLICATIONS FOR LAND DIVISION APPROVAL

- A. Upon receipt of a land division application package, the municipal clerk or other official designated by the governing body shall forthwith submit the same to the township assessor and township zoning administrator or other designated official(s) for decision. The township assessor and township zoning administrator or other designee(s) shall approve, approve with reasonable conditions to assure compliance with applicable ordinances and the protection of public health, safety and general welfare, or disapprove the land division applied for within 45 days after receipt of the application package conforming to this Ordinance's requirements, and shall promptly notify the applicant of the decisions and the reasons for any denial. If the application package does not conform to this Ordinance requirements and the State Land Division Act, the assessor and zoning administrator or other designee(s) shall return the same to the applicant for completion and refiling in accordance with this Ordinance and the State Land Division Act.
- B. Any person or entity aggrieved by the decision of the assessor and zoning administrator or designee(s) may, within 30 days of said decision appeal the decision to the township board of the municipality or such other board or person designated by the governing body 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 written notice to the applicant (and appellant where other than the applicant) of the time and date of said meeting and appellate hearing.
- C. A decision approving a land division is effective for 90 days, after which it shall be considered revoked unless within such period a document is recorded with the County Register of Deeds office and filed with the municipal clerk or other designated official accomplishing the approved land division or transfer.
- D. The township assessor and township zoning administrator or designee(s) shall maintain an official record of all approved and accomplished land divisions or transfers.

Section 7 - STANDARDS FOR APPROVAL OF LAND DIVISIONS

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

- A. All the parcels to be created by the proposed land division(s) fully comply with the applicable lot (parcel), yard and area requirements of the applicable zoning ordinance, including, but not limited to, minimum lot (parcel) frontage/width,

minimum road frontage, minimum lot (parcel) area, minimum lot width to depth ratio, and maximum lot (parcel) coverage and minimum setbacks for existing buildings/structures.

- B. The proposed land division(s) comply with all requirements of the State Land Division Act and this Ordinance.
- C. All parcels created and remaining have existing adequate accessibility, or an area available therefor, to a public road for public utilities and emergency and other vehicles not less than the requirements of the applicable zoning ordinance, major thoroughfare plan, road ordinance or this Ordinance. In determining adequacy of accessibility, any ordinance standards applicable to plats shall also apply as a minimum standard whenever a parcel or tract is proposed to be divided to create 4 or more parcels.
- D. The ratio of depth to width of any parcel created by the division does not exceed a four to one ratio exclusive of access roads, easements, or non-buildable parcels created under Section 8 of this Ordinance and parcels added to contiguous parcels that result in all involved parcels complying with said ratio.

The permissible depth of a parcel created by a land division shall be measured within the boundaries of each parcel from the abutting road right of way to the most remote boundary line point of the parcel from the point of commencement of the measurement.

The permissible minimum width shall be as defined in the applicable zoning ordinance, or, in the absence thereof, specified in subparagraph E(l) and (2) of this Ordinance.

- E. In the absence of applicable zoning or other ordinances providing a different standard, all parcels created by a land division shall comply with the following minimum standards:
 - 1. A minimum road frontage of 100 feet on a public road or municipally approved private road.
 - 2. A minimum width throughout the entire parcel of 100 feet as measured on a line parallel to the abutting road right of way and/or lake frontage.
 - 3. A minimum lot (parcel) area of 25,000 square feet.
- F. In the absence of applicable zoning or other ordinances providing a different standard, all parcels created by a land division shall comply with the following minimum standards:
 - 1. 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.

2. Where accessibility by vehicle traffic and for utilities is permitted through other than a dedicated and accepted public road or easement, such accessibility shall comply with the following:
 - a. Where such private road or easement extends for more than 660 feet from a dedicated public road, or is serving or intended to serve more than one separate parcel, unit or ownership, it shall be not less than 66 feet in right of way width, 24 feet in improved roadbed width with at least three feet of improved shoulder width on each side and adequate drainage ditches and necessary culverts on both sides to accumulate and contain surface waters from the road area. It shall further be improved with not less than six inches of a processed and stabilized gravel base over six inches of granular soil, have a grade of not more than seven percent, and if dead-ended, shall have a cul-de-sac with a radius of not less than 50 feet of improved roadbed for the accommodation of emergency, commercial and other vehicles.
 - b. Where the private road or easement is 660 feet or less in length, and is serving or intended to serve not more than four separate parcels, units or ownerships, it shall not be less than 40 feet in right of way width, 20 feet in improved roadbed width with at least two feet of improved shoulder width on each side, and adequate drainage ditches on both sides with necessary culverts to accommodate and contain surface waters from the road area. It shall further be improved with processed and stabilized gravel and granular soil, have a grade of not more than seven percent, and a cul-de-sac where dead-ended as specified in subparagraph (2) (a) above. If said private road or easement is serving or intended to serve more than four separate parcels, units or ownerships, the right of way and development standards set forth in (2) (a) above shall apply.
 - c. If accessibility is by a private road or easement, a document acceptable to the municipality shall be recorded with the County Register of Deeds and filed with the assessor or designee specifying the method of private financing of all maintenance, improvements, and snow removal, the apportionment of these costs among those benefitted, and the right of the municipality to assess such costs against those properties benefitted, plus a 25 percent administrative fee, and to perform such improvements in the event of a failure of those benefitted to privately perform these duties for the health, safety and general welfare of the area.
 - d. Any intersection between private and public roads shall contain a clear vision triangular area of not less than two feet along each right of way line as measured from the intersecting right of way lines.

- e. No private road or easement shall extend for more than 1,000 feet from a public road.
- f. No private road shall serve more than 25 separate parcels.

Section 8 - ALLOWANCE FOR APPROVAL OF OTHER LAND DIVISIONS

Notwithstanding disqualification from approval pursuant to this ordinance, a proposed land division which does not fully comply with the applicable lot, yard, accessibility and area requirements of the applicable zoning ordinance or this Ordinance may be approved in any of the following circumstances:

- A. Where the applicant executes and records an affidavit or deed restriction with the County Register of Deeds, in a form acceptable to the municipality, designating the parcel as "not buildable". Any such parcel shall also be designated as "not buildable" in the municipal records, and shall not thereafter be the subject of a request to the Zoning Board of Appeals for variance relief from the applicable lot and/or area requirements, and shall not be developed with any building or above ground structure exceeding four feet in height.
- B. Where, in circumstances not covered by paragraph A above, the Zoning Board of Appeals has, previous to this Ordinance, granted a variance from the lot, yard, ratio, frontage and/or area requirements with which the parcel failed to comply.
- C. Where the proposed land division involves only the minor adjustment of a common boundary line or involves a conveyance between adjoining properties which does not result in either parcel violating this Ordinance, any applicable zoning ordinance, or the State Land Division Act.

Section 9 - CONSEQUENCES OF NONCOMPLIANCE WITH LAND DIVISION APPROVAL REQUIREMENT

Any parcel created in noncompliance with this ordinance shall not be eligible for any building permits, or zoning approvals, such as special land use approval or site plan approval, and shall not be recognized as a separate parcel on the assessment roll. In addition, violation of this ordinance shall subject the violator to the penalties and enforcement actions set forth in Section 10 of this ordinance, and as may otherwise be provided by law.

Section 10 - PENALTIES AND ENFORCEMENT

Any person who violates any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than \$500.00 or by imprisonment in the county jail not to exceed 90 days or by both such fine and imprisonment.

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

Section 11 - SEVERABILITY

The provisions of this ordinance are hereby declared to be severable and if any clause, sentence, word, section or provision is 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 of portion thereof.

Section 12 - 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 Municipality Zoning Ordinance, the Municipality Subdivision Control Ordinance, or the Municipality Building Code.

Section 13 – EFFECTIVE DATE

This Ordinance is ordered to take effect thirty (30) days following publication of adoption in the Elk Rapids News, a newspaper having general circulation in the Township.

William White
Township Supervisor

Carolyn Boals
Township Clerk

Adopted: May, 1997

Effective: June, 1997

Re-adopted: May 10, 2011

Effective: June 19, 2011