

LAND DIVISION ORDINANCE
VILLAGE OF LAKEVIEW
MONTCALM COUNTY, MICHIGAN
ORDINANCE NO. 05-02
Adopted: August 8, 2005
Effective: September 8, 2005

ARTITIONING AND DIVISION OF PARCELS OR TRACTS OF LAND,
ACT NO. 288 OF THE PUBLIC ACTS OF 1967, AS AMENDED, BEING
SECTION 9 OF THE PUBLIC ACTS OF 1947, AS AMENDED, AND ACT NO. 3
OF 1947, BEING THE VILLAGE GENERAL ORDINANCE STATUTE; TO PROVIDE
FOR THE ENFORCEMENT OF THIS ORDINANCE OR PROVISION THEREOF IN CONFLICT HEREWITH;
AND TO PROVIDE REMEDIES FOR THE VIOLATION OF THIS ORDINANCE.

Section 1 Title

This ordinance shall be known and cited as the "Village of Lakeview Land Division Ordinance."

Section 2 Purpose and Scope

- A. The purpose of this Ordinance is to implement the provisions of the Michigan Land Division Act (Act No. 288 of the Public Acts of 1967, as amended, formerly known as the Subdivision Control Act) ("Act"), to prevent the creation of parcels of property and access to easements which do not comply with applicable 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 Lakeview Village 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 Lakeview Village by establishing reasonable standards for prior review and approval of all land divisions within the Village of Lakeview ("Village").
- 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 Village Zoning Ordinance and any other applicable ordinances, laws or 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 Village 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 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.

Section 3 Definitions

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

- A. "Act" – Act No. 288 of the Public Acts of 1967, as amended (including, but not limited to, Act No. 591 of the Public Acts of 1996, being the Michigan Land Division Act).
- 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"- Montcalm 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 limited to, the creation of one or more access easements, parcels, lots or site condominium units whether created by partition, deed, land contract, a lease over one (1) year of other written agreement, whether or not recorded with the county register of deeds records. "Divided" or "division" shall also include the adjustment or reconfiguration of property lines and the creation or development of site condominium units or projects.
- E. "Governing Body" – the Village of Lakeview Council.
- F. "Village" – the Village of Lakeview, Montcalm County, Michigan.
- G. 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.
- H. 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 Village Zoning Ordinance, as amended, including, but not limited to, size, road frontage, easement regulations and similar requirements.
- I. For purposes of Sections 105(b) and 109(1)(c) of the Act, the word "width" shall be as defined in the Village Zoning Ordinance, as amended, and shall also include road or street frontage requirements of that Zoning Ordinance.
- J. For purposes of this Ordinance, "lot" or "parcel" shall be used interchangeably.

Section 4 Prior Approval Requirement for Land Divisions

Land in the Village shall not be divided and access easements shall not be created without prior review and approval of the Village Zoning Administrator (or such other official as is designated by the Village

Council 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 Village'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. The creation or alteration of site condominium units and developments shall also be subject to the review and approval requirements of this Ordinance.

Section 5 Application for Land Division Approval

An applicant shall file all of the following with the Village Zoning Administrator or other official designated by the Village Council 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, 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 Act No. 132 of the Public Acts of 1970, as amended, 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 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 Village 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 Village Zoning Administrator or other designated official prior to a final application under this Section 5. Additionally, the Village 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 Village may require that the applicant provide a title search by a

title insurance company if it is reasonably necessary for the Village 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 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, the applicant shall provide sufficient information to show that 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 full fee in an amount as may from time to time be established by resolution of the Village Council for land division reviews pursuant to this Ordinance to cover to costs of review of the application and administration of this Ordinance.

Section 6 Procedure for Review of Applications for Land Division Approval

A. Upon receipt of a complete land division application package from an applicant, the Village Zoning Administrator or other official designated by the Village Council shall forthwith submit the same to the Village Zoning Administrator or other designated official for decision. The Village 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 Village Zoning Administrator or other designee shall return the same to the applicant for completion and refiling in accordance with this Ordinance and the Act.

B. Any person or entity aggrieved by the decision of the Village Zoning Administrator or designee may, within 30 days of said decision, appeal the decision to the Village Planning Commission (or such other board or person designated by the Village Council) 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 Village Clerk within said thirty (30) day time limit.

C. Land division approvals shall be valid only for a period of ninety (90) days from the date of approval by the Village. If such lots, easements, parcels or site condominium unites 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 Village Zoning Ordinance or other Village ordinance becomes effective prior to the land division being recorded and the amendment applied to any of the resulting parcels, easements, lots or site condominium units in a way which would make the proposed lots, easements, parcels or site condominium units violate the Village Zoning Ordinance or other Village ordinance, the land division approval shall be null and void even if the 90-day time limit has not expired.

D. The Village 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, parcel or site condominium unit created by a land division must still comply with the requirements of the Village 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.

F. No permanent parcel number or property tax identification number shall be issued for any new parcel, lot or site condominium unit until and unless a land division approval by the Village has been granted pursuant to this Ordinance and the deed, land contract or memorandum of land contract creating the land division has been recorded with the County Register of Deeds.

G. If the land division involves the use or creation of a private road, approval of the private road must be obtained from the Village in accordance with the Village 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 Montcalm County Road Commission.

Section 7 Standards for Approval of Land Divisions

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

A. All the parcels and easements to be created by the proposed land division(s) fully comply with the applicable lot (parcel) yard access and area requirements of the Village Zoning Ordinance and other applicable Village 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 therefor, to a public road for public utilities and emergency and other vehicles not less than the

requirements of the Village 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 3:1 unless otherwise provided by the Village Zoning Ordinance.

E. Where accessibility is to be provided by a proposed new dedicated public road, proof that the County Road Commission for 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 Village may require such additional conditions and safeguards as are deemed necessary to ensure compliance with the requirements of this Ordinance.

G. The Village Council may establish reasonable fees for Village review and approval of land divisions, easements, and condominiums hereunder. Additionally, the Village may require the applicant to reimburse the Village for fees and costs incurred by the Village Attorney and/or Village 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 Village in full.

H. Within ten (10) days of the date 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 (with county stamps), the applicant shall provide the Village with copies of the same so that the Village can verify that the resulting lots, parcels, condominium units and/or easements created by the recordings complies with the Village approval.

I. No land division shall be approved until all ad valorem property taxes due and owing on the original parcel have been paid in full to the Village and/or County, and all special assessments and charges in lieu of special assessments, due and owing against the original parcel have been paid to the Village in full. Additionally, no land division shall be approved until all indebtedness of the owners of the original parcel have been paid in full to the Village.

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 Village Zoning Ordinance or this Ordinance may be approved by the Village Zoning Administrator (or other person designated by the Village Council) in any of the following circumstances:

A. Where the applicant executes and records a permanent deed restriction with the County Register of Deeds, in a form acceptable to the Village, designating the parcel as "not buildable" and also

not usable for anything other than agricultural or passive uses, which restrictions shall be enforceable by the Village.

Any such parcel shall also be designated as “not buildable” in the Village 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 1 foot in height or used except for agricultural or passive uses.

B. 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, the Village Zoning Ordinance, or the Act and the Village Zoning Administrator (or designee) determines the boundary adjustments to be minor.

Section 9 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 building permits or zoning approvals such as special land use approval and site plan approval.

Furthermore, no parcel, lot, site condominium unit 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 10 of this Ordinance, and as may otherwise be provided by law.

In addition to the other remedies provided herein, the Village Zoning Administrator is authorized to deny or rescind a permanent parcel number or property tax identification number for any lot, parcel or site condominium unit created in violation of this Ordinance and to also formally request that County officials either rescind or refuse to issue such a property tax identifying number for any lot, parcel or site condominium unit created in violation of this Ordinance, where applicable.

Section 10 Penalties and Enforcement

Any person, firm, corporation, trust, partnership or other legal entity which violates or refuses to comply with any provision of this Ordinance shall be responsible for a municipal civil infraction and shall be punished by a civil fine of two hundred fifty dollars (\$250.00) for a first violation, five hundred dollars (\$500.00) for a second violation and one thousand dollars (\$1,000) for a third or any subsequent violation and shall be liable for the payment of the costs of prosecution in an amount of not less than nine dollars (\$9.00) and more than five hundred dollars (\$500.00)

A. Each day that a violation continues to exist shall constitute a distinct and separate offense, and shall make the violator liable for the imposition of a fine for each day.

B. The foregoing penalties shall be in addition to the abatement of the violating condition and injunctive or other relief prescribed by the laws of the State of Michigan for the abatement of a public nuisance or the violation of a Village ordinance designated as a municipal civil infraction.

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 of 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.

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 Village Zoning Ordinance.

Section 13 Effective Date

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

The above Ordinance was offered for adoption by Village Council Member Collard, and was seconded by Village Council Member Earhart, the vote being as follows:

YEAS: Winter, Earhart, Farrell, Schottle, Collard, Lund

NAYS: None

ABSENT: Lobert

ORDINANCE NO. 05-02 DECLARED ADOPTED.

Ed Winter, President

Wally J. Delamater, Clerk

CERTIFICATION

I hereby certify that the above Ordinance was adopted by the Council of the Village of Lakeview at a regular meeting held at the Village offices on August 8, 2005, pursuant to the required statutory notice and procedures.

Wally J. Delamater, Clerk

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