

ORDINANCE NO. 41

PRIVATE ROAD ORDINANCE
As Amended Through April 10, 2008

An Ordinance to protect the health, safety, and general welfare of the inhabitants of Port Sheldon Township.

The Township of Port Sheldon ordains as follows: This Ordinance shall be known as the "Private Road" Ordinance.

SECTION 1.01 PURPOSE The Township has hereby determined that as large tracts 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:

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

SECTION 1.02 DEFINITIONS For purposes of this section, the following terms are defined as follows:

- A. An "existing private road" is a private road or a private road system which is used to provide access to two or more existing lots, or dwelling units as of the effective date of this Section.
- B. An "existing lot" is a lot which, as of the effective date of this Section, meets at least one of the following conditions:
 - (1) the lot consists of a parcel described by metes and bounds for which a deed has been recorded with the Ottawa County Register of Deeds, or of a parcel described by a land contract or memorandum of land contract which has been recorded with the Ottawa County Register of Deeds;

- (2) the lot has been assigned its own permanent parcel number by the Ottawa County Property Description and Mapping Department and is individually assessed and taxed on that basis; or
 - (3) the lot consists of a "condominium unit" (i.e., a portion of a condominium project designed and intended for separate ownership and use as described in the condominium master deed) located within a "site condominium" development for which a condominium master deed has been recorded with the Ottawa County Register of Deeds in accordance with the requirements of the Michigan Condominium Act (PA 59 of 1978, as amended, MCLA 559.101 et seq.) and other applicable laws and ordinances.
- C. An "existing dwelling unit" is a single family home for which a building permit has been issued by the Township as of the effective date of this Ordinance.

SECTION 1.03 GENERAL REQUIREMENTS AND APPLICATION TO EXISTING PRIVATE ROADS

- A. After the effective date of this Ordinance, a private road shall not be constructed, extended, relocated, or improved except in accordance with the minimum standards and requirements of this Ordinance. If an additional lot is proposed adjacent to an existing private road, the road shall meet the requirements of Section 1.04E and a private road permit must be obtained as per Section 1.06. If an existing private 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
- B. Private roads are permitted in all zoning districts.
- C. The provisions of this Ordinance shall not apply to access roads internal to any individual lot or parcel of land which has direct public street frontage access and is under the control of one person, firm, corporation, or association, provided that the access road does not provide access to any abutting lot or parcel of land. Examples of access roads that may be exempted from the provisions of this Ordinance include those serving multi-family dwellings, nursing homes, hospitals, factories, schools, mobile home parks, and shopping centers which are otherwise subject to site plan review and approval under the provisions of the Port Sheldon Township Zoning Ordinance.
- D. The provisions of this Ordinance pertaining to names for private roads, house numbers and minimum lot frontage shall apply to an existing private road serving two or more lots.

- E. Private roads shall not interconnect with the public street network in a manner that will preclude the extension of public streets is necessary to further the logical, orderly, and efficient development of the overall public street network. In making such determination, the Township Board shall consider the circulation pattern and traffic volumes on nearby public streets, existing and proposed land use in the general area, the recommendations contained within the Port Sheldon Township Master Plan and Major Street Plan, if any and if applicable, the Street and Highway Plans of the Ottawa County Road Commission and Michigan Department of Transportation.
- F. Where private roads in existence prior to the effective date of this ordinance are to be extended or improved and serving five (5) or less lots, the existing road may be extended or improved provided that the entire private road is improved to the construction specifications of Section 1.04 (E) of this ordinance except for paving. A private road permit must be obtained as per Section 1.06.
- G. Where private roads in existence prior to the effective date of this ordinance are to be extended or improved and serving six (6) or more lots, the existing road may be extended or improved provided that the entire private road is improved to the construction specifications of Section 1.04 (E) of this ordinance including paving. A private road permit must be obtained as per Section 1.06.
- H. Where a private road serving five (5) lots or less has been approved and constructed under the terms of this ordinance and is proposed to be extended to serve six (6) or more lots, the existing road may be extended provided that the entire private road is improved to the construction specifications of Section 1.04 (E) of this ordinance including paving. A private road permit must be obtained as per Section 1.06.

SECTION 1.04 MINIMUM STANDARDS FOR PRIVATE ROADS

- A. A private road shall be located within a private road easement. Such easement shall not be less than sixty-six (66) feet in width.

At any dead-end of such easement, the easement shall widen such that there is a minimum radius of sixty (60) feet.

- B. A lot shall have frontage on the private road easement which is at least equal to the minimum lot width required for the zoning district in which the lot is located. Lots fronting on a cul-de-sac may be reduced to forty (40) feet at the front lot line, as long as the lot meets the minimum width requirement at the minimum front yard setback line.

- C. A private road shall intersect and connect to a public road. The private road shall have a minimum of sixty six (66) feet of frontage at its access point to the public road. A private road shall not be approved which accesses a public street or road by another private road.
- D. A private road serving two (2) or more lots shall be given a street name that is not the same or similar to any other street name in the county. A street sign bearing the street name given the private road meeting Ottawa 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. The provision shall also apply to existing private roads. A street sign shall be erected within one (1) year after the adoption of this Ordinance.
- E. A new private road serving six (6) or more lots is required to be paved with a minimum of two (2) inches of asphalt or equivalent dustless surface and shall have a minimum width of sixteen (16) feet with a three (3) foot shoulder on each side (see Figure 2). A new private road serving five (5) or less lots is not required to be paved but shall have a minimum width of sixteen (16) feet with a three (3) foot shoulder on each side (see Figure 1). 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) crown from centerline to the edge of the road. The road base shall consist of at least a six (6) inch gravel base (MDOT 22A) with a twelve (12) inch sand sub-base (MDOT Class 2). The road shall widen at any dead-end so there is at least a forty (40) foot radius turn-around. The top elevation of the roadway shall be a minimum of three (3) feet above the seasonal high water table. (Amended September 17, 1997)
- 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 (1.5) percent.
- G. A private road shall be constructed in a manner to provide effective storm water drainage and to prevent run-off onto adjacent property. 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 applicable Ottawa County Drain Commission and State of Michigan requirements.
- H. A dwelling unit which derives its primary access from a private road shall display a house number in a manner so that the number is at all times readily visible from the private road. The house numbers shall be a minimum of three (3) inches in height.

- I. In determining the location of a private road, consideration shall be given to safety of traffic entering and exiting the driveway in relationship with the public road.

SECTION 1.05 ROAD MAINTENANCE

A. Road Maintenance Agreement. (Amended Nov. 16, 1996)

The applicant (s) and/or owners(s) of the proposed private road shall provide to the Township Clerk a recorded road maintenance agreement, access easement agreement, and deed restrictions in compliance with Section 1.06(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. These documents shall contain the following provisions.

- (1) A method of initiating and financing of 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 and improvements, including the potential of future paving, if the road is extended to serve six (6) or more lots. For new private road applications and for applications for the extension of existing private roads submitted after October 31, 1996, the recorded road maintenance agreement and the method of apportioning the costs of maintenance and improvements shall provide that any future improvements required or desired shall be completed over the entire length of the private road and/or 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 Section 1.04 and assess owners of parcels on the private road for the improvements, plus an administrative fee in the amount of 5% of the total cost of the improvements.
- (4). A notice that no public funds of the Township of Port Sheldon are to be used to build, repair, or maintain the private road.
- (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 property using the road shall refrain from prohibiting, restricting, limiting or in any manner interfering 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. (Amended, Nov. 16, 1996)
- (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 existing private roads and private roads approved by the Township prior to October 31, 1996 shall provide that any future improvements required or desired shall be completed over the entire length of the private road and/or any extensions thereto. The Township Zoning Administrator shall review the road maintenance agreements for all existing private roads and private roads approved by the Township prior to October 31, 1996 and determine whether such agreements provide that any future improvements required or desired shall be completed over the entire length of the private road and/or any extensions thereto. All property owners abutting private road covered by road maintenance agreements that do not include such a provision shall be notified in writing by the Township Zoning Administrator of the requirements of this section. Said property owners shall be given a reasonable period of time to amend their road maintenance agreements and to record such amendment with the Ottawa County Register of Deeds.

SECTION 1.06 PROCEDURE FOR REVIEW OF PRIVATE ROADS

A. Permit Application and Fee

An application to establish, extend, or relocate a private road shall be filed with the Township Zoning Administrator along with a fee as set by the Township Board. This shall also apply to changing the name of a private road. The submission shall be made as set by the resolution adopted by the Township Board for establishing submission deadlines. The application shall contain or be accompanied by the following information: (*amended November 11, 2004*) (*amended April 10, 2008*)

- (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 not 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) A scaled drawing showing the location, route, dimensions, specifications and design of the private road and any proposed extensions of the road, existing or proposed curb cuts and the location and distance to any public street which the private road is to intersect, in compliance with this Ordinance.
- (5) A scaled drawing illustrating the proposed lot divisions.
- (6) A road maintenance agreement, access easement agreement and deed restrictions as described in Section 1.05 herein, shall also accompany the application.
- (7) A driveway permit application from the Ottawa County Road Commission.
- (8) A letter from the Ottawa County Road Commission indicating there is no known duplication of the proposed private road name.
- (9) The Zoning Administrator shall determine the type of information from the above items that will be necessary to consider a road name change plus a statement from all adjacent property owners with access to the private road indicating their desire to change the name of the road. (*amended April 10, 2008*)

B. Review of Permit Application (amended March 20, 1997)

- (1) The permit application, drawings and other required information shall be forwarded to the Planning Commission upon review by the Zoning Administrator to determine compliance with the standards for private roads. Not less than five (5) and no more than fifteen (15) days prior to the meeting, the Township Clerk shall send a notice to all property owners within three hundred (300) feet of the subject property. Said

notice requirement shall not be required for a road name change.
(amended April 10, 2008)

Such notice shall describe the approximate location of the proposed new private road or the extension or relocation of an existing private road and the date, time and place of the Planning Commission meeting at which the application will be considered. Such notice shall also invite all interested residents of the Township to attend said meeting for the purpose of commenting on the application.

- (2) The Planning Commission shall review this information and may consult with the Township Fire Chief, Attorney, Engineer or Planner as deemed necessary. A quorum of the Planning Commission shall be present to review and decide upon the permit application.
- (3) The applicant shall submit the petition at least thirty (30) days prior to the next Planning Commission meeting to be added to that meeting's agenda for consideration. (amended October 14, 2004)
- (4) The Planning Commission shall recommend approval or denial of the permit application within sixty (60) days of receiving all requested information from the applicant and all desired recommendations (e.g. from Planner, Fire Chief, Attorney, etc.). (amended October 14, 2004)
The Planning Commission shall approve a road name change provided there is proof there is no road name duplication or objection from property owners with access to the road. (amended April 10, 2008)
- (5) If the Planning Commission finds that the application meets the requirements of this Ordinance, it shall then approve by a majority of the membership the application and direct the Zoning Administrator to 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 Zoning 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 Township. This construction permit is not a Private Road Permit and does not authorize the construction of any dwelling units on the private road. 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.
- (6) If the Planning Commission denies the application, the Planning Commission meeting minutes shall be provided to the applicant within

fourteen (14) working days of the date of the Planning Commission meeting.

- (7) Final Compliance Requirements - Upon completion of construction of the private road, the applicant shall provide to the Zoning Administrator: a) a letter from a registered professional engineer or the Ottawa 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 Ottawa County Register of Deeds office, and c) a driveway permit for the private road from the Ottawa County Road Commission.
- (8) Private Road Permit Issuance - Upon approval of all items required for final compliance, the Zoning Administrator shall issue a Private Road Permit.
- (9) Permits for Dwellings on Private Roads - A building permit shall not be issued for any principal dwelling which derives its primary access from a private road 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 Township, 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.

- (10) 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 which derives its primary access from an existing private road as defined herein except as provided in Section 1.03 herein.

SECTION 1.07 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 save and hold the Township harmless from all claims for personal injury and/or property damage arising out of the failure to properly construct, maintain, repair and replace the private road. Such wording shall appear on the application for the permit and be signed by the applicant.

SECTION 1.08 VARIANCES Any person 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 sixty (60) days after filing. Written notice of such hearing by first class mail shall be provided to all adjacent properties which depend or may depend in the future on the private road for access and all properties within 300 feet of such private road and to all Planning Commission members. Such notice shall be given not less than seventy-two hours prior to such hearing. The decision of the Township Board shall be set forth in writing and be delivered to the applicant within thirty (30) 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 shall grant variances only upon a finding, from reasonable evidence, that the following facts and conditions exist: (*amended November 11, 2004*)

- A. THAT the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the intent and purposes of this Ordinance or the public interest. The possibility of increased financial return shall not of itself be deemed sufficient to 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 a nature as to make reasonably practicable the formation of a general regulation for such conditions or situation.
- C. THAT by reason of exceptional narrowness in width, breadth, length, or shape of 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 there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of this Ordinance is observed, public safety secured and substantial justice done.

SECTION 1.09 PENALTIES Any person who violates a provision of this Ordinance shall be responsible for a municipal civil infraction, and upon an admission or determination of responsibility thereof, shall be subject to a fine of not more than Five Hundred and 00/100 (\$500.00) Dollars, plus court costs. Each day that a violation occurs shall be considered a separate violation. The issuance of a citation for a municipal civil infraction shall not in any way limit the Township in seeking enforcement of the provisions

of this Ordinance, including, but not limited to, requesting a civil restraining order from any court of competent jurisdiction. (Amended September 17, 1997)

SECTION 1.10 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. (Amended September 17, 1997)

SECTION 1.11 EFFECTIVE DATE This Ordinance shall take effect thirty (30) days after its publication in the manner provided by law. (Amended September 17, 1997), (Amended June 1, 2000 effective July 7, 2000) (Amended Nov. 11, 2004 effective Dec. 11, 2004)