

TALLMADGE CHARTER TOWNSHIP

ORDINANCE NO. 03 14 95 A

PRIVATE ROAD ORDINANCE (RESTATEMENT) AS AMENDED THROUGH SEPTEMBER 2010

An Ordinance to protect the health, safety, and general welfare of the inhabitants of Tallmadge Charter Township.

The Charter Township of Tallmadge 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 three or more existing lots, or existing dwelling units as of the effective date of this Ordinance (March 28, 1995). An existing private road or road system must physically exist at the effective date of this ordinance.
- B. An "existing lot" is a lot which, as of the effective date of this Ordinance, 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.
- D. A 'private road' is a privately owned and maintained right-of-way which provides traffic circulation and principal means of access to three (3) or more parcels of abutting property.

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, or relocated, except in accordance with the minimum standards and requirements of this Ordinance.

The following information for registration and recording of an existing private road or private road system as defined by this Ordinance must be filed with the Township Clerk and Fire Chief within six (6) months after the effective date of this Ordinance. If this information is not filed, the provisions of Section 1.03 (D) shall not apply. The Fire Chief shall review the existing private road within sixty (60) days of receiving information and inform the owner(s) of problems associated with the existing road, if any. The Fire Chief will be required to file a report on the existing private road with the Township Clerk indicating his opinion of providing emergency service to the adjacent residents. This will be attached to any new building permit.

- (1) An aerial tax map depicting the existing lots served by the private road or road system with the private road or road system drawn on the map as accurately as possible.
- B. Private roads are permitted only in the AG and RP 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 Tallmadge Township Zoning Ordinance.
- D. Expansion of use.
 - (1) Private roads or roadway systems as defined herein and as registered under section 1.03(A) shall be permitted to serve additional lots or building sites, provided the entire road shall be upgraded to meet the standards contained in Attachment A plus all provisions of this Private Road Ordinance, subject to the following provisions:
 - a. The additional lots or building sites shall be approved by the Planning Commission, if they meet all requirements of this ordinance. The Planning Commission shall also review the documents required by this Ordinance for compliance with the provisions of Section 1.05 and 1.06. In the event, the owner or owners of an existing private road find these requirements to be impractical or physically impossible to accomplish, the provisions of Section 1.09 Variances may be pursued. Special consideration shall be given to all who complied with the original Ordinance. If the applicant desires to pursue a variance during the application process, the Planning Commission shall provide a recommendation to the Township Board considering the provisions of Section 1.09.
 - b. Additional lots or building sites created shall comply with the lot size and lot width requirements of the applicable zoning district.

If extensions to the existing roadway system are made to serve any additional lots, the road construction standards shall be determined by the total number of lots served by the entire private road or roadway system as outlined in Attachment A, and the entire private road or roadway system shall comply or be made to comply with said construction standards.

If a new private road is proposed from an existing private road creating an intersection of the two roads, the new private road shall have a name different and distinct from the existing road and shall be designed and constructed to meet the standards outlined in Attachment A based on all lots served by the new road and the existing road. If the existing private road does not meet the standards of Attachment A considering the lots served by the new private road, the existing road shall also be upgraded to comply with the road standards.

- (2) An expansion of use shall comply with the procedure and application requirements of Section 1.06 of this Ordinance.
- E. Requirements pertaining to names for private roads, house numbers and minimum lot frontage shall pertain to all private roads.

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 as illustrated in Attachment A. **When a private road terminates in a dead end, it shall contain a paved cul-de-sac.**

- 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, except extensions permitted by this Ordinance.

- D. The private road 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 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. For all new private roads, the address shall be the name of the private road, not the adjacent public road.
- E. A private road shall be constructed to the standards indicated in Attachment A.
- F. A private road shall not exceed a grade of eight (8) percent; provided that within thirty (30) feet of the intersection 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 a-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 so 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.
- J. A private road shall have a stop sign which requires all traffic to stop before exiting the private road and entering the public street upon which the private road fronts.
- K. All brush, ~~and~~ trees, stumps, and other obstructions shall be cleared ~~for to~~ to a distance ~~equal to at least of~~ **no less than** four feet (4') from each side of the road **and to a height of at least fifteen feet (15')**, for the entire **width** and length of the private road.

SECTION 1.05 ROAD MAINTENANCE The applicant (s) and/or owners(s) of the proposed private road shall provide to the Township 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.

- A. 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.
- B. A workable method of apportioning the costs of maintenance, snowplowing, and improvements. The road shall be snowplowed as often as necessary to keep it reasonably passable for motor vehicles, especially for emergency motor vehicles. For purposes of this Ordinance, the words 'maintenance' and 'improvements' shall include but not be limited to tree trimming, tree removal, and reconstruction of the private road.
- C. 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.
- D. A notice that no public funds of the Charter Township of Tallmadge are to be used to build, repair, or maintain the private road.
- E. Easements to the public for purposes of utilities, emergency and other public vehicles for whatever public services are necessary.
- F. 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.

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. 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 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 precise location, route, elevations, 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. (See Attachment A)
- (5) A scaled drawing illustrating the proposed lot divisions. (See Attachment A)
- (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 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.

B. Review of Permit Application

- (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.
- (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) If the Planning Commission finds that the application meets the requirements of this Ordinance, it shall then approve by a majority of the total 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.
- (4) 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.
- (5) 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 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.
- (6) Private Road Permit Issuance - Upon approval of all items required for final compliance, the Zoning Administrator shall issue a Private Road Permit.
- (7) 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.

- (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 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 EXISTING HARDSHIP CASES A special Board of Adjustment shall be appointed pursuant to this Ordinance by the Township Board from property owners in the Township for the purpose of addressing cases that are unusual equitable situations or hardship cases

This Board shall consist of five members and shall have authority for one (1) year after the effective date of this Ordinance to recommend exceptions to this Ordinance. Such exceptions which are approved by the Township Board shall be exempt from the terms of this Ordinance to the extent to which they are approved.

Criteria for the exceptions under this Section shall be the same as those set forth in Section 1.09.

A record of exceptions shall be kept by the Township Clerk and shall be binding in the Township, the property owners, and their heirs, executors, successors and assigns.

The Board of Adjustment shall adopt a procedure for applications, hearings, notice and times of hearing, which shall be public. Applications may be made by any person having a recorded interest in the property being considered.

The compensation of the Board of Adjustment shall be established and paid by the Township Board.

SECTION 1.09 VARIANCES Any person affected by a decision regarding this Ordinance shall have the right to appeal the decision to the Township Board within ten (10) 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. 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 ten (10) 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:

- 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 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 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 1.10 VIOLATIONS Any person, firm, or corporation which violates the provisions of this Ordinance shall be responsible for a municipal civil infraction. The sanction for a violation of this Ordinance shall be a civil fine of not less than \$50.00, plus costs and other sanctions. Increased civil fines may be imposed for repeated violations of this Ordinance by a person, firm, or corporation. A “repeat violation” of this Ordinance is a second or subsequent violation of this Ordinance committed by a person, firm, or corporation within six months of a prior violation of this Ordinance, and for which the

person, firm, or corporation admits responsibility or is determined to be responsible. The sanction for a violation of this Ordinance which is a first repeat violation shall be a civil fine of not less than \$250.00, plus costs and other sanctions. The sanction for a violation of this Ordinance which is a second or subsequent repeat violation shall be a civil fine of not less than \$500.00, plus costs and other sanctions.

SECTION 1.11 ADMINISTRATIVE LIABILITY No Township officer, agent, employee or member of the Township Board shall be personally liable for any damage which may occur to any person or entity as a result of any act or decision performed in the discharge of duties and responsibilities pursuant to this Ordinance.

SECTION 1.12 REPEAL All ordinances, parts of ordinances or amendments to ordinances, any of which are in conflict with the provisions of this Ordinance, as amended, are repealed to the extent of such conflict.

SECTION 1.13 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 1.14 EFFECTIVE DATE This Ordinance shall take effect immediately upon the second publication, March 28, 1995

TALLMADGE CHARTER TOWNSHIP

PRIVATE ROAD ORDINANCE

ATTACHMENT 'A' - ROAD STANDARDS

Private Road Category	No. of Lots served	Deadend Turnaround Easement	Minimum Surface Requirement Section 1.04E	Minimum Road Width Section 1.04E	Cul de sac Requirement Section 1.04G	Registered Engineer Section 1.06A Section 1.06B
A	3 - 4	60' radius min.	12" class 2 sand base 6" class 22A gravel 1-3/4" asphalt 2-1/2" asphalt	14'	40' radius min.	Yes
B	5 or more	60' radius min.	12" class 2 sand base 6" class 22A gravel 1-3/4" asphalt 2-1/2" asphalt	20'	40' radius min.	Yes

NOTE: Two (2) valley gutters are required where needed for drainage.
These standards apply to extensions of existing private roads and to new private roads.