

**BIRCH RUN TOWNSHIP
ORDINANCE NO. 98-2**

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, 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.

BIRCH RUN TOWNSHIP, SAGINAW COUNTY, MICHIGAN, ORDAINS:

Section 1 - TITLE

This ordinance shall be known and cited as the Birch Run 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 Township of Birch Run, and otherwise provide for the health, safety and welfare of the residents and property owners of the Township by establishing reasonable standards for prior review and approval of land divisions within the Township.

Section 3 - DEFINITIONS

As used herein, the following terms shall be defined as follows;

- 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. "Divide" 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 (as defined in the Act), and that satisfies the requirements of Sections 108 and 109 of the State Land Division Act. Division does not include a property transfer between two or more adjacent parcels, if the land taken for one parcel is added to an adjacent parcel.
- 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 representative, successors or assigns, that does not result in one or more parcels of less than 40 acres or the equivalent.
- 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 the Township of Birch Run.
- f. "Parcel" - means a contiguous area of land which can be described as stated in Section 102(g) of the Act.
- g. "Parent parcel" or "parent tract" - means a parcel or tract, respectively, lawfully in existence on March 31, 1997.
- h. "Resulting parcel(s)" - means one or more parcels which result from a land division.
- i. "Tract" - means two or more parcels that share a common property line and are under the same ownership.

Section 4 - PRIOR APPROVAL REQUIREMENT FOR LAND DIVISIONS

Land in the Township shall not be divided without the prior review and approval of the assessor, or other official designated by the Township Supervisor, 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 Township'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 Township'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

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An applicant shall file all of the following with the Township's Assessor or other official designated by the Township Supervisor 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 Township.
- b. Proof of ownership interest in the land which is subject of the proposed division, or written consent to the application, signed by the owner of such land.
- 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 Township, 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 this section.

The Assessor 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 division, 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 size and 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 the 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 Township Board 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. At the request of the applicant, a preliminary review and approval by the Assessor may be obtained based on scaled drawings. This preliminary approval is outside of the 45 day approval/denial period provided by the State Land Division Act. If preliminary approval is granted by the Assessor, the applicant must apply to the Township for public water and sewer availability, zoning ordinance compliance and for road accessibility. If public water and sewer are not available, approval is required through the County Health Department. After all necessary approvals are obtained and a survey has been completed, the applicant may submit for final approval.

- b. Upon receipt of a land division application package, the Assessor or other official designated by the Township Supervisor 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. The assessor or other designee shall promptly notify the applicant of the decisions and the reasons for any denial. If the application package does not conform to these Ordinance requirements and the State Land Division Act, the assessor or other designee shall return the same to the applicant for completion and refile in accordance with this Ordinance and the State Land Division Act.
- c. Any person or entity aggrieved by the decision of the Assessor or designee may, within 30 days of said decision appeal the decision to the Board of Zoning Appeals, which shall consider and resolve such appeal as outlined in the Birch Run Township Zoning Ordinance.
- d. 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 Registrar of Deeds office and filed with the Assessor or the designated official accomplishing the approved land division or transfer.
- e. The Assessor or designee 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 Ordinances of the Township of Birch Run, including, but not limited to, minimum lot size, frontage/width, minimum road frontage, minimum lot area and coverage, minimum lot width to depth ratio and minimum set-backs.

The depth to width requirements of this ordinance do not apply to a parcel larger than 10 acres.

The depth to width requirements may be waived by the Township under special and/or hardship conditions. Said conditions will be predicted on potential for agricultural or other usage of the property beyond the 4 to 1 ratio.

- b. The proposed land division(s) fully comply with all requirements of the State Land Division Act and this Ordinance.
- c. All parcels created and remaining shall have accessibility by vehicle traffic and for utilities to a public street. Private easements or roads are prohibited within the Township. Where accessibility is to be provided by a proposed new dedicated public street, proof that the Saginaw County Road Commission has reviewed and approved the proposed layout and construction design of the road and the utility easements and drainage facilities connected therewith is required.

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 Zoning Ordinance requirements and the requirements of 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 Registrar of Deeds, in a form acceptable to the Township, designating the parcel as "not buildable". Any such parcel shall also be designated as "not buildable" in the Township records, and shall not thereafter be the subject of a request to the Board of Zoning Appeals for variance relief from the applicable Zoning Ordinance 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 Board of Zoning Appeals has, previous to this ordinance, granted a variance from the requirements of the Zoning Ordinance 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, other ordinances of the Township, the 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 penalties and enforcement actions set forth in Section 10 of this ordinance, and as may otherwise be provided by law.

Section 10 - PENALTY 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 for 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.

Any sale of lands subdivided or otherwise partitioned to split in violation of this ordinance or the State Land Division Act is voidable at the option of the purchaser, and shall subject the owner to forfeiture of all consideration received or pledged therefore together with any damages sustained by the purchaser, recoverable in an action at law.

Section 11 - SEVERABILITY CLAUSE

This ordinance and the several sections and sub-sections, clauses and parts thereof, are hereby declared to be severable. If any part or clauses thereof is declared or adjudged invalid by present or future legislation or decree of Court, the balance of the Ordinance shall not be affected thereby.

Section 12 - CONFLICTING ORDINANCES

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 Birch Run Township Zoning Ordinance or Building Codes.

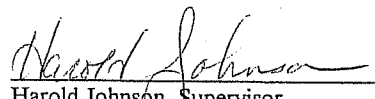
Section 13 - PUBLICATION AND EFFECTIVE DATE

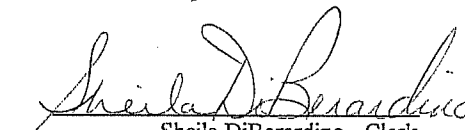
This Ordinance shall be published in the same manner as other Ordinances of the Township of Birch Run and shall become effective 30 days after its publication in a local newspaper of general circulation within the Township of Birch Run.

AYES: Members: Johnson, DiBerardino, Henige, Hadsall, Jankowski, Stewart

NAYS: Members: None


Adopted this 10th day of February 1998 by the Birch Run Township Board.


Harold Johnson, Supervisor


Sheila DiBerardino, Clerk

This Ordinance was published on the 27th day of February, 1998 in the Saginaw News.

I, Sheila DiBerardino, Birch Run Township Clerk, do hereby certify that the foregoing is a true copy of the Ordinance adopted by the Birch Run Township Board on the 10th day of February, 1998.


Sheila DiBerardino, Birch Run Township Clerk