

TOWNSHIP OF CHIKAMING
BERRIEN COUNTY, MICHIGAN

ORDINANCE NO. 89
Adopted: May 14, 1998

AN ORDINANCE TO REGULATE PARTITIONING OR DIVISION OF PARCELS OR TRACTS OF LAND, WITHIN THE TOWNSHIP OF CHIKAMING, BERRIEN COUNTY, MICHIGAN, ENACTED PURSUANT BUT NOT LIMITED TO ACT 288 OF THE PUBLIC ACTS OF 1967, AS AMENDED, AND ACT 246 OF THE PUBLIC ACTS OF 1945, AS AMENDED, BEING THE TOWNSHIP GENERAL ORDINANCE STATUTE; TO PROVIDE A PROCEDURE THEREFOR TO REPEAL ANY ORDINANCE OR PROVISION THEREOF IN CONFLICT HEREWITH; AND TO PRESCRIBE PENALTIES AND ENFORCEMENT REMEDIES FOR THE VIOLATION OF THIS ORDINANCE.

THE TOWNSHIP OF CHIKAMING, BERRIEN COUNTY, MICHIGAN ORDAINS:

Section 1. Title. This ordinance shall be known and cited as the Chikaming Township Land Division Ordinance.

Section 2. Purpose. The purpose of this ordinance is to carry out the provisions of the State Land Division Act (Act 288 of the Public Acts of 1967, 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 Chikaming Township by establishing reasonable standards for prior review and approval of land divisions within the Township.

Section 3. Definitions.

A. "Applicant" - a person, firm, association, partnership, corporation, or combination of any of them that holds an ownership interest in land whether recorded or not.

B. "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, gift 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 Section 108 and 109 of the State Land Division Act.

C. "Exempt split" - 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" - 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 Chikaming Township Board of Trustees.

Section 4. Prior Approval Requirement for Land Divisions. Land in Chikaming Township shall not be divided without the prior review and approval of the assessor or other official designated by the governing body, in accordance with this ordinance and State Land Division Act; provided that the following shall be exempted for this requirement:

A. A parcel proposed for subdivision through a recorded plat pursuant to the State Land Division Act.

B. A lot in a recorded plat proposed to be divided in accordance with Chikaming Township Lot Split Ordinance No. 42.

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 assessor or other official designated by the governing body for review and approval of a proposed land division before any division either by deed, land contract, lease for more than one year, or for building development:

A. A completed application on such form as may be provided by Chikaming Township.

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 Public Act 132 of the Public Acts of 1970, as amended, (MCL 54.211) by a land survey licensed by the State of Michigan, and showing the dimensions and legal descriptions of the existing parcel and each resulting parcel proposed to be created by the division(s), accessibility, and public utility easements from existing public roads.

In lieu of such survey map, the governing body or its designated agent delegated such authority by the governing body, may waive the survey map requirements where the applicant submits a 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. The governing body or its designated agent delegated such authority by the governing body, shall only waive the survey map requirement when a 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 or are located.

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. If transfer of division rights are proposed in the land transfer, detailed information about the terms and availability of the proposed division rights transfer.

G. Unless a division created 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 plans 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.

H. The fee as may from time to time be established by resolution of the governing body of Chikaming Township.

Section 6. Procedure for Review of Applications for Land Division Approval.

A. Upon receipt of a land division application package, the assessor or other official designated by the governing body, shall approve or disapprove the land division applied for within 45 days after receipt of a complete application package conforming to the Ordinance's requirements. The assessor, or other official designated by the governing body, shall promptly provide the applicant written notice whether the application is approved or disapproved, and if disapproved, all of the reasons for disapproval. If the application package does not conform to this Ordinance's requirements and/or the State Land Division Act, the assessor, or other official designated by the governing body, shall return the same to the applicant, together with a written statement of the reasons for its return, for completion and refile in accordance with this Ordinance and the State Land Division Act. No portion of the fee shall be returned if an application package is returned for failing to conform to the requirements of this Ordinance or the State Land Division Act.

B. Any person or entity aggrieved by the decision of the assessor, or other official designated by the governing body, may, within 30 days of said decision, appeal the decision to the governing body. The governing body shall consider and resolve such appeal by a majority vote of said Board at its next regular meeting affording sufficient time for a 21 day written notice to the applicant (and appellant where other than the applicant) of the time and date of said meeting and appellate hearing. The Township Clerk shall provide the written notice by first class mail or personal delivery and shall place the appeal on the governing body's agenda for its next regular meeting that allows for the notice period provided for herein.

C. After approval, no land division adjustment may be made to any assessment or tax roll until the land division transfer instrument is recorded in the Berrien County Register of Deeds Office.

D. The assessor, or other official designated by the governing body, 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 parcels 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 set-backs for existing buildings/ structures.

B. The proposed land divisions(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 and site development plan. 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 area abutting the 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 for the zoning district in which the parcel is located.

F. 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 Berrien County Road Commission has approved the proposed layout and construction design of the road and the governing body and other appropriate agencies have approved the 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, the accessibility shall meet the requirements of the Chikaming Township Site Development Policy.

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 in the Berrien County Register of Deeds Office, in a form acceptable to Chikaming Township, 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 the adoption of 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. Fee. The governing body shall by resolution establish the fee to be charged 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 11. Penalties and Enforcement. Any person, firm or corporation who violates any of the provisions of this Ordinance, in addition to the other provisions of this Ordinance, is responsible for a municipal civil infraction, subject to payment of a civil fine of not less than Fifty (\$50.00) Dollars or more than Five Hundred (\$500.00) Dollars, plus costs and other sanctions, for each infraction. Repeat offenses shall be subject to an increased civil fine as follows:

(1) The fine for any offense which is a first repeat offense shall be not less than Two Hundred Fifty (\$250.00) Dollars, plus costs and other sanctions.

(2) The fine for any offense which is a second repeat offense or any subsequent repeat offense shall not be less than Five Hundred (\$500.00) Dollars, plus costs and other sanctions.

A repeat offense means a second (or any subsequent) violation of this Ordinance (i) committed by a person within any six (6) month period and (ii) for which the person admits responsibility or is determined to be responsible.

Each day on which any violation of this Ordinance continues constitutes a separate offense and shall be subject to penalties or sanctions as a separate offense.

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 12. 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 or portion thereof.

Section 13. 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 Township Zoning Ordinance or the Township Building Code.

Section 14. Effective Date. This ordinance was adopted by the Chikaming Township Board at a regular meeting held in the Township Hall on the 14th day of May, 1998, and shall take effect the 15th day of June, 1998, the same being more than thirty (30) days after the date of publication.

Jeanne S. Dudeck
 Jeanne S. Dudeck, Clerk
 Township of Chikaming

Attest:

Harold J. Gilmore
 Harold J. Gilmore, Supervisor
 Township of Chikaming

CERTIFICATION

I do hereby certify that the foregoing constitutes a true and complete copy of Ordinance No. 89, duly adopted by the Township Board of the Township of Chikaming, Berrien County, Michigan, at a regular meeting held on the 14th day of May, 1998. I further certify that Dudeck moved the adoption of said ordinance and Zimmerman supported said motion. The names and the members of the Township Board and their vote on the foregoing ordinance were as follows:

MEMBERS	AYES	NAYS	ABSTAIN	ABSENT
Zimmerman	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Gibson	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Simmons	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Dudeck	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Gilmore	<u> </u>	<u> </u>	<u> </u>	<u> X </u>

I further certify that the aforesaid ordinance was recorded in the Ordinance Book for the Township of Chikaming on the 18th day of May, 1998, and such recording has been authenticated by the signatures of the Supervisor and Township Clerk. I further certify that the

foregoing ordinance was published in full in the Southcounty Gazette & Shopper, a newspaper circulated in the Township of Chikaming, Berrien County, Michigan, on the 18th day of May, 1998.

Dated: May 15th, 1998

Jeanne S. Dudeck
Jeanne S. Dudeck, Clerk
Township of Chikaming