

Ordinance No. _____

Private Road Ordinance

Town of Thomson

Carlton County, Minnesota

An Ordinance Regulating the Design, Construction, Inspection, Review, Approval, Use and Maintenance of Private Roads within the Town of Thomson, Carlton County, Minnesota.

The Town of Thomson Ordains:

SECTION 1. INTENT

The Board of Supervisors (the “Board”) of the Town of Thomson (the “Town”) hereby finds that unobstructed, safe, continuous and adequate access to private property is necessary to promote and protect the health, safety, and welfare of the public through police and fire protection, ambulance service and other emergency services. The Board further finds that adequate access is necessary to insure that such services can safely and quickly enter and exit private property at all times. The Board further finds that access to private property should meet minimum standards and specifications to permit future upgrading and dedication of such access rights of way when public dedication is desirable or required. The procedures, standards and specifications hereinafter set forth are determined to be the minimum procedures, standards and specifications necessary to meet the intent of this ordinance.

It is also the Board’s goal to assist owners of property on private roads that do not have a road maintenance agreement, to establish an approved road maintenance agreement and encourage the future care and maintenance of each private road.

SECTION 2. DEFINITIONS

Parcel: Shall have the same meaning as defined in the Town’s Subdivision Ordinance.

Shared Driveway: Any privately owned and maintained driveway or road, any portion of which (calculated from the public road to which it connects) is used or is likely to be used for access by vehicular traffic to two (2) or three (3) parcels of private property, or any combination of two (2) or three (3) residences or places of business. A separate Shared Driveway Ordinance has been adopted by the Town for regulation of Shared Driveways.

Private Road: Any privately owned and maintained road or driveway, any portion of which (calculated from the public road to which it connects) is used or is likely to be used for access by vehicular traffic to more than three (3) parcels of private property, or any combination of more than three (3) residences or places of business.

Public Road: A road under the jurisdiction of the Town or other public entity, including Carlton County and the State of Minnesota.

Road: A thoroughfare which affords vehicular traffic circulation and principal means of access to abutting property, regardless of whether designated as avenue, place, way, cul de sac, drive, lane, boulevard, highway, street or other name, but excluding alleys and Shared Driveways.

Use: Shall have the same meaning as defined in the Town's Zoning Ordinance.

SECTION 3. REQUIREMENTS No Private Road may be constructed within the Town except in accordance with this Ordinance.

3.1 Private Roads:

- A. Shall have a written, recorded agreement providing for maintenance and use obligations affecting all owners and users of the Private Road. If such agreement is not established and cannot be agreed upon by all owners and users, then the maintenance and use provisions of Section 4 below shall apply.
- B. Shall be designed and constructed in relation to public roads in such a manner as to minimize entrances onto public roads, and with proper concern for safety considerations such as sight distance, curves, hills, blind entrances and the like. The Town Zoning Officer will work with owners and users in the placement, design and construction of Private Roads, consulting as needed with the Town's Engineer, Road Foreman, Fire Official and other Town employees and consultants.
- C. Shall be within a recorded easement of not less than 66' in width unless a smaller width for all or a portion of the Private Road is approved at the discretion of the Town Zoning Officer, taking into consideration practical difficulties, topography, future development possibilities or lack thereof, and other matters, and with input from the Town's Engineer, Road Foreman, Fire Official and other Town employees and consultants. If it is reasonably conceivable that a Private Road could in the future become a public road, or if construction concerns such as topography, slopes, fills, sight distance or other issues will affect use of the Private Road, then the Town Zoning Officer may require that all or part of the Private Road easement be more than 66' in width.
- D. Shall be designed and constructed with an eye to future uses and development.

- E. Shall for all portions of the Private Road be constructed in accordance with minimum Private Road standards established by the Town, inspected and approved by the Town Road Foreman or the Town Engineer at owner's expense; provided that road construction requirements may be varied for different portions of a Private Road at the discretion of the Town Zoning Officer, consulting as needed with the Town's Engineer, Road Foreman, Fire Official and other Town employees and consultants.

3.2 Division of Land No person shall divide, sell, convey, encumber or transfer by any means, including by operation of law, any parcel of land within the Town unless said parcel of land:

- A. Fronts upon a public road; or
- B. Fronts upon a Shared Driveway in conformance with the provisions of the Town's Shared Driveway ordinance; or
- C. Fronts upon a Private Road designed, permitted, constructed, inspected during construction, approved and maintained in conformance with the provisions of this Private Road ordinance; or
- D. Has access to a public or Private Road in conformance with the frontage and access standards of the Zoning Ordinance, Subdivision Ordinance, and this Private Road Ordinance; or
- E. Is combined with a parcel of land which conforms with Subsection A, B, C or D above which otherwise meets applicable Zoning Ordinance requirements regarding lot area, and setback requirements; or
- F. Is conveyed by contract, deed or other conveyance (including through probate or other proceedings or by operation of law) which contains in the document of transfer or conveyance the following language: "This parcel is not buildable because it does not meet the standards set forth by the Town of Thomson Zoning Ordinance and the Town of Thomson Private Road Ordinance."

3.3 Building Permits No building permit shall be issued for any structure unless said structure will be located on a parcel which meets the criteria of this Section 3.

SECTION 4. MAINTENANCE AND USE REQUIREMENTS

If any Private Road exists in the Town and does not have a written, recorded agreement in place affecting shared use and maintenance, the following provisions shall apply and shall be privately enforceable by the owner of any parcel served by such Private Road, against all other owners or users thereof. The Town will not enforce these provisions for or against the owner or user of any parcel served by a Private Road in the Town.

Minimum Shared Use and Maintenance: Each Private Road in the Town which is not benefitted by a written, recorded agreement affecting shared use and maintenance shall be subject to the following provisions:

The road shall be maintained in a good and workmanlike fashion, shall be neat in appearance, and snow may be deposited immediately on either side of the road as reasonably necessary to keep such roadway open and safe for travel, but it shall not be deposited in such a manner as to create a safety hazard or an undue burden on adjoining property. The expenses of repairing and maintaining the road shall be shared equally by those parties which make joint use of the road, in proportion to their use; provided, however, that parties who make no use of portions of the road shall have no obligation to contribute to repairs and maintenance of portions which they do not use. Owners and users of the road will cooperate in discussing repairs, maintenance and upgrades and determining what work is to be undertaken with respect to the road. All actions as to expenditures for upgrades (such as improving to Town road standards and paving) must be unanimous or agreed to by the parties who will pay for same. Damage to or rutting of the road which is caused by one party shall be repaired as soon as practicable by such party, at its expense. Parties shall not park their vehicles or permit others to park vehicles (or otherwise block) the road, without in each instance first obtaining permission from the other parties validly using the road. State vehicles, fire and emergency vehicles and other vehicles as the owners and users deem necessary shall be allowed to use the road.

SECTION 5. PERMIT REQUIRED

No construction shall begin on any Private Road until a permit for construction has been issued by the Town. No permits for construction shall be issued until there is full compliance with the provisions of this Ordinance and the Town's Road Policy, and plans have been approved by the Town's Zoning Officer who may in his discretion consult with the Town's Engineer, Road Foreman, Fire Official and other Town employees and consultants.

SECTION 6. APPLICATION REQUIREMENTS

Application for construction of a Private Road within the Town shall include the following:

- 6.1 A complete Private Road Application including:
 - A. Documents evidencing ownership of the subject property over the previous five (5) years.
 - B. The names, address and phone numbers of all current owners of record affected by or connecting to the Private Road, and all persons owning legal or equitable interest, including parties to a land contract or purchase agreement. Written verification and proof of ownership shall be by most recent recorded deed or

- document of transfer of title, by an ownership and encumbrance report, or by current title commitment or title policy, which identifies the owner(s) of the parcel.
- C. The applicant's name, address, email address, phone number, and signature.
 - D. The parcel identification number(s) of the parent parcel or parent tract and a copy of the most recent property tax bill for the subject parcel(s).
 - E. Written proposal and drawings to be approved by the Town for the design of the intersection of any proposed Private Road with any public road.
 - F. Additional information as may be required by the Town to verify application information, geographic site data or to clarify status of other governmental reviews and approvals.

6.2 A complete legal description of:

- A. The Private Road easement for ingress, egress, roadway and public utility purposes.
- B. All parcels, including existing or proposed divisions, which are adjacent to, abut, or will have access to the Private Road. Note parcel numbers, dimensions and area (net and gross) for the parent parcel or tract and all resultant parcels. Survey is not required to identify all boundaries of every adjacent, abutting or accessible parcel, only the portions of such parcels which a pertinent to the application. The Zoning Officer may require that structures and improvements be shown on any such survey.
- C. Drainage and utility easements, and topographical contours if necessary as determined by the Zoning Officer.

The legal description shall be included on the plans submitted for review.

6.3 If required by the Zoning Officer, Road Foreman or Town Engineer, engineering plans of the proposed Shared Driveway/Private Road construction. Engineering plans shall be drawn to a minimum scale of 1" = 100', shall be prepared by a Registered Civil Engineer, and shall include the following:

- A. A vicinity map (scale of 1" = 2000' +/-) showing the location of the Shared Driveway/Private Road location in relationship to any access roads and cross streets.
- B. Existing topography and two (2) foot contour intervals for the portions of the site sufficient to determine drainage from the Private Road easement to a suitable storm water outlet.
- C. Proposed improvements shown in plan and profile indicating all materials, grades, dimensions and bearings. The plans shall also show all existing and proposed utilities, structures, and natural conditions existing adjacent to such improvements.
- D. Location, dimension and size of all existing and proposed property lines, parcels, buildings, wetlands, lakes, streams, ponds, drives, public and private driveways and roads, easements, drains, utilities, wells and septic fields, including setbacks from

all property lines on the subject parcel(s) and within one hundred (100) feet of the subject parcels.

- E. Soil erosion and sedimentation control measures shall be indicated on the plans.
 - F. The proposed location and type of access to each parcel which abuts or has access to the proposed Private Road.
- 6.4 A copy of the proposed roadway maintenance agreement that will be recorded with the deed or land contract for each lot or parcel to be served by the Private Road.
- 6.5 Application, planning and engineering review fees, as established by resolution of the Board.
- 6.6 If an application has not been approved, denied or withdrawn within one year from the initial date of application, then it shall be deemed to have been withdrawn and no rights shall accrue with respect to such application. Any future application concerning the same or similar Private Road shall be deemed a new application and all requirements set forth herein, including payment of applicable fees, shall apply as if no previous application had been submitted.

SECTION 7. ROADWAY DESCRIPTION AND MAINTENANCE AGREEMENT

- 7.1 All Private Roads shall have a minimum road easement of sixty six (66) feet in width and shall include an easement for the purposes of constructing, operating, inspecting, maintaining, repairing, replacing, and/or removing pipelines, mains, conduits and other installations of a similar character (hereinafter collectively called "Public Structures") for the purpose of providing public utilities, including conveyance of sewage, water and storm water runoff across, through and under the property subject to said easement, and excavating and refilling ditches and trenches necessary for the location of said structures. The Town is not obligated or responsible for the installation or maintenance of storm water or other public structures.
- 7.2 The legal description of the roadway easement shall be recorded as part of the deed or land contract for every parcel of property to which it provides access.
- 7.3 A Private Road Maintenance Agreement, in a form approved by the Board, shall be recorded as a part of the deed or land contract for every parcel of property to which the Private Road provides access. The Private Road Maintenance Agreement shall be binding on all parties, shall guarantee a financial mechanism for, and actual, regular maintenance of the Private Road by all benefited property owners, and shall include at a minimum the following:

- A. Creation of a Private Road Association responsible for the maintenance of the Private Road, including membership, annual meeting, and specification of duties and responsibilities.
- B. Method of assessment for road maintenance costs, including frequency, apportionment of assessment between property owners, collection process, and method of collection from delinquent property owners.
- C. Legal description of the Private Road and all parcels or lots adjacent, abutting or which have access to the Private Road.
- D. Purpose of easement, including ingress, egress, storm water and utility construction, maintenance, installation and improvement.
- E. Mechanism for a yearly estimate of expenses for road maintenance.
- F. Method of payment of extraordinary expenses.
- G. Association responsibility for maintenance in accordance with the Town's Private Road Ordinance.
- H. Remedies for property owner failure to comply with provisions of Private Road agreement.
- I. Notification of subsequent owners of Private Road agreement.
- J. Method of future dedication of Private Road to the public
- K. Method of amendment of Private Road agreement.
- L. A hold harmless clause in favor of the Town and its agents, boards, commissions, staff and consultants regarding design and maintenance of the Private Road.

7.4 The Town, Carlton County, and the State of Minnesota shall have no responsibility to maintain Private Roads, nor any obligation for associated storm water and utility installations unless the same are officially accepted by the Town for public maintenance.

SECTION 8. STANDARDS

8.1 All Private Roads shall conform with applicable road standards ("Road Standards") promulgated from time to time by the Town Board, as approved by the Town Engineer and Road Foreman. Easements shall be not less than 66 feet in width. Rules for dead-end roads, construction cross-sections, alignment, grade, design and other related matters shall be as set forth in applicable Road Standards.

8.2 Compliance With Permitting Requirements

- A. The applicant shall obtain a soil erosion control permit from the Carlton County Transportation Department and shall install and maintain required erosion control devices throughout the construction period and afterward, as applicable.
- B. Construction permits from the Carlton County Transportation Department. are required for connections to county roads and from the Minnesota Department of Transportation for connection to State Highways.

C. The applicant shall obtain wetland delineations, permits for wetland impacts, and any other required permits, reviews or approvals from applicable governmental agencies.

8.3 Private Road Names. All Private Road names shall be approved by the Town and Carlton County 911 Addressing Authority. All required name signs and sign posts shall be erected by the Carlton County Department of Transportation at the expense of the applicant. Each parcel or use with a separate number shall have a posted number at the beginning of the Private Road, and also at the point where the driveway for such parcel or use splits off from the main road, or in a location as may be designated by the Town's Fire Chief.

8.4 Drainage requirements shall be as set forth in applicable Road Standards.

SECTION 9. APPLICATION AND REVIEW PROCEDURE

- 9.1 The application form, plans and the proposed Private Road maintenance agreement shall be submitted to the Zoning Officer at least two (2) weeks prior to a regular Board meeting. The Town Clerk/Treasurer shall transmit a copy of the application and all attachments to the Town Engineer and Town Attorney. The costs of review and inspections by the Town Engineer, Town Attorney and other consultants shall be paid by the applicant.
- 9.2 The Zoning Officer shall review the application and the reports of the planning and engineering consultants and shall make a recommendation to the Board for approval, approval with conditions, or denial.
- 9.3 Upon receipt of the recommendation of the Zoning Officer, and design and technical review by the Town Engineer, the matter will be placed on the agenda of a regular meeting of the Board for consideration. The Board shall approve the plans only upon a finding that they comply with all requirements of this Ordinance and the Town Zoning Ordinance.

SECTION 10. INSPECTIONS AND APPROVAL OF CONSTRUCTION

- 10.1 All construction shall conform to the plans approved by the Town. All inspections will be based upon the approved plan. Construction not according to the approved plan and/or not inspected according to the Town's requirements shall not be approved. Road construction inspections may be completed by the Road Foreman and referred to the Town Engineer when the situation requires.
- 10.2 At least one week prior to the start of construction, a pre-construction meeting shall be scheduled by the applicant and held with the Zoning Officer and the Town Road Foreman to discuss the timing, inspection schedule and general conduct of the work.
- 10.3 Inspections of different phases of work by the Town Engineer shall be made according to the Road Policy. The contractor or applicant shall notify the Town Engineer 48 hours

before the conclusion of each step in road construction so that the required inspections can be scheduled. The applicant is responsible for ensuring that all required inspections are scheduled and occur.

- 10.4 The applicant shall provide evidence satisfactory to the Road Foreman certifying the weight and class of material used for all sub-base and aggregate used for the road and shoulder surfaces.
- 10.5 Inspections shall be certified by the Town Road Foreman. The completed inspection reports shall be filed with the Town Clerk/Treasurer so that a complete record of the Private Road construction is available.
- 10.6 All inspection fees shall be paid by the applicant prior to scheduling of inspections.

SECTION 11. EXTENDING EXISTING PRIVATE ROADS.

In those cases where the applicant wishes to extend an existing Private Road, such extension shall be considered only when the existing Private Road is brought into conformance with this Ordinance, unless the Zoning Officer believes such conformity would be impossible or impractical, in which case the opinion of the Zoning Officer, in consultation with the Road Foreman, Engineer, and Fire Chief shall be determinative. All standards as set forth herein shall apply to both the proposed extension and the existing roadway or, in the discretion of the Zoning Officer, portions thereof. Notification to all those persons who own any interest in the existing right-of-way, or have the right of access to their property therefrom, shall be required in writing and verification thereof shall be filed with the application for review and approval hereunder.

SECTION 12. PRIVATE ROADS NOT MEETING STANDARDS OF ORDINANCE

In those instances where a permit is being sought for the construction of a structure on an existing Private Road which does not meet the standards as herein set forth, the Zoning Officer shall, wherever possible and practical, in consultation with the Road Foreman, Engineer, and Fire Chief, require that said Private Road or portions thereof be brought into compliance with the standards set forth.

SECTION 13. ENFORCEMENT AND PENALTIES

- 13.1 The Town shall notify the responsible party or parties of violation(s) in writing. Said notice shall include the nature of the violation(s), the date on which the violation(s) were observed, and the action(s) necessary to eliminate the violation. Violations shall be corrected by the responsible party within ten (10) days of the date of the notice.
- 13.2 Violation(s) of the provisions of this Ordinance are punishable to the extent provided by law and shall be subject to a fine of up to five hundred dollars (\$500). Each day shall a violation is existing shall constitute a separate violation.
- 13.3 The Board may institute injunctive proceedings to prevent or enjoin any violation of the provisions of this Ordinance.

13.4 The rights and remedies provided herein are cumulative and in addition to other remedies provided by law.

SECTION 14. VALIDITY

This Ordinance and the various parts, sections, subsection, sentences, phrases and clauses thereof are hereby declared to be severable. If any part, sentence, paragraph, section, subsection phrase or clause is adjudged unconstitutional or invalid, it is hereby provided that the remainder of this Ordinance shall not be affected thereby.

SECTION 15. RELATIONSHIP TO OTHER LAWS AND ORDINANCES

Whenever regulations or restrictions imposed by the Ordinance are either more or less restrictive than regulations or restrictions imposed by governmental authority through legislation, rule or regulation, the more restrictive regulations or those which impose higher standards shall govern.

SECTION 16. EFFECTIVE DATE

This Ordinance shall take immediate effect following publication of a notice of adoption, as provided by law. Effective Date: _____

SECTION 17. CERTIFICATION

I, Rhonda Peleski, Clerk/Treasurer of the Town of Thomson, Carlton County, Minnesota, hereby certify that the foregoing ordinance of the Town of Thomson was duly adopted by the Town's Board of Supervisors at a regular meeting held on _____.

I further certify that board members _____, _____, _____, and _____, voted for adoption of the ordinance and no board members voted against the adoption. Board members _____ was absent. I further certify that notice of adoption was printed and published on the _____ day of _____, _____, in the Cloquet Pine Knot News, a legal newspaper circulated in the Town of Thomson. I hereby certify that I delivered a copy of the foregoing ordinance to the Carlton County Clerk on _____, _____.

Rhonda Peleski, Clerk/Treasurer