

CHAPTER 2

GENERAL PROVISIONS

Section 2.01 - ALTERATION ON DWELLINGS

Except and as hereinafter specified, no building structure, premises, or piece and parcel of land in and throughout the Township shall hereafter be used or occupied, and no building or part thereof or other structure shall be erected, raised, moved, placed, reconstructed, extended, enlarged, or altered, except in conformity with the regulations and provisions herein specified for the zone in which it is located.

Section 2.02 - GRADE LEVELS

- A. All dwelling houses in any zone and all business places shall, subsequent to adoption of this Ordinance, conform to all established and determined grade levels.
- B. The established grade shall be determined by averaging the natural grade elevations surrounding the proposed structure. The natural grade is the natural topography that existed before any site alteration.
- C. It shall be unlawful to erect or construct a building in any zone with the top of the foundation or basement walls together with the plates thereof, more than twenty-four (24) inches above the established or determined grade level.

Section 2.03 - BASEMENT DWELLINGS PROHIBITED

Basement dwellings are prohibited in the Township except as provided in Section 2.05.

Section 2.04 - MOBILE HOMES AND HOUSE TRAILERS

- A. A mobile home may be used in any zone in which a single family dwelling is permitted without application for special approval if the mobile home complies with the definition of "Dwelling, Single Family" as defined in this ordinance.
- B. Under skirting shall be provided from the floor level to the ground level around the entire perimeter of the mobile home.
- C. All mobile homes shall be secured to a minimum of four (4) tie downs; two (2) tie downs per side or according to HUD requirements, whichever are more strict.
- D. A mobile home or house trailer which does not meet the definition of "Dwelling, Single Family" shall not be permitted in any zone within the Township except in a seasonal trailer park or mobile home park located in the "P-D" Zone and approved by the Planning Commission.

The minimum floor area in such a dwelling shall not be less than six hundred (600) square feet with a minimum width of twelve (12) feet.

Section 2.05 - TEMPORARY DWELLINGS

No cabin, garage, basement, tent, motor home or travel trailer or other temporary structure shall be used in whole or in part for dwelling purposes in any zone provided that such structure may be used for a temporary dwelling for a period not to exceed six (6) months upon application to and approval of a permit for such occupancy by the Zoning Administrator upon determination that the following conditions exist and are met:

- A. The permanent dwelling of the resident applicant has become uninhabitable due to damage caused by fire, wind or other natural calamity or emergency.
- B. Due to undue hardship, the applicant is unable to obtain another dwelling unit as a temporary residence.
- C. Adequate provision is made for temporary public or private water supply and sewage disposal to and from said structure.
- D. The structure is constructed so as to meet the minimum requirements for the health, safety and welfare of those occupants and the surrounding neighborhood.

Section 2.06 - ACCESSORY STRUCTURES

- A. Purpose - The purpose of this section is to provide standards for land that is primarily residential with regard to attached and detached accessory structures, including, but not limited to, attached and detached garages, pole buildings, sheds and other structures as defined in Section 1.03–Structures. Accessory structures are intended to be subordinate to the principal structure.
- B. Definitions - Refer to Section 1.03-Accessory Structures.
- C. Detached Accessory Structures
 - 1. May only be built on a lot upon which there is a principal structure.
 - 2. Are prohibited in the front yard, as defined in Section 1.03-Yards-Front Yard, or in either of the front yards on a corner lot, unless the following conditions apply:

On a waterfront lot, one (1) detached accessory structure may be located on that Portion of the lot between the water and the principal dwelling provided the following criteria are met:

 - a. It shall not exceed one hundred (100) square feet in area and ten (10) feet in height to the peak.
 - b. Shall meet all setback requirements of the zone district in which it is to be located.

- c. The area of such accessory structure shall be counted as part of the overall lot coverage on the lot.
3. Shall not be used for dwelling purposes. If plumbing facilities will serve the structure, the structure shall be limited to no more than two (2) internal plumbing fixtures located on the ground or first floor of the accessory structure.
4. Shall maintain a minimum of ten (10) feet of separation from each other and from the principal structure.
5. Shall comply with all yard, setback and lot coverage requirements applicable to the permitted principal structure, except for accessory structures on lots less than or equal to one (1) acre (43,560 sq ft), the following shall apply:
 - a. The accessory structure shall not exceed eighteen (18) feet in height to the peak.
 - b. Within any zone district that permits a residential use, a maximum of two (2) detached accessory structures are permitted, one of which shall not exceed one hundred (100) square feet in area and ten (10) feet in height to the peak.
 - c. When a lot is less than or equal to one (1) acre (43,560 sq ft), the total ground level gross square footage of all detached accessory structures shall not exceed the gross square footage of the first floor of the principal structure, exclusive of all attached accessory structures.
6. Lots under common ownership that are adjacent to one another or separated only by a public road (e.g. lots are directly across from one another) may be legally combined to form one lot. Once combined, an accessory structure may be erected across the street from the principal building lot provided all yard requirements for a principal structure are maintained.
7. If the detached accessory structure has an attic or second story, it shall be used for storage purposes and access to the attic or second story shall be by interior access only; exterior access or stairs shall not be permitted.
8. A site sketch shall be submitted along with a zoning permit application and approved by the Zoning Administrator prior to erection of a detached accessory structure. Such site sketch shall be drawn to scale and shall illustrate information necessary to determine compliance with applicable Ordinance requirements, including but not limited to dimensions and height of the structure, setbacks from lot lines and other structures on the property, location of the structure, and elevation renderings.

D. Attached Accessory Structures

1. Shall comply in all respects with requirements of this Ordinance applicable to the permitted principal structure.

2. An attached accessory structure may include second floor living space provided that such living space is a contiguous extension of living space within the primary structure. Access to the second story shall be by interior access only; exterior access or stairs shall not be permitted.
3. Attached accessory structures shall comply with all yard, setback, height and lot coverage requirements applicable to the permitted principal structure, except accessory structures on lots less than or equal to one (1) acre (43,560 sq ft), the following shall apply:

An attached accessory structure, including a garage, shall not exceed sixty (60%) percent of the ground floor area of the attached single family dwelling. Notwithstanding the above, an existing single family dwelling less than 960 square feet is permitted an attached garage up to five hundred and seventy six (576) square feet, or 24'x24', in area regardless of the ground floor area, subject to standards within the applicable zone district.

Section 2.07 - STORAGE OF VEHICLES AND EQUIPMENT

No area within any zone shall be used for the open space storage, dismantling, accumulation, or abandonment of dismantled, disabled, wrecked or discarded motor vehicles or machinery, fixtures, appliances, junk or any part thereof.

Section 2.08 - ESSENTIAL SERVICES

Essential services shall be permitted as authorized or regulated by law and the Ordinances of this Township in any zone, it being the intention hereof to exempt such erection, construction, alteration and maintenance from the application of this Ordinance.

Section 2.09 - HIGHWAY INTERSECTION SETBACKS

- A. At the intersection of any State Trunkline Highway and any County Primary Road and for a distance of one hundred (100) feet as measured along each right-of-way line from the point of intersection of the right-of-way lines, and then diagonally, no building or structure shall be erected or located within one hundred (100) feet of said right-of-way except approved directional or other official sign or open fences allowing totally unobstructed vision.
- B. At the intersection of any County Local Road with any State Trunkline Highway or County Primary or Local Road and for a distance of fifty (50) feet as measured along each right-of-way line from the point of intersection of the right of-way lines, and then diagonally, no building or structure shall be erected within fifty (50) feet of the right-of-way line of the County or Local Road except approved directional or other official sign or open fences allowing totally unobstructed vision.

Section 2.10 - ANIMALS IN ZONED AREAS

It shall be unlawful to keep animals such as horses, cattle, pigs, goats or poultry on any premises in an "R" - Residential, "E" - Environmental, "C" – Commercial, or "M" - Manufacturing zone provided that the keeping of such animals shall be permitted in an "R-1", "R-2" and "E" zone and residential

lots in the "A" - Agricultural zone where the size of the lot upon which the same shall be kept shall be not less than five (5) acres in area with a minimum width of two hundred (200) feet and where a total enclosure of fencing is provided. This restriction shall not prohibit the keeping of ordinary household pets in any zone.

Section 2.11 - RESTRICTIONS APPLICABLE TO PROPERTY ABUTTING LAKES, RIVERS OR STREAMS

Many lands within the Township are connected to, adjoin or abut lakes, East Arm of the Grand Traverse Bay, rivers, streams and wetlands. In the interest of protecting the water quality, controlling erosion, and preserving the natural setting of the shoreline, the following provisions are applicable:

- A. A strip of natural vegetation shall be maintained paralleling the shoreline or streambed and traversing the property in question for a depth of twenty-five (25) feet beginning at the edge of surface loam soil or a contiguous root system, whichever occurs nearest to the shoreline. For undeveloped lots only no more than thirty (30) percent of all living trees and shrubs may be removed by cutting them to grade level. Trees and shrubberies may be trimmed and pruned for a view of the water from the property. No land alterations including the removal of tree stumps and natural ice dams shall be allowed within this native protection strip.

- B. If living trees and shrubs are proposed for removal in excess of those permitted in Section 2.11-C, or if land alterations will occur within the native protection strip specified above, the following requirements must first be met:
 - 1. The applicant shall submit a site plan in accordance with Chapter 17. The submission requirements for the site plan shall include items 17.04-A 1-14, and 17.04-B 1-7 and 22. The site plan shall be prepared by a Natural Shoreline Professional certified by the Michigan Natural Shoreline Partnership or a qualified professional and shall detail the proposed modifications to the property to enable the Planning Commission to determine the extent and potential impacts of proposed changes. In addition to the review process outlined in Chapter 17, prior to Planning Commission action on the request, the applicant shall submit the site plan to the Antrim County Soil Erosion Control Officer for review.
 - 2. The shoreline erosion design shall make every effort possible to maintain a forested/wooded shoreline character by maintaining existing trees and shrubs in the design and construction of the new shoreline protection system.
 - 3. The Planning Commission may require a performance guarantee as outlined in Section 17.08 to insure completion of any restoration, native landscaping or other features of the proposed modifications. An inspection coordinated with the Township Zoning Administrator, conducted by the Antrim County Soil Erosion Control Officer shall take place after the modifications have been completed to determine whether stipulations have been met and whether Township permits can be issued. A second inspection coordinated with the Township Zoning Administrator, shall be conducted by the Antrim County Soil Erosion Control Officer one year after Township permits have been issued to

determine whether any required performance guarantee can be relinquished to the applicant. If the condition of the site is in compliance with approved plans, any such performance guarantee shall be returned to the applicant.

4. The Planning Commission shall consider the recommendation of the Soil Erosion Control Officer, the extent of proposed vegetation removal or land alteration, proposed restoration, existing and proposed topography, and the location of any nearby structures. The application shall be approved where it is shown that the proposed modifications will not be injurious to shoreline on adjacent properties, and where the plan demonstrates an intent to improve a situation that is dangerous to the general public or harmful to water quality because of unchecked or potential shoreline erosion, sediment runoff or water pollution.

Section 2.12 - HOME OCCUPATIONS

Unless otherwise specified herein, home occupations will be permitted in the R Zone only upon approval as a special exception as provided in Section 19.07.

Section 2.13 - PRIVATE WATERFRONT ACCESS

All private unoccupied waterfront accesses will conform as a minimum to the width and square footage requirements for a platted lot within the R-I zone. A private access of the required minimum size can support a maximum use density of five (5) non-waterfront property dwelling units. An additional twenty (20) feet of width and four thousand (4,000) square feet of land will be provided for each additional dwelling unit over five (5) dwelling units.

Section 2.14 - SCENIC VISTAS

No materials, accessory structures, or vegetation shall be placed in such a manner so as to unreasonably deprive other property owners of their pre-existing scenic view or vista.

Section 2.15 - GENERAL LOT AND YARD REQUIREMENTS FOR ALL ZONE DISTRICTS

Non-Duplication - In determining lot and yard requirements, no area shall be counted as yard to more than one structure or use, and no area necessary for compliance with the open-space requirements for one structure or use shall be counted in the calculation or requirements for any other structure or use.

Section 2.16 - WATER SUPPLY AND SEWAGE DISPOSAL FACILITIES

Every building hereafter erected, altered or moved upon any premises and used in whole or in part for dwelling, recreational, business, commercial or manufacturing purposes, including churches, schools and other buildings in which persons customarily congregate, shall be provided with a safe and sanitary water supply system, and with means for collecting and disposal of all human excreta and of all water-carried domestic, commercial, industrial, and other wastes that may adversely affect health conditions. The written approval of such facilities by the District Health Department Number Three shall be filed with the application for a Zoning Permit as hereinafter provided. Temporary sanitation facilities used for more than two (2) days may be permitted by signed approval by the Zoning Administrator and must be properly screened from public view.

Section 2.17 - GRADING

No premises shall be filled or graded so as to increase the amount or velocity of surface water run off onto adjoining parcels.

Section 2.18 - LOT CREATION, LAND DIVISION & CONDOMINIUM DEVELOPMENT

- A. Approval Required - For the purposes of this Ordinance, the Township of Elk Rapids shall not recognize any lot which was not a lot of record as of the effective date of this Ordinance, or any amendment thereto, is not of sufficient size and configuration to meet all zoning requirements, or which has not been subsequently approved by the Elk Rapids Township Board as established under this Section. Subdivisions, site condominiums, or plats may be made only in accordance with the Michigan Subdivision Control\Land Division Act or the Michigan Condominium Act as amended and in accordance with the conditions of the Elk Rapids Township Subdivision Control Ordinance or the Land Division Ordinance and the Elk Rapids Township Zoning Ordinance

- B. Application for Lot Creation, Land Division & Condominium Development - Application for a lot creation, land division & condominium development shall be made to the Elk Rapids Township Clerk. If generally complete, the application shall be processed in accordance with this Ordinance and the Elk Rapids Township Subdivision Control Ordinance or the Land Division Ordinance. The application shall be signed by all parties of interest in the property.

- C. Required Application Information -The following required information shall be included on all applications for lot creation, land division & condominium development:
 - 1. Property survey signed and sealed by a land surveyor registered in the State of Michigan, including the following:
 - a. North arrow, date, and scale.
 - b. Existing and proposed lot lines and dimensions.
 - c. Existing utilities and official County drainage courses within fifty (50) feet of the lot(s) to be created.
 - d. Location and dimensions of existing and proposed easements, lot numbers, roadways and lot irons.
 - e. Existing structures on the proposed lot(s) and all structures within 50 feet of the proposed lot lines.
 - f. Zoning classification of the lot(s) to be created and all abutting lots.
 - g. All required front, rear and side yard setbacks resulting from the requested lot creation.
 - h. All required open space.

- i. Location of natural or artificial drainage courses, lakes, streams, wetlands, and dunes, high risk erosion zones, threatened or endangered species, unusual topography, and major stands of trees.
 - j. At the discretion of the Elk Rapids Township Board, the owner shall provide a preliminary plan for the feasible plan development, division and access to any remaining or abutting lands affected by the proposed lot creations. The Elk Rapids Township Board may also at their discretion, require the preliminary plan to be reviewed by the Elk Rapids Township Planning Commission.
 2. A written instrument fully executed in a form legally sufficient for recording with the Antrim County Register of Deeds, including a legal description of the requested parcels. Areas shall be shown to the square foot on parcels of less than one acre and acres to the one-hundredth of an acre on parcels larger than one (1) acre.
 3. All existing and proposed deed restrictions for the property(s), including any required easements for drainage, roads or utilities attached in recordable form.
 4. Name, address and phone number of the property owner(s) and all others holding interest in the property. Satisfactory evidence of ownership or interest shall be presented to the Township.
 5. If the division or partition of the parcel will result in a lot size less than the requirements of the Land Division Act, Michigan Public Act 288 of 1967, as amended, and/or the applicable provisions of the Zoning Ordinance or its successor ordinance, if any, then the applicant shall submit in addition a fully executed affidavit in form legally sufficient for recording with the Antrim County Register of Deeds and signed by all persons who have any legal or equitable interest in the parcel, acknowledging that they understand the partitioned or divided parcel or parcels may not thereafter be developed or used separately, but only in conjunction with the adjoining parcel or parcels of land.
- D. Criteria for Approval or Denial of Lot Creation - The following criteria shall be used as a basis upon which lot creation will be reviewed by the office of the Supervisor, Clerk, Treasurer, Board and Assessor:
1. No lot creation shall be approved if the proposed resultant parcels contain less area than required by the minimum standards of this Zoning Ordinance, except where resultant abutting parcels under the same ownership are combined to meet, or exceed the minimum size.
 2. The ratio of lot depth to width shall not exceed four (4) to one (1).
 3. All lots shall be provided with a satisfactory means of access to a public road or a private road complying with the provisions of this Ordinance and the provisions of the Elk Rapids Township Subdivision Control Ordinance or the Land Division Ordinance.

Property lines shall be laid out to promote efficient development with shared access to roads available for future development.

4. The size, shape, orientation, and existing zoning of the lots shall be appropriate for the type of development and land use contemplated. No lot creation shall be approved which would conflict with existing drainage ditches, natural watercourses, easements or public right-of-way.
5. No lot creations shall be granted which are contrary to, or in violation of, the Land Division Act, Michigan Public Act 288 of 1967, as amended.
6. No lot creation shall be approved if the division would reduce any required open space, yard space or off-street parking space below the minimums required by this Ordinance or if the division would effectively allow the avoidance of the requirements of this Ordinance and those of the Elk Rapids Township Subdivision Control Ordinance or the Land Division Ordinance.
7. No lot creations shall be approved which would preclude the feasible and efficient development, division or access for remaining or abutting lands affected by the proposed lot creation. No lot shall be created solely of sand dunes area, wetland area, drainage ways, lake or river bottom, lands within the 100 year flood plain or stream bed based on the Ordinary High Water (OHW) elevation, I.G.L.D. 1985 (International Great Lakes Datum).

Section 2.19 - PRIVATE ROAD REGULATION

Private Road - Any road or thoroughfare for vehicular traffic which is privately owned and maintained and which provides the principal means of access to abutting properties.

- A. When private road development occurs in the Township of Elk Rapids and is not subject to the standards established under the Land Division Act, Michigan Public Act 288 of 1967, as amended, and the requirements of the Elk Rapids Township Subdivision Control Ordinance or the Land Division Ordinance, the following minimum private road standards shall apply. No person, firm, or corporation shall hereafter divide any land as hereinafter described without providing for public or permanent private easements for access to such divided lands with said private easements to conform to these minimum requirements:
 1. All lots must be on a public or private road frontage and meet all Ordinance requirements.
 2. All private roads constructed in Elk Rapids Township shall be accessible, usable, and constructed to the Antrim County Road Commission Standards parallel to and centered with the centerline of a permanent right-of-way easement duly recorded with the Antrim County Register of Deeds. Rights-of-way or easements, while not required to be dedicated, will be reserved for future dedication and preclude any development

within this designated area. All plans as submitted for approval must show the private road easement including a legal description, the grades for the roads, and any drainage facilities and structures.

3. All private roads shall have names approved by the Elk Rapids Township Board, be consistent with the County address numbering system and the County Road Commission requirements.
4. There shall be a clear vision zone at corners of intersecting roads, or road junctions, consisting of a triangular area defined by the point of intersection of the right-of-way lines and the two points extended along such lines a distance of twenty-five (25) feet from the point of intersection, and within which area no obstruction to vision, excluding existing topography, shall be permitted from a height of two (2) feet to eight (8) feet above centerline elevation of abutting streets, except that not more than two (2) trees with trunks of not more than thirty (30) inches in diameter each, and clear of any branches for such heights may be located within such area; provided, however, that this section shall not prohibit the requirement of a greater clear vision area where such is necessary in view of permitted traffic, anticipated traffic volumes, or geographic conditions.
5. All private road easements shall meet the following requirements:
 - a. Unless otherwise specified in this Ordinance and the Elk Rapids Township Subdivision Control Ordinance or the Land Division Ordinance, easements shall be a minimum of sixty six (66) feet wide. The Township of Elk Rapids Planning Commission or its designated agent may require additional width to the right-of-way easement to insure for adequate construction in specific situations.
 - b. The right-of-way easement width on curved portions of roads shall be the same as for tangent portions.
 - c. The minimum distance between private road outlets on a single side of a public road shall be six hundred (600) feet.
 - d. Shall be posted with speed limits of fifteen (15) mph or less.
6. A drainage plan shall be submitted on a topographic map, indicating the manner in which surface drainage is to be dispersed. In no case shall runoff from a private road be diverted beyond the limits of that private road onto adjacent roads or property unless appropriate easements are provided.
7. All roads constructed in Elk Rapids Township shall be constructed so as to sufficiently control storm water runoff and permit effective storm water drainage and prevent soil erosion and shall have all required storm water and soil erosion control permits. No runoff shall be discharged to lakes, streams, or wetlands without adequate best

management practices. Private roads shall be laid out to the greatest extent feasible to achieve the following objectives: (Listed below in order of priority, as it is recognized that some may not exist or may conflict with others on any given site)

- a. Not on soil classified as “hydric” (wetland soils) by the USDA Soil Conservation Service or through wetland area as delineated pursuant to the Unified Federal Method of Wetland Delineation.
 - b. Not in areas of steep slopes (fifteen percent (15%) or greater), within two hundred (200) feet of a shoreline or over streams if they can be avoided.
 - c. Along fence rows or the edges of open field or other open spaces adjacent to any woodlands.
 - d. Within marginal areas of woodland (note: marginal areas shall extend a maximum of two hundred (200) feet into the interior of said woodlands).
 - e. On areas not considered prime or unique farmlands or in areas not considered as prime forestland soils on a national or regional basis.
 - f. In locations least likely to impact scenic vistas, as seen from public roadways or water.
8. A private road serving or to serve a maximum of two (2) lots, parcels or condominium units shall at a minimum meet the following design standards:
- a. Shall be located on a right-of-way easement a minimum of thirty (30) feet wide.
 - b. Have sand and gravel base of not less than twelve (12) inches in depth of which the top six (6) inches in depth shall be at minimum road grade gravel.
 - c. Have a roadbed not less than twelve (12) feet wide.
 - d. Use adequate best management practices when crossing streams, drainage courses, and wetlands.
 - e. No portion of the road grades shall exceed seven (7%) percent.
 - f. Shall have a maximum length of two thousand (2,000) feet.
9. A private road serving or to serve a minimum of three (3) and a maximum of six (6) lots, parcels, or condominium units shall at a minimum meet all of the design standards presented in Item 8 of this section with the exception of that the minimum road bed width shall be sixteen (16) feet rather than twelve (12) feet.

10. A private road serving or to serve a minimum of seven (7) and a maximum to twelve (12) lots, parcels, or condominium units shall at a minimum meet all of the design standards presented in Item 8 of this section with the exception of the following:
 - a. Shall be located on a right-of-way easement a minimum of sixty six (66) feet wide.
 - b. Have a roadbed not less than nineteen (19) feet wide.
 - c. Paving shall be required in those areas that have grades greater than three (3) percent. Pavement in said areas shall be a minimum of eighteen (18) feet in width and other than pavement width meet or exceeding County Road Commission standards and specifications for materials, thickness, and roadbed construction. (Note: grade shall be determined by determining the differences in elevations at stations located at one hundred (100) feet intervals along the centerline of the final road grade).
11. A private road serving or to serve more than twelve (12) lots, parcels or condominium units shall meet design specifications and road construction standards as presented in Item 10 of this section with exception of the following:
 - a. Have a roadbed not less than twenty-four (24) feet wide unless it connects two public roads in which case all County Road Commission standards shall be met.
 - b. If more than twenty-five (25) lots have access to a private road then a second means of access meeting the requirements of this Ordinance (either a public road or an approved private road) shall be provided.
12. Construction permits from the Antrim County Road Commission are required for connection to County roads. Permits are required from the Antrim County Drain Commissioner under the Soil Erosion and Sedimentation Control Act, P.A. 347 of 1974, MCLA282.101 et seq., when applicable. No zoning permit shall be issued on any private road until such private road reviewed by the Elk Rapids Township Planning Commission and then approved by the Elk Rapids Township Board.
13. Application for road construction shall be made at the same time as a land division occurs creating a lot(s) without frontage on an existing public road. Applicant shall prepare a general property development plan complying with the requirements of this Ordinance, and the Elk Rapids Township Subdivision Control Ordinance or the Land Division Ordinance, as amended. Prior to review by the Elk Rapids Township Planning Commission and then approval by the Elk Rapids Township Board, the applicant will prepare and provide three (3) sets of:
 - a. Engineered road construction plans.
 - b. Drainage plan.

- c. Road maintenance agreement and deed restrictions satisfactory to the Elk Rapids Township Attorney, signed by applicant/owner, providing for:
 - 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 to current and future users.
 - 3) A notice that if repairs and maintenance are not made within six months of the date of official notice from the Elk Rapids Township Board of Elk Rapids Township may bring the road up to the design standards of this Ordinance and assess owners of parcels on the private road for the cost of all improvement, plus an administrative fee in the amount of twenty-five (25) percent of the total costs.
 - 4) A notice that no public funds of Elk Rapids Township are to be used to initially build, thereafter repair, or maintain the private road.
 - 5) Easements to the public for purposes of 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, guest, invitee, vendors, trades persons, delivery person, and others bound to or returning from any of the properties having a need to use the road.

14. No private road shall be incorporated into the public road system unless built to the specifications of the Antrim County Road Commission for a public road.

B. The Elk Rapids Township Planning Commission shall review the plans of the private road and forward recommendations to the Elk Rapids Township Board. A Professional Engineer, who reports to the Elk Rapids Township Zoning Administrator, shall be hired by the private road developer. The Engineer and the Elk Rapids Township Zoning Administrator shall consult with water resource experts and/or Michigan Department of Natural Resources officials for a written review of environmental impacts. After road plans are reviewed by the Elk Rapids Township Board, a conditional construction permit may be issued by the Zoning Administrator which are subjects to performance bonds as established by the Township Board. The Engineer and Township Zoning Administrator will inspect and review the road during construction. Upon completion of construction of the road, a site inspection of the road will be made by the Engineer and the Zoning Administrator who shall forward his/her recommendation to the Township Board who shall then grant a final approval.

- C. All private roads shall be designated as such and have a sign and name meeting county sign standards erected by the property owner. In addition to road identification, private road signs shall also include the wording "Private Road" in a minimum of four (4) inch letters and "Not maintained by the Antrim County Road Commission" in a minimum of two (2) inch high letters.
- D. An application fee is to be established by the Elk Rapids Township Board. Before final approval the cost of review of plans and inspection by the Township Zoning Administrator of the private road and drainage shall be paid for by the applicant/developer.
- E. All purchasers of property where a private road provides access to the premises shall, prior to closing of the sale, receive from the seller a notice of easement, in recordable form, substantially conforming to the following:

"This parcel of land has private road access across a permanent _____ (insert size of easement) foot easement which is a matter of record and a part of the deed. This notice is to make the purchaser aware that this parcel of land has egress and ingress over this easement only."
- F. Neither the County nor the Township of Elk Rapids has any responsibility for maintenance or up keep of any improvement across this easement. This is the responsibility of the owners of record. The United States mail service and the local school district are not required to traverse this private improvement and may provide service only to the closest public access. (Michigan P.A. 134 of 1972 as amended)
- G. Where a private road or access easement is present on a lot, minimum required yard setbacks shall be measured from the private road or access easement right-of-way, regardless of whether the right-of-way provides frontage for the lot.

Section 2.20 – CONFLICT OF INTEREST

- A. Before casting a vote on a matter on which a Zoning Board of Appeals or Planning Commission member may reasonably be considered to have a conflict of interest, the member shall disclose the potential conflict of interest to the Zoning Board of Appeals or Planning Commission of which he or she is a member. Failure of a member to disqualify him or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.
- B. Conflict of interest is defined as; failure to disclose conflict of interest for purpose of disqualification when a Zoning Board of Appeals or Planning Commission member has personal or monetary interest in the matter involved, or will be directly affected by a decision of the Zoning Board of Appeals or Planning Commission involved when:
 - 1. An immediate family member is involved in any request for which the Zoning Board of Appeals or Planning Commission is asked to make a decision. "Immediate family

member” is defined as, an individual's spouse, father, mother, son, daughter, brother, sister, or a relative of any degree, or any person residing in the same household as that individual.

2. A Zoning Board of Appeals or Planning Commission member has a business or financial interest in the property involved in the request or has a business or financial interest in the applicant's company, agency or association.
3. A Zoning Board of Appeals or Planning Commission member owns or has a financial interest in neighboring property. A neighboring property shall include any property falling within the notification radius for the application or proposed development, as required by the zoning ordinance.
4. There is a reasonable appearance of a conflict of interest, as determined by the Zoning Board of Appeals or Planning Commission member declaring such conflict.
5. A member of the Zoning Board of Appeals who is also a member of the Planning Commission or the Township Board, shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the Planning Commission or the Township Board. The member may consider and vote on other unrelated matters involving the same property.

C. Member Participation

1. A Zoning Board of Appeals or Planning Commission member declaring a conflict of interest should state the nature of the conflict and whether he or she believes he or she could impartially consider the request before the Zoning Board of Appeals or Planning Commission.
2. He or she should individually decide to abstain from any discussion or votes relative to the matter that is the subject of the conflict.
3. The member declaring a conflict may ask the other Zoning Board of Appeals or Planning Commission members to decide if he or she should abstain.
4. The member declaring a conflict may absent him/herself from the room in which the discussion takes place, unless doing so would violate his or her constitutionally protected rights to participate.
5. He or she should not make any presentations to the Zoning Board of Appeals or Planning Commission as a representative of the proposal.

Section 2.21 – Open Space Development

- A. Purpose: The purpose of this Section is to provide an “open space preservation” development option for certain land in the Township.
- B. Qualifying conditions: Land may be developed under the provisions of this Section only if each of the following conditions are satisfied:

1. The land shall be zoned A or R3 Zone;
 2. The development of land under this Section shall not depend upon the extension of a public sanitary sewer or a public water supply system to the land, unless the development of the land without the exercise of the clustering option provided by this Section would also depend on such extension;
 3. At least fifty (50) percent of the land proposed for development shall remain in a perpetually undeveloped state (i.e., open space); and
 4. The open space preservation option shall not have previously been exercised with respect to the same land.
- C. Permitted uses: Only uses permitted in the underlying Zone district shall be permitted within the open space preservation development.
- D. Application: The application and review procedures for land proposed to be developed pursuant to this Section shall be those stated in Chapter 17 of this Zoning Ordinance, except as otherwise provided in this Section. In addition to the application materials required by Chapter 17, an application for the development of land under the provisions of this Section shall include the following:
1. Parallel Plan Application Requirements: A parallel plan shall be prepared for the purpose of demonstrating the number of dwelling units that could otherwise be developed on the land under its existing zoning if the open space preservation option were not exercised. The parallel plan may be conceptual in nature but shall include at least the following information:
 - a. Dates drawn and revised, north arrow and scale, which shall not be more than one inch equaling one-hundred feet (1" = 100'), and, in all cases, the scale shall be the same as that utilized for the site plan illustrating the proposed open space preservation development;
 - b. Location of street rights-of-way and all easements;
 - c. Location of all lots, illustrating lot area and width to demonstrate compliance with the minimum requirements of the applicable Zone;
 - d. Required building setback lines on all lots to demonstrate the availability of sufficient buildable land to make the lot usable;
 - e. Location of all utilities that would be necessary to serve a development under the parallel plan and which would not be located within any street right-of-way or private road, or on buildable lots (the utilities include, but are not limited to, storm water retention or detention basins, community sewage treatment systems and community water supply facilities);
 - f. If development under the parallel plan would require the use of septic tanks and drain fields, the parallel plan shall illustrate the location of all septic tanks and drain fields. The applicant shall submit proof that the proposed septic tank and drain field location for each lot would be approved, or has been approved, by the Antrim County Health Department;

- g. The topography of the land, at two (2) foot intervals, including identifying the location of all portions of the land that are unbuildable for residential purposes due to the presence of wetlands, slopes in excess of twenty-five (25) percent, flood plains, or other features prohibiting development for residential purposes; and
 - h. For parcels with water frontage proposed for open space preservation, the parallel plan shall also demonstrate compliance with Section 2.13 Private Waterfront Access.
2. Open Space Site Plan Application Requirements: A site plan shall be required in accordance with Chapter 17, in addition to the following information:
- a. The portion(s) of the land proposed to remain in a perpetually undeveloped state and the portions of the land to be used for clustered development;
 - b. Total number of acres of land proposed to remain in a perpetually undeveloped state, the total number of acres of land proposed to be used for clustered development, and the area contained within rights-of-way or easements;
 - c. Lots and proposed building envelopes, showing the lot area, width, and setbacks for each lot (the number of lots on the site plan shall not exceed the number of lots that could otherwise be developed as shown on the parallel plan, as approved by the Planning Commission);
 - d. Location of all septic tanks and drain fields (the applicant shall submit proof that the proposed septic tank and drain field location for each lot has been approved by the Northwest Community Health Department); and
 - e. The site plan must demonstrate compliance with the provisions of Section 2.13 if the parcel has private waterfront access.
3. A copy of the conservation easement, plat dedication, restrictive covenants, or other legal instrument that would run with the land, used to perpetually preserve the open space in an undeveloped state, shall be required. The legal instrument shall be reviewed by the Township Attorney, and shall be subject to the approval of the Township Board, consistent with the terms of this Section, prior to recording the legal instrument with the Antrim County Register of Deeds. The legal instrument shall indicate permitted uses of the open space; require that open space be perpetually preserved; and require maintenance by parties who have an ownership interest and provide standards for scheduled maintenance.
- E. Review Procedure: When reviewing an application submitted under the terms of this Section, the Planning Commission shall determine whether the parallel plan accurately reflects the number of dwelling units that could otherwise be developed on the land under its existing zoning. If the Planning Commission determines that the number of dwellings illustrated on the parallel plan exceeds the number of dwellings that could be permitted on the land if it were developed under its existing zoning, the applicant shall submit a revised site plan reflecting the permitted number of dwellings, as determined by the Planning Commission. If a site plan for an open space preservation development satisfies all

applicable requirements of Chapter 17, all requirements of this Section 2.21, and Section 2.13, the Planning Commission shall approve the site plan.

F. Development requirements:

1. At least fifty (50) percent of the land proposed for development under the provisions of this Section shall remain in a perpetually undeveloped state as permanent open space. The following areas shall not be considered as Open Space:
 - a. All areas within all street rights-of-way;
 - b. All areas within all private road easements;
 - c. Any easement for overhead utility lines, unless adjacent to open space;
 - d. The area within a platted lot or site condominium unit;
 - e. Parking areas and driveways;
 - f. Detention and retention ponds;
 - g. Community drain fields;
 - h. Areas devoted to community water supply or sanitary sewer treatment systems;
 - i. Marinas;
 - j. Clubhouses and swimming pools; and
 - k. Golf courses.
2. A portion of the open space shall be located along the perimeter street frontage abutting the land. The depth of this area shall be at least fifty (50) feet, not including public right-of-way, and this area shall be left in its natural condition or be landscaped to help preserve or enhance the existing views.