

ORDINANCE NO. 116

(LAND DIVISION ORDINANCE)

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 BY MICHIGAN PUBLIC ACT 591 OF 1996; 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.

THE VILLAGE OF DECATUR, VAN BUREN COUNTY, MICHIGAN ORDAINS:

Section 1. SHORT TITLE.

This Ordinance shall be known and may be cited as the "Village of Decatur Land Division Ordinance".

Section 2. PURPOSE.

The purpose of this Ordinance is to carry out the provisions of the State Land Division Act (Michigan Public Act 288 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 to provide for the health, safety and welfare of the residents and property owners of the Village, by establishing reasonable standards for prior review and approval of land divisions within the Village of Decatur, Van Buren County, Michigan.

Section 3. DEFINITIONS.

For purposes of this Ordinance certain terms and words used herein shall have the following meaning:

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. "Divided" or "Division" - the partitioning or splitting of a parcel or tract of land by the proprietor thereof or by his or her heirs, personal representatives, legal representatives, successors or assigns, for the purpose of sale, or lease of more than one (1) year, or of building development that results in one (1) or more parcels of less than forty (40) acres or the equivalent, and that satisfies the requirements of Sections 108 and 109 of the State Land Division Act.

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, personal representatives, legal representatives, successors or assigns, that does not result in one (1) or more parcels of less than forty (40) acres or the equivalent; provided all resulting parcels are accessible for vehicular travel and utilities from existing public roads or through existing private roads or easements, or through areas owned by the owner of the parcel that can provide such access.

D. "Forty (40) acres or the equivalent" - either forty (40) acres, a quarter-quarter section containing not less than thirty (30) acres, or a government lot containing not less than thirty (30) acres.

E. "Governing body" - the Village Council of the Village of Decatur.

Section 4. PRIOR APPROVAL REQUIREMENT FOR LAND DIVISIONS.

Land in the Village of Decatur shall not be divided without the prior review and approval of the municipal assessor, or other official designated by the governing body, 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 State Land Division Act and in conformity with the Zoning Ordinance of the Village of Decatur, and any other applicable Ordinances.

B. A lot in a recorded plat proposed to be divided in accordance with the Village of Decatur 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.

An applicant shall file all of the following with the official designated by the governing body to review and approve a proposed land division before making any non-exempted land division either by deed, land contract, lease for more than one (1) year, or for building development:

A. A completed application on such form as may be provided by the Village of Decatur.

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 Michigan Public Act 132 of 1970, 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 thirty (30) day statutory requirement for a decision on the application until such survey map and legal description are filed with the municipality, and submit a tentative preliminary parcel map drawn to scale of 200 feet per inch, and 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 vehicular traffic and public utilities, for preliminary review, approval, and/or denial by the locally designated official prior to a final

application under Section 5.

The governing body of the municipality, or its designated agent delegated such authority by the governing body, 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 divisions, and the undeveloped character of the territory within which the proposed divisions are located. However, an accurate legal description of all the proposed divisions 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 of, sufficient to establish that 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 to be transferred.

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 building is prohibited therefrom, with sufficient area to comply with all applicable requirements of the Zoning Ordinance of the Village of Decatur, including but not limited to requirements for size of premises, minimum width at site of access to the premises, yard or setback provisions, minimum floor areas, off-street parking spaces, and accessibility; and shall further have sufficient area to comply with the Van Buren County, Michigan Health Department requirements for on-site sewage disposal and water well locations (where public water and sewer service is not available).

I. The fee as may from time to time be established by resolution of the governing body of the Village of Decatur 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. Upon receipt of a land division application package, the official designated by the governing body 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 thirty (30) days after receipt of the application package conforming to this Ordinance's requirements. Said official shall promptly notify the applicant of the decision and the reasons for any denial. If the application package does not conform to the requirements of this

Ordinance and the State Land Division Act, said designee shall return same to the applicant for completion and refilling in accordance with this Ordinance and the State Land Division Act.

B. Any person or entity aggrieved by the decision of the designee may, within thirty (30) days of said decision, appeal the decision to the governing board of the Village which shall consider and resolve such appeal by a majority vote of said board at its next regular meeting or session; provided that a twenty (20) day written notice to the applicant (and appellant where other than the applicant), has been given of the time and date of said meeting and appellate hearing.

C. A decision approving a land division is effective for one (1) year, after which it shall be considered revoked unless within such period a document is recorded with the County Register of Deeds office and filed with the designated official accomplishing the approved land division or transfer, or unless said time period is further extended by the Village Council of the Village of Decatur.

D. The Municipal 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 applicable requirements of the Village of Decatur Zoning Ordinance, including but not limited to requirements for size of premises, minimum width at site of access to the premises, yard or setback provisions, minimum floor areas, off-street parking spaces, and accessibility.

B. The proposed land division(s) comply with all requirements of the State Land Division Act and this Ordinance.

C. Each resulting parcel that is "buildable" (development site) and not served by public water or sewer service, must have approval from the Van Buren County, Michigan Health Department for on-site water supply and on-site sewage disposal.

D. All parcels created and remaining have existing adequate accessibility or an area available therefor, to a public road and for public utilities, emergency and other vehicles, of not less than the requirements of the Zoning Ordinance of the Village of Decatur, and if same is not accessible to a Village public road as said parcel adjoins State Highway M-51, same shall have a driveway permit issued by the State Transportation Department.

E. For any parcel created of ten (10) acres or less, the depth of same shall not be more than four (4) times its width, exclusive of access roads, easements, or non-buildable parcels created under Section 8 of this Ordinance. Said ratio does not apply to 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 abutting road or 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 Zoning Ordinance of the Village of Decatur.

The Village Council may allow a greater depth to width ratio than four (4) to one (1) in the event there are exceptional topographic or physical conditions with respect to the parcel to be divided; and said division is compatible with the surrounding lands; and same would not be detrimental or injurious to the use or development of adjacent properties.

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 Zoning Ordinance of the Village of Decatur 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 Register of Deeds, in a form acceptable to the municipality, 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 Village of Decatur 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 (4) feet in height.

B. Where, in circumstances not covered by paragraph A above, the Village of Decatur Zoning Board of Appeals has, previous to 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, the Zoning Ordinance of the Village of Decatur, or the State Land Division Act.

Section 9. CONSEQUENCES OF NONCOMPLIANCE WITH LAND DIVISION APPROVAL REQUIREMENTS.

Any parcel created in noncompliance with this Ordinance shall not be eligible for any building permits, or zoning approvals including Special Exception Land Use approval or site plan approval, and shall not be recognized as a separate parcel on the tax assessment roll of said Village. 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. PENALTIES AND ENFORCEMENT.

Any person, firm, association, partnership, or corporation who

shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor, and shall upon conviction thereof, be subject to a fine of not more than \$500.00, plus Court costs and costs of prosecution, or by imprisonment in the county jail for a term not exceeding ninety (90) days, or both, at the discretion of the Court.

Any person, firm, association, partnership, or corporation 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 11. 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, same shall not be deemed or held to affect the validity of any other portion of this Ordinance.

Section 12. REPEAL.

All Ordinances or parts of Ordinances in conflict with this Ordinance are, to the extent of such conflict, hereby repealed, except that this Ordinance shall not be construed to repeal any provision in the Village of Decatur Zoning Ordinance, the Municipality Subdivision Control Ordinance, or the Municipality Building Code.

Section 13. EFFECTIVE DATE.

This Ordinance shall become effective the 1st day of July, 1997.