

Navigating Private Road Issues

Few issues cause so many Michigan township officials as much grief as private roads. This article attempts to address a wide variety of private road issues in "bite-size" fashion.



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1. Do Townships Even Have to Allow Private Roads?

While most townships permit private roads, we have come up with a simple solution for avoiding the headaches of private roads: they simply prohibit them. Logically, the townships require that all new parcels, lots and/or condominium units have a required amount of frontage on a fully improved public road. Existing private roads and properties along them are deemed lawful nonconforming (grandparented) uses, but such private roads cannot be extended or expanded, nor can the parcels along them be further split or subdivided.

Is it legally permissible to ban new private roads? Probably, although no Michigan appellate court has yet addressed the issue.

Why don't more townships prohibit private roads? There are several reasons. First, many townships have found it politically difficult to tell property owners that they cannot develop their property by way of private roads. Second, many private roads allow them to avoid the higher costs associated with installing a new public road. Second, private roads tend to have less negative impacts upon the natural terrain when installed than public roads. Normally, fewer trees have to be removed due to the narrower private roads and not as many hills have to be leveled due to more liberal grade regulations. As such, private roads are often more environmentally friendly than public

roads. Finally, more often than not, the use of private roads tends to breed less dense housing developments given the lower costs associated with installing private roads and the typical purchase of a hill.

2. Can Townships Regulate New Private Roads?

Yes, townships can regulate new private roads (and extensions or expansions of existing private roads, including further division of land, serviced by existing private roads) via either a local zoning ordinance under the Michigan Township Zoning Act (MCLA 42-271, et seq) or by means of a general zoning police power ordinance pursuant to MCLA 41-131, 67, 69 (general law township) or MCLA 42-15, 27, 29 (charter township).

3. Can Townships Regulate Existing/Grandparented Private Roads?

Probably, although few townships do so. If new private road regulations are adopted by a township as an amendment to a zoning ordinance, all pre-existing lawful private roads (and parcels thereon) have lawful nonconforming status. However, a lawful nonconforming private road cannot be extended (nor can existing land, served by the nonconforming road, be further subdivided or additional lands be added to the private road), since that would constitute an unlawful expansion of a nonconforming

