

**WHITEWATER TOWNSHIP BOARD**  
**AGENDA FOR SPECIAL MEETING – JANUARY 12, 2023**  
**9:00 a.m. at the Whitewater Township Hall**  
**5777 Vinton Road, Williamsburg, MI 49690**  
**Phone 231-267-5141/Fax 231-267-9020**

*At this time, the Board invites everyone to silence their electronic devices.*

Whitewater Zoom is inviting you to a scheduled Zoom meeting.

Zoom invite for 1/12/2023: Whitewater Zoom is inviting you to a scheduled Zoom meeting.

Topic: Township Board Special Meeting Time: Jan 12, 2023 09:00 AM Eastern Time

Join Zoom Meeting

<https://us06web.zoom.us/j/81647110045?pwd=SWJpUDJiaWhvaDJQazdtMzRuWlI2Zz09>

Meeting ID: 816 4711 0045 Passcode: 853764

One tap mobile: +16469313860,,81647110045#,,, \*853764# US +13017158592,  
81647110045#,,, \*853764# US (Washington DC)

Dial by your location: 1 312 626 6799 US (Chicago), +1 646 558 8656 US (New York)

Find your local number: <https://us06web.zoom.us/j/81647110045?pwd=SWJpUDJiaWhvaDJQazdtMzRuWlI2Zz09>

*Whitewater Township will provide necessary reasonable auxiliary aids and services to individuals with disabilities upon reasonable advance notice. Contact the Township Clerk at 231.267.5141 Ext. 24 at least 5 days in advance of the meeting.*

- A. Call to Order
- B. Roll Call of Board Members
- C. Set/Adjust Meeting Agenda -
- D. Declaration of Conflict of Interest
- E. Public Comment. Any person shall be permitted to address a meeting of the township board. Public comment shall be carried out in accordance with the following board rules and procedures:
  - 1. Comments shall be directed to the board, with questions directed to the chair.
  - 2. Any person wishing to address the board shall speak from the lectern and state his or her name and address.
  - 3. Persons may address the board on matters that are relevant to township government issues.

4. No person shall be allowed to speak more than once on the same matter, excluding the time needed to answer board member's questions. The chair shall control the amount of time each person shall be allowed to speak, which shall not exceed five (5) minutes.

F. Agenda Items as Listed in the Special Meeting Notice

1. Discuss Hymore Complaint dated 8.22.2022
2. Discuss subsequent legal opinion dated 12.14.2022. Possible Closed Session

G. Board Comments/Discussion

H. Public Comment

I. Adjournment

Whitewater Township will provide necessary reasonable auxiliary aids and services to individuals with disabilities who are planning to attend. Contact the township clerk at 231-267-5141.



# WHITEWATER TOWNSHIP COMMUNITY CENTER



## CODE ENFORCEMENT COMPLAINT FORM

Complaints are usually handled in the order received. Health and safety issues take precedence over all other complaints and are usually investigated as soon as possible. Clearing up a violation may take 60 days or more depending on the level of voluntary action on the part of the violator. For more information regarding Whitewater Township's Code Enforcement Policy go to whitewatertownship.org

**Date:** August 29, 2022

**Complainant/Reporting Party:**

**Name:** Frank & Connie Hymore

**Address:** 6761 Baggs Rd, Williamsburg MI 49690

**Address of Violation:** 6631 Baggs Rd, Williamsburg MI 49690

**Type of Complaint:**

Illegal Land Division of Morrison Orchard Parcel "B" (13-136-001-02). Does not meet minimum width to maximum depth ratio of 1:4, actual almost 1:6.

See attached documents:

- Code violation detail
- Application for land division
- Survey map with width to depth calculations
- Support documentation
- Whitewater Township General Ordinance No. 26

**How long has the violation existed?** 2 years, 3 months

It is important that you supply as much detail as possible. If you have photos or other related information that can be used as evidence of this violation, please submit them with this form. The submitted documentation will not be returned and will become part of the complaint file. Attach a separate narrative if you need additional space.

NOTE: Anonymous complaints will be accepted, but may or may not be investigated at the discretion of the Code Enforcement Employees/Officials depending on the following factors:

- The reliability of the complaint;
- Whether the complaint alleges an imminent threat to public health and safety or the environment;
- The ease or difficulty with which the complaint can be verified.



## **Code Enforcement Complaint - Support Documentation**

Per the MTA...

"A township ordinance is ineffective unless it is uniformly enforced. Enforcement of most ordinances is accomplished by an initial informal, but firm, notice to the violator allowing a limited period to correct the ordinance violation. Where correction is not accomplished, the township should be prepared to take the next step in ordinance enforcement."

The only correction that we see, per General Ordinance No. 26,

*"an affidavit or deed restriction with the county register of deeds, in a form acceptable to the municipality, designating the parcel as "not buildable""*

Continuing from the MTA...

"For violations involving misdemeanors, a complaint and warrant generally starts the case, unless the person issuing the citation is also a police officer or sheriff's deputy. Once the complaint and warrant is sworn to and recorded at the court, a notice to appear before the district court is served upon the violator. If the violator fails to appear pursuant to the appearance ticket, a warrant for the violator's arrest and arraignment for the underlying violation before the district court is issued."

We all know Ordinances are the law. We have heard that over and over. The law (Ordinances) has certain protocols that must be followed when it comes to the division of land. These protocols include a distinct paper trail which needs to be documented and saved. Bob Hall makes the statement in the 3/2/22 Planning Commission meeting video that he talked to legal and they told him not to worry. I'm sure, like the rest of us, they were not privy to the General Ordinances! If they were, did they think the Zoning administrator is above the law? If you just look at the Zoning Ordinances, there is no process to follow, there are no consequences, there are no penalties. On the other hand, when you look at General Ordinance No.26, there are procedures to follow, there are consequences, and there are penalties!

In the video, Bob Hall admits that, in 2020, an error was made in the execution of the land division of Morrison Orchard parcel "B". He states local ordinance supersedes state ordinance. General Ordinance No. 26 states *"The ratio of depth to width of any parcel created by the division does not exceed a four to one ratio."* This parcel is almost six to one. He admits he made the error, and he "feels" the landowner should not be penalized for the mistake of the Township. He says there have been other divisions of the parcel since the original split and LUP's issued. That statement was wrong. In fact, the parcel has not been re-split and it does not have a LUP issued! He blows it off like it's no big deal! It is a big deal! Laws were broken! Breaking the law has consequences! Those consequences are clearly spelled out in the General Ordinance. It includes fines, jail time and the land becomes "unbuildable!" The following is the proper procedure for executing a legal land division with excerpts from the General Ordinance:

General Ordinance 26 - Land Division Ordinance

Step 1 - Section IV PRIOR APPROVAL REQUIREMENTS FOR LAND DIVISIONS

*"Land in a municipality shall not be divided without the prior review and approval of the township assessor and the township zoning administrator"*

Step 2 - Section V     APPLICATION FOR LAND DIVISION APPROVAL

*"The applicant shall file all of the following with the municipal Clerk"*

- A. Completed application*
- B. Proof of ownership*
- C. A survey map*
- 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*
- F. Proof that all taxes are paid*
- G. Transfer of division rights if applicable*
- H. Unless a division creates a parcel which is acknowledged and declared to be "not buildable" under section VIII of this ordinance, all divisions shall result in "buildable" parcels*
- I. Fee if applicable*

Step 3 - Section VI     PROCEDURE FOR REVIEW OF APPLICATION FOR LAND DIVISION APPROVAL

*"A. Upon receipt of a land division application package, the municipal clerk, shall forthwith submit the same to the township assessor and township zoning administrator."*

*"The township assessor and zoning administrator shall approve, approve with reasonable conditions to assure compliance with applicable ordinances, or disapprove."*

*"If the application package does not conform to the ordinance requirements and the state land division act, the assessor and zoning administrator shall return same to the applicant for completion and refile in accordance with the ordinance and the state land division act"*

*"D. The township assessor and the township zoning administrator shall maintain an official record of all approved and accomplished land divisions or transfers"*

Step 4 - Section VII STANDARD FOR APPROVAL OF LAND DIVISION

*"A proposed land division shall be approved if the following criteria are met:"*

*A. All parcels to be created by the proposed land division(s) fully comply with the applicable lot, yard and area requirements of the applicable zoning ordinance, including, but not limited to, minimum lot frontage/width, minimum road frontage, minimum lot area, minimum lot width to depth ratio, and maximum lot coverage **Parcel "B" (13-136-001-02) does not comply!***

*B. The proposed land division(s) comply with all requirements of the state land division act and this ordinance. **Parcel "B" (13-136-001-02) does not comply!***

*D. The ratio of depth to width of any parcel created by the division does not exceed a four to one ratio **Parcel "B" (13-136-001-02) does not comply!***

Supervisor Comment: No all of Section VII is shown here. Specifically, the ability of the governing body to make exceptions to the 4 to 1 ration if certain conditions are met. Can the Township prove the conditions were met. (findings of fact)

Step 5 - Section VIII ALLOWANCE FOR APPROVAL OF OTHER LAND DIVISIONS

*"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 with the county register of deeds, in a form acceptable to the municipality, designating the parcel as "not buildable" ....*

*B. Where, in circumstances not covered by paragraph A above, the zoning board of appeals has, prior to this ordinance, granted a variance....*

*C. Where the proposed land division involves only a minor adjustment of a common boundary line...*

***With the way Parcel "B" (13-136-001-02) was divided, these were the only allowances available for approval, and none of them were utilized!***

Supervisor Comment: The provisions of Section VIII appear to still be part of Ordinance 26

Step 6 - Section IX 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 approval, 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 penalties and enforcement action set forth in Section X of this ordinance, and as may otherwise be provide by law."*

Step7 - Section X PENALTIES AND ENFORCEMENT

*"Any person who violates any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and shall be punished by a fine not more than \$500.00 or by imprisonment in the county jail not to exceed 90 days or both such fine and imprisonment"*

*"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."*

Summary:

- Laws have been broken!
- There are consequences to breaking the law!
- There are penalties to breaking the law!
- The Zoning Administrator must be held accountable for his actions!
- The Township must correct this error!
- Parcel "B" (13-136-001-02) of the Morrison Orchard land division

***"shall not be eligible for any building permits, or zoning approval, such as special land use approval or site plan approval."***



### **Code Enforcement Complaint - Code Violation Details**

Illegal Land Division of Morrison Orchard Parcel "B" (13-136-001-02). Does not meet minimum width to maximum depth ratio of 1:4, actual is almost 1:6.

This violates Whitewater Township Zoning Ordinance Article XII and General Ordinance No. 26.

### **Per Whitewater Township Zoning Ordinance Article XII, Section 12.11 - Schedule of Regulations**

Zone A-1 Requires a Minimum Width: Maximum Depth ratio of 1:4. However, the Zoning Ordinance does not identify any consequences or penalties for noncompliance, those are written in General Ordinance No. 26

Supervisor comment: The Whitewater Township Zoning Ordinance (effective 7.28.2017) was in place when this land division took place indicated on page 35 Note #5 "Variance provisions for the width-to-depth ratio will be found in General Ordinance 26, Land Division Ordinance, Section VII D." This variance language is confusing in the fact it states that the governing body or other person designated by the governing body may approve a land division with a ratio greater than four to one. Are we to assume the governing body designated the Zoning Administrator? The Assessor? The ZBA?

The power of variance also requires the applicant to demonstrate exceptional topographical or physical conditions exist somehow requiring a different ratio. Moreover, the ratio would be compatible with surrounding lands. Review of information contained in 2022.10.03 FOIA Appeal S-10 Hymore ZA Response Transmittal Letter justification for a variance when surrounding areas are 90 acres is questionable. Here again a different version of General Ordinance No. 26 Section VIII Variance is presented which I don't have a notice for. Of the three notices known to exist for General Ordinance 26 none reveal this kind of language.

The question is now, what is the real Ordinance 26 look like.

Other flaws in the land division application are found when comparing parcel number from the county GIS site the parcel A is labeled 28.13.136.001.01 but the county shows it as 28.13.13.002.01. Parcel be the subject parcel is labeled correctly.

### **Per Whitewater Township General Ordinance No. 26 - Land Division Ordinance**

#### **Section IX CONSEQUENCES OF NONCOMPLIANCE WITH LAND DIVISION APPROVAL REQUIREMENTS**

Supervisor comment: Amendment 3 to General Ordinance 26 adopted by the Board 02.08.2011 and published (with flaws) on 02.17.2011 changes this Section IX to Section X. It is important to realize these consequences are still in place and make no mention of the "variance language" added in Amendment No. 2 adopted by the Board 12.16. 2008 and published on 12.27.2008.

*"Any parcel created in noncompliance with this ordinance shall not be eligible for any building permits, or zoning approval, 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 penalties and enforcement action set forth in Section X of this ordinance, and as may otherwise be provide by law."*

Section X PENALTIES AND ENFORCEMENT

Supervisor comment: Amendment 3 to General Ordinance 26 adopted by the Board 02.08.2011 and published (with flaws) on 02.17.2011 changes this Section X to Section XI. It is important to realize these consequences are still in place and make no mention of the "variance language" added in Amendment No. 2 adopted by the Board 12.16. 2008 and published on 12.27.2008.

*"Any person who violates any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and shall be punished by a fine not more than \$500.00 or by imprisonment in the county jail not to exceed 90 days or both such fine and imprisonment"*

*"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."*

**Relief Sought**

Per General Ordinance No. 26 Section VIII Paragraph A

Supervisor comment: Amendment 3 to General Ordinance 26 adopted by the Board 02.08.2011 and published (with flaws) on 02.17.2011 changes this Section VIII A to Section IX A. It is important to realize these consequences are still in place and make no mention of the "variance language" added in Amendment No. 2 adopted by the Board 12.16. 2008 and published on 12.27.2008.

A "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 a subject of 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."

See attached survey map and attached excerpts (with comments) from General Ordinance No. 26

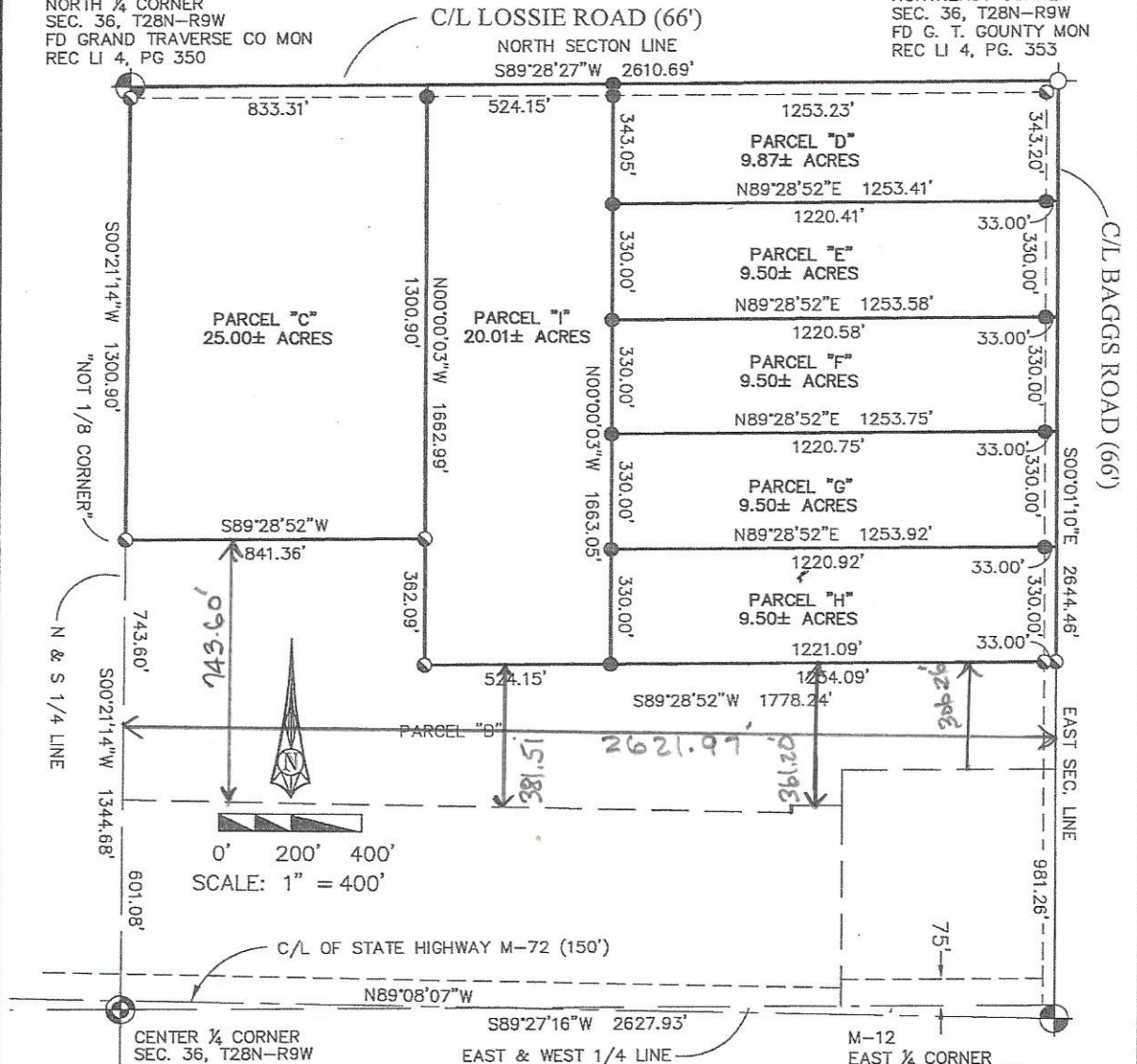
# CERTIFICATE OF SURVEY

## LEGEND

- = SET 1/2" ROD & CAP    ⊕ = FD. CONC. MON.
- ⊙ = FD. FARRIER IRON    ⊗ = SET CONC. MON.
- = FD. IRON                R = RECORD
- ▲ = SET NAIL                M = MEASURED
- △ = FD. NAIL                PR = PRORATED

L-11  
NORTH 1/4 CORNER  
SEC. 36, T28N-R9W  
FD GRAND TRAVERSE CO MON  
REC LI 4, PG 350

M-11  
NORTHEAST CORNER  
SEC. 36, T28N-R9W  
FD G. T. COUNTY MON  
REC LI 4, PG. 353



WIDTH  
743.60'  
381.51'  
361.20'  
306.26'  
448.14'

DEPTH  
2624.34'  
2619.60'  
2621.97'

RATIO  
1:5.85



I, DEAN RAY FARRIER, A PROFESSIONAL SURVEYOR IN THE STATE OF MICHIGAN, CERTIFY THAT I HAVE SURVEYED AND MAPPED THE HEREOIN DESCRIBED PARCEL OF LAND, AND THE RELATIVE POSITIONAL PRECISION IS WITHIN 0.15 FEET FOR EACH OF THE CORNERS SHOWN HEREIN AND THAT I HAVE FULLY COMPLIED WITH THE SURVEY REQUIREMENTS OF ACT 132 OF 1970 AS AMENDED.

*Dean R. FARRIER* PS#40010-41098    DATE 4-13-21

DEAN R. FARRIER

BEARING BASIS: PREVIOUS FARRIER SURVEYING PROJECT No. 2420

<b>FARRIER SURVEYING INC.</b> P.O. BOX 998 244 S. CEDAR STREET KALKASKA, MI 49646 TEL (231) 258-8162 office@farrriersurveying.com	<b>CLIENT MORRISON ORCHARDS</b> DESCRIPTION PART OF THE NE 1/4, SECTION 36, T28N-R9W, WHITEWATER TOWNSHIP, GRAND TRAVERSE COUNTY, MICHIGAN	DRAWN: DES CHECK: DRF REVISED: 4/13/2021	FILE No. 3920A Fd. Bk. 262, Pg. 5 DATE: 4/21/2020 SHEET: 1 of 3
	C:\DATA DRIVE\Carlson Projects\2020\3920 MORRISON\3920A MORRISON.dwg 4/13/2021 4:54:02 PM		
	BEARING BASIS: PREVIOUS FARRIER SURVEYING PROJECT No. 2420		