

Village of Estral Beach

ORDINANCE NO. 1041A

CONTROL OF INCREASING THE GRADE OF PROPERTIES WITH FILL MATERIAL

An ordinance to control the grading of properties within the Village not covered by Michigan Public Act 451 of 1994, Part 91.

The Village of Estral Beach, Monroe County, hereafter referred to as the Village, hereby ordains;

1041A-1, Findings

- (1) Almost all land within the boundaries of the Village is designated as a floodplain.
- (2) The Village Council hereby finds that excessive quantities of fill materials are being added to properties within the Village resulting in undue storm water runoff onto surrounding properties.
- (3) The increase in grade of a property may have a negative impact on the surrounding properties and therefore must be evaluated and controlled by a permit process such that effective drainage is installed (e.g., swale, culvert, etc.) if the increase in grade is to be allowed.
- (4) Michigan Public Act (PA) 451 of 1994, Part 91 dictates the requirements for soil erosion and sedimentation control which addresses earth change activities which may result in or contribute to soil erosion or sedimentation of the waters of the state. Section 324.9105(1) of this act states that "a county is responsible for administration and enforcement of this part and the rules promulgated under this part throughout the county except as follows: (a) within a municipality that has assumed the responsibility for soil erosion and sedimentation control under section 9106, (b) with regard to earth changes of authorized public agencies." The Village chooses not to administer Part 91 of PA 451, therefore, the Monroe County Drain Commission administers this function for the Village as authorized by the Department of Environmental Quality (DEQ).
- (5) Part 91 does not control grade changes of a property and subsequent storm water runoff that does not result in sedimentation, therefore, this ordinance is enacted to control these types of grade changes.

1041A-2, Purpose

- (1) The purpose of this ordinance is to prevent increases in grade of properties within the boundaries of the Village without the consideration of the impact on surrounding properties. The controls for grade changes will include a permitting process by the Village.
- (2) Earth changes made that may result in soil erosion or sedimentation that could migrate to the waters of the state are controlled by the Monroe County Drain Commission permitting process under PA 451 Part 91.
- (3) This ordinance does not apply to new home construction since grade changes are controlled by the building permit process. The permitting body may choose to use this ordinance as a guide at their discretion (i.e., 1041A-5(3)(k), 1041A-13(1)(e)).
- (4) This ordinance and permitting requirements apply to the addition of fill to control runoff away from existing homes and into a natural or established drainage course.

1041A-3, Definitions

The following words and phrases, when used in this ordinance shall have the meaning ascribed to them in this section.

- (1) Accelerated Soil Erosion – The increased loss of the land surface that occurs as a result of man’s activities.
- (2) Certification of Completion – A signed written statement by the Village’s duly authorized representative that specific grading has been inspected and found to comply with all grading plans and specifications.
- (3) Debris – A term applied to loose refuse or earth material not suitable for use as presently situated or constituted as determined by the Village’s duly authorized representative.
- (4) Duly Authorized Village Representative – Person or persons qualified and authorized to inspect, permit, and certify the work to be performed (e.g., Building Official, Engineer, competent Village Official, etc. so designated by the Village).
- (5) Earth Change – A man-made change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state.
- (6) Engineer – Engineering firm or Engineer hired by the Village to provide engineering services.
- (7) Erosion – The process by which the ground surface is worn away by action of wind, water, gravity or a combination thereof.
- (8) Fill – A deposit of soil, rock, asphalt, or other material placed or replaced by man or machine which raises and existing elevation.

- (9) Floodplain – That area which would be inundated by storm runoff or flood water equivalent to that which would occur with a rainfall or flood of one hundred year recurrence frequency.
- (10) Grading – Any stripping, excavation, filling, stockpiling or any combination thereof, including the land in its excavated or filled condition.
- (11) Hazard – Any danger to public health, welfare and safety, including exposure to risk of damage to property or liability for personal injury, or risk of harm to land, air or water resulting in environmental degradation. Hazards can include flooding, compaction and settling, landslides, earthquakes, toxic chemicals, radiation, fire and disease.
- (12) Natural Ground Surface – Any ground surface in its original state before any grading, excavation or filling, and established by the Village, Village Engineer, or duly authorized representative when there is any question of its location.
- (13) Non-Erosive Velocity – A speed of water movement which is not conducive to the development of accelerated soil erosion or migration of debris.
- (14) Permanent Soil Erosion Control Measures – Those control measures which are installed or constructed to control soil erosion and which are maintained after project completion.
- (15) Person – A natural person, firm, corporation, partnership or association.
- (16) Sediment – Any solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water or gravity as a product of erosion.
- (17) Soil – All earth material of whatever origin that overlies bedrock, including the decomposed zone of bedrock which can be readily excavated by mechanical equipment.
- (18) Stabilization – The proper placement, grading and/or covering of soil or rock to ensure their resistance to soil erosion, sliding or other earth movement.
- (19) Stockpiling – The depositing of earth materials or rock for temporary periods of time in accordance with the requirements of this ordinance for the purposes of facilitating construction operations.
- (20) Stripping – Any activity which removes or significantly disturbs the vegetative surface cover, including clearing and grubbing operations.
- (21) Swale - A low tract of land designed to manage water runoff and increase water infiltration.
- (22) Temporary Soil Erosion Control Measures – Interim control measures which are installed or constructed for the control of soil erosion or debris migration until permanent soil erosion control is put into effect.

1041A-4, Compliance with Ordinance Required for Addition of Fill Material

- (1) Major Fill – No addition of fill material shall be approved by the Village unless plans are provided and include the information listed under section 1041A-5(3) of this ordinance which required detail of the plan commensurate with the size and complexity of the project. The plans shall include control measures consistent with the requirements of this ordinance. Defined as greater than five (5) cubic yards.
- (2) Minor Fill – The exception to the above is an annual allowance per lot to add up to five (5) cubic yards for miscellaneous fill of low lying areas, gardening, etc. with the actual amount allowed dependent on the square footage to be covered (i.e., increase in grade). A permit is required for this fill amount for tracking purposes, however, the permit fee will be waived. A plan view sketch of where the soil will be placed may be requested, as might access to the property to assess the layout prior to issuing a permit.
- (3) Stockpiling – Stockpiling of fill material is not allowed within the Village limits, unless less than ten (10) cubic yards, greater than one hundred (100) feet from the waters of the state, out of sight from road traffic otherwise it is considered blight, and for less than thirty (30) days if supporting an upcoming project.
- (4) Runoff onto Adjacent Properties – New grades shall not be established that would permit an increase in the runoff of surface water onto adjacent properties, except directly through an established drainage course, swale, ditch, or easement.
- (5) Suitable Fill Material – Fill shall consist of clean, compactable, natural earth materials free from contamination from hazardous substances. Fill material shall not contain more than 5% broken concrete and shall not contain any other foreign matter, including brick, crockery, or other debris or waste, except for fill under a driveway or along a retaining wall. The duly authorized Village Representative or Village Engineer may require verification from a qualified soil-testing laboratory that the fill is free of all contamination. Note that the use of broken concrete does not apply when used as rip rap along the dike or rock cribbings.

1041A-5, Permits and Fees for Major Fill

- (1) Permit Requirement – Except as exempted by sections of this ordinance, no person shall do any grading, stripping, excavation or filling nor undertake any earth change unless a valid permit has been issued by either the Monroe County Drain Commission under Part 91 and/or the duly authorized representative of the Village under this ordinance.
- (2) Permit Application – A separate application shall be required for each grading permit. Plans, specifications, and timing schedules shall be submitted with each application for a grading permit. For Major Fill, the plans shall be prepared or approved and signed by a professional engineer or by an architect. The Village Engineer, Village Council, or duly authorized representative may waive the preparation or approval and signature by the professional engineer or architect when the work entails little hazard to the adjacent

property and does not include the construction of a fill upon which a structure may be erected.

- (3) Application Data Required – The plans and specifications accompanying the grading permit application shall contain the following data:
- a. Name, address and telephone number of the owner of the plat where the fill material will be added.
 - b. Name, address and telephone number of the developer and petitioner, if applicable.
 - c. A vicinity sketch indicating the site location, and volume of fill being added.
 - d. Type of fill material to be added.
 - e. Purpose for the fill.
 - f. Final grade with respect to the initial grade following the fill.
 - g. Impact on adjoining properties.
 - h. Plans for installation of temporary and/or permanent soil control / supplemental drainage measures.
 - i. A boundary line survey of the site on which the work is to be performed if deemed necessary by the duly authorized representative, or if any fill will be placed near a property line and is contested by an adjoining property owner.
 - j. Schedule for completion of grading activities.
 - k. OPTIONAL GUIDELINES if this ordinance is used as guidance for new home construction grade plans. If for grade changes for new home construction under Village oversight, the Village's duly authorized representative will require a plan of the site containing one or more of the following:
 - i. A timing schedule indicating the anticipated starting and completion dates of the development sequence and the time of exposure of each area prior to the completion of effective erosion and sediment control measures.
 - ii. A certified statement of the quality of excavation and fill involved.
 - iii. Existing topography at a maximum of five foot contour intervals.
 - iv. Proposed topography at a maximum of five foot contour intervals.
 - v. Location of any structure or natural feature on the site.
 - vi. Location of any structure or natural feature on the land adjacent to the site and within fifty (50) feet of the site boundary line.
 - vii. Location of any proposed additional structures or development on the site.
 - viii. Elevations, dimensions, location, extent and the slope of all proposed grading (including building and driveway grades). Elevations shall be to North American Vertical Datum (NAVD) 1988. Note that IGLD heights are not used for regulating land development, and only applicable where shore protection measures such as seawalls and rip rap have been built and surveyed with reference to IGLD 85.
 - ix. The estimated total cost of the required temporary and permanent soil erosion control measures.

- x. Plans of all drainage provisions, retaining walls, cribbing, planting, anti-erosion devices, or other temporary or permanent soil erosion control measures to be constructed in connection with , or as part of the proposed work together with a map showing the drainage area of land tributary to the site and estimated runoff of the area served by any drains.
 - xi. Other information or data as may be required by the Village Engineer, Village Council, or duly authorized Village representative such as soil investigation report which shall include, but not be limited to a data regarding the nature, distribution and supporting ability of existing soil and rock on the site.
- I. Fees – At the time of filing an application for major fill grading permit, a non-refundable fee of ten dollars (\$10) shall be paid to the Village Treasurer. An additional nonrefundable fee of ten dollars (\$10) per each twenty five (20) cubic yards of fill will be charged for plan review and site inspections for fill volumes greater than five (5) cubic yards (with a minimum fee of ten dollars (\$10) for such review and inspection). Such fees shall not be required where a building permit is obtained for such work.

Permit Fees

| | |
|----------------------------|------|
| Minor Fill ≤ 5 cubic yards | \$0 |
| Major Fill > 5 cubic yards | \$10 |

Major Fill Review Inspection

| | |
|----------------------|------|
| 5 to 20 cubic yards | \$10 |
| 21 to 40 cubic yards | \$20 |

Additional \$10 for each additional 20 cubic yards.

(4) Permit Issuance – The Village Council, Village Engineer, or duly Authorized Village Representative will be responsible for issuing the permit(s).

1041A-6, Extension of Time

If the permittee is unable to complete the work within the specified time, he/she may, at least ten (10) days prior to the expiration of the permit, present in writing to the Village Engineer, Village Council, or duly authorized Village representative a request for an extension of time setting forth the reasons for the requested extension. In the event such an extension is warranted, the Village Engineer, Village Council, or duly authorized Village representative at the direction of the Village Council may grant additional time for the completion of the work.

1041A-7, Failure to Complete Work

In the event of failure to complete the work or failure to comply with all the requirements, conditions and terms of permit, the Village Engineer, Village Council, or duly authorized Village representative may order such work as is necessary to eliminate any danger to persons or property and to leave the site in a safe condition and may authorize completion of all necessary temporary or permanent soil erosion control measure. Any cost incurred by the Village in order to correct deficiencies shall be assessed against the property taxes.

1041A-8, Denial of Permit

Grading permits shall not be issued where:

- (1) The proposed work would create hazards to the public safety and welfare; or
- (2) The work as proposed by the applicant will damage any public or private property or interfere with any existing drainage course in such a manner as to cause damage to any adjacent property or result in the deposition of debris or sediment on any public way or into any stream or create an unreasonable hazard to persons or property; or
- (3) The land area for which grading is proposed is subject to geological hazards to the extent that no reasonable amount of corrective work can eliminate or sufficiently reduce settlement, slope stability or any other such hazard to persons or property; or
- (4) The land area for which the grading is proposed may lie within the floodplain of any stream (not specifically designed and delineated by the Village as an area subject to flood hazard), unless a hydrologic report, prepared by a professional engineer, is submitted to certify that the proposed grading will have no detrimental influence on the public welfare or upon the total development of the floodplain.

1041A-9, Modification of Approved Plans

All modification of the approved grading plans must be submitted and approved by the Village Engineer, Village Council, or duly authorized Village representative, with the concurrence of the Village Council. All necessary sustaining reports shall be submitted with any proposal to modify the approved grading plan. No grading work in connection with the proposed modification shall be permitted without the approval of the Village Engineer and/or Village Council. Depending on the extent of the modification, an administrative fee of \$10 may be required.

1041A-10, Responsibility of Permittee

During grading operations the permittee shall be responsible for:

- (1) The prevention of damage to any public utilities or services with the limits of grading and along routes of travel of the equipment.
- (2) The prevention of damage to adjacent property. No person shall grade on land so close to the property line as to endanger any adjoining public street, sidewalk, alley or any public or private property without supporting and protecting such property from settling, cracking or other damage which might result.
- (3) Carrying out the proposed work in accordance with the approved plans and in compliance with the requirements of the permit and this ordinance.
- (4) The prompt removal of all soil, miscellaneous debris or other materials applied, dumped or otherwise deposited on public streets, highways, sidewalks or other public thoroughfares during transit to and from the construction, where such spillage constitutes a public nuisance or hazard.

1041A-11, General Requirements

- (1) Any Earth changes shall be conducted in a manner that will effectively reduce accelerated soil erosion and resulting sedimentation.
- (2) All earth changes shall be designed, constructed and completed in a manner which shall limit the exposed area of any disturbed land for the shortest period of time.
- (3) Sediment caused by accelerated soil erosion shall be removed from runoff water before it leaves the site of the earth change.
- (4) Any temporary or permanent facility designed and constructed for the conveyance of water around, through or from the earth change area shall be designed to limit the water flow to a non-erosive velocity.
- (5) Temporary soil erosion control facilities shall be removed and earth change areas graded and stabilized with permanent soil erosion control measures pursuant to approved standards and specifications.
- (6) Permanent soil erosion control measures for all slopes, channels, ditches or any disturbed land area shall be completed within fifteen (15) calendar days after final grading or the final earth change has been completed. When it is not possible to permanently stabilize a disturbed area after an earth change has been completed or where significant earth change activity ceases, temporary soil erosion control measures shall be implemented within thirty (30) calendar days. All temporary soil erosion control measures shall be maintained until permanent soil erosion control measures are implemented.

1041A-12, Maintenance Requirements

Persons carrying out soil erosion and sediment control measures under this ordinance, and all subsequent owners of property concerning which such measures have been taken, shall maintain all permanent anti-erosion devices, retaining walls, structures, planting and other protective devices.

1041A-13, Variances and Exceptions

- (1) No permits shall be required for the following:
 - a. Agricultural use of land for plowing, filling and gardening as exempted by the PA 451 of 1994, Part 91.
 - b. A sidewalk, driveway authorized by a valid permit and maintenance of existing sidewalks, driveways, and private roadways, unless the grade is to be increased, in which case a permit will be required.
 - c. Where the Village Engineer, Village Council, or duly authorized Village representative certifies in writing that the planned work and the final structures or topographical changes will not result in, or contribute to, soil erosion or sedimentation of the waters of the state, will not interfere with any existing drainage course in such manner as to cause damage to any adjacent property or result in the deposition of debris or sediment on any public way, will not create any hazard to any persons or property, and will have no detrimental influence upon the public welfare.
 - d. Localized (i.e., $\leq 5 \text{ yd}^3$) ornamental mounds for gardens, flower beds, rock gardens, etc. as long as they do not form a continuous grade increase along a property line.
 - e. Although no permits are required under subsections (1)(a), (b), (c), and (d) of this section, the operations and constructions exempt from obtaining permits must comply with the rules and regulations concerning grading and erosion specified in this ordinance.
- (2) Where it is alleged that there is error or misinterpretation in any order, requirements, decisions, grant or refusal made by the Village Engineer, Village Council, or duly authorized Village representative, the Zoning Board of Appeals shall have the power to hear specific applications and may amend or change such order, requirements, decisions, grant or refusal so that it is in harmony with the general purpose and intent of the requirements.
- (3) Appeals to the Zoning Board of Appeals shall be taken in the same manner as provided in Ordinance 1031, and the same fee shall apply thereto.
- (4) Work Authorized under a valid Village Flood Control Device Permit as controlled by Village Ordinance 1052.

1041A-14, Inspection

- (1) The requirements of this ordinance shall be enforced by the Village Engineer or Council, or where the building permit is required, by the duly authorized Village representative. The Village Engineer, Village Council, or duly authorized Village representative shall inspect the work and shall require adequate inspection of compaction by a soil engineer, unless the Village Council determines that such inspection may be waived, due to the nonhazardous nature of the grading.
- (2) Upon satisfactory execution of all approved major fill grading plans and other requirements, the Village Engineer, Village Council, or duly authorized Village representative shall issue a certification of completion. If the Village Engineer, Village Council, or duly authorized Village representative finds any existing conditions not as stated in any application, grading permit or approved plan, refusal to approve further work may be demanded until a revised plan is approved which will conform to the requirements of this ordinance.

1041A-15, Enforcement

- (1) Notwithstanding the existence or pursuit of any other remedy, the Village may maintain an action in its own name in any court of competent jurisdiction for an injunction or other process against any person to restrain or prevent violations of this ordinance.
- (2) The Village Engineer, or duly authorized Village representative, may enter at all reasonable times upon any private or public property for the purpose of inspecting and investigating conditions and practices which may be a violation of this ordinance or the rules of the Michigan Department of Natural Resources, Water Resources Commission, promulgated pursuant to Act 451 of the Public Act of 1994.

1041A-16, Penalty for Violation

- (1) No persons either natural or corporate, shall maintain or undertake a land use or earth change governed by this ordinance, except in compliance with the ordinance and pursuant to a permit approved as required by this ordinance.
- (2) The owner of the land or any part thereof, the lessee of the land or any part thereof, any person, architect, builder, contractor, or qualified person designated by the Village Council employed in connection therewith, who has violated subsection (1) of this section, or who has knowingly assisted in the violation of subsection (1) of this section shall be guilty of a separate offense, which offense shall be a misdemeanor and, upon conviction thereof in any court of competent jurisdiction, shall be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment. Each day that a violation shall be willfully permitted to exist shall be a separate violation.

1041A-17, Conflicting Ordinances Repealed

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are repealed to the extent necessary to give this ordinance full force and effect. Ordinance 1041A supersedes ordinance 1041 in its entirety.

1041A-18, Severability

Should any section, clause or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this ordinance as a whole or any part thereof, other than the part so declared to be invalid.

1041A-22, Effective Date

This ordinance shall be in full effect thirty (30) days after publication thereof.

Moved by Trustee: ___ to adopt Ordinance 1041A

Supported by Trustee: _____

Roll Call:

Ayes: _____

Nays: _____

Absent: _____

Adopted: _____

Published: _____

Certification

I Carol A. Vandercook, duly elected Clerk of the Village of Estral beach, County of Monroe, State of Michigan, do hereby attest and affirm the Ordinance is a true copy of the Ordinance Adopted by the Village of Estral Beach Council at the Regular Meeting held on ____.

Carol A. Vandercook, Clerk – Village of Estral Beach