LAND DEVELOPMENT

History
Legislation assuring uniform methods of land division in Michigan go as far back as 1821. These rules were amended and expanded piece-meal for nearly a century until those rules were codified under the Plat Act (1929), the Municipal Planning Commission Act (1931), Standard City Planning Enabling Act (1928) and the Township Planning act (1945). These Acts authorized the creation of local planning commissions (county, township and cities), master plans and subdivision rules.

The Land Division Act (Public Act 288 of 1967)
In 1967, the Michigan Legislature replaced the Plat Act and further expanded land division regulations. The county road commission gained jurisdiction over all highways, streets, alleys and private roads. The Act also provides for municipalities authority over paved and gravel roads, street curbs and gutters, sanitary and storm sewers, water mains, street lights, and tree planting.

The Michigan Land Division Act distinguishes between exempt splits, divisions, and subdivisions of land, and each of these have different requirements.

Exempt Splits
Under the Act, parcels whose split results in 40 acres or more are exempt from the Act.Under MCL 560.102, an "exempt split" is the partitioning or splitting of a parcel of land that does not result in 1 or more parcels of less than 40 acres or the equivalent.[1] Under MCL 560.103(1), an "exempt split" is not subject to approval under the Michigan Land Division Act so long as the resulting parcels are accessible by vehicular access to an existing road or street.

Divisions
From Michigan State University, "The first thing a landowner should know about the Land Division Act is that any division of land that will result in one or more of the parcels being less than 40 acres (or the equivalent) is subject to local government review. Only after that review can the owner market, sell or record the property with the county Register of Deeds. The review is at the township, village or city (and sometimes county) level. A local official, not a committee or board, is assigned the responsibility to approve or deny proposed land divisions. Most often, it is the local government tax assessor or the zoning administrator.

The second thing landowners should know is that the number of allowable divisions depends on the size of the 'parent parcel.' The 'parent parcel' is whatever the shape and size of the parcel was as of March 31, 1997. If, on that date, there were two or more adjacent parcels under identical ownership, then the entire land area under common ownership is considered the parent tract. In addition, land held under land contract, or land professionally surveyed and actively marketed for sale, but not recorded with the Register of Deeds as of March 31, 1997, would be considered the parent parcel. Again,

the Land Division Act prescribes the number of allowable divisions based on the size of the parent parcel. For example, a 40-49.9 acre parent parcel is allowed 7 divisions; a 30-39.9 acre parent parcel is allowed 6 divisions; and a 20-29.9 acre parent parcel is allowed 5 divisions.

If the parent parcel has already been divided, a landowner might wish to determine if additional divisions can be made. One would need to determine:

- The total number of divisions allowed for the parent parcel
- Minus the number of divisions that have already been approved by the local government (even if not yet sold)
- Minus the number of divisions transferred to a resulting parcel (i.e. the number of divisions the original owner transferred to buyers of any already sold divisions)

The resulting sum is the number of divisions allowed for the remainder of the parent parcel.

A landowner should explore his/her property's deed or chain of title and consult with the local assessor to confirm the number of divisions that are available, if any. If divisions are available, has sufficient time passed in order to begin exercising the division rights (i.e. 10 years since being recorded)? If no divisions are available, because all have already been made, or because no divisions were assigned from the parent parcel, or insufficient time has passed (i.e. at least 10 years since being recorded), the parcel cannot be further divided unless 10 years have elapsed since the parcel was recorded with the county Register of Deeds. After that time, the division can be split further (referred to as re-divisions). The total number of re-divisions allowed within a division (parcel) is based on another sliding scale related to the size of the division.

The local unit of government where the parcel is located should have a detailed application form for reviewing land division requests. An application form is needed to determine the number of divisions and re-divisions allowed. This also helps maintain detailed property records. The form requires property information and history so that the land division official conducting the review can ensure that the resulting divisions or re-divisions will (from MCL 560.109):

- Have an adequate and accurate legal description;
- Not be narrower than 4:1 (parcel depth to width ratio for parcels less than 10 acres);
- Meet the minimum parcel width required in the zoning ordinance, if applicable;
- Meet the minimum parcel size required in the zoning ordinance, if applicable;
- Be accessible by a public road, private road, easement or other similar means (as required by the local land division or zoning ordinance);
- Not exceed the maximum number of divisions for the parent parcel, or the number of re-divisions for the division;
- Have adequate easements for public utilities from the parcel to existing public utility facilities;

- Not result in land-locking a cemetery; and
- Not have any unpaid property taxes and/or special assessments due for the last five years.

Based solely on the Land Division Act, the local government review of divisions and re-divisions is for the above nine things. In a local government jurisdiction with zoning and/or a separate local land division ordinance, proposed land divisions must also satisfy the standards of those local ordinances. Again, any division can be re-divided after the passage of 10 years.

Subdivisions / Platted Land

The difference between a Division and a Subdivision is that a subdivision is also subject to the platting requirements of the Michigan Land Division Act, while a division only needs to comply with Sections 108 and 109 of the Michigan Land Division Act. A plat is defined as a "map or chart of a subdivision of land" and is essentially a detailed map identifying the layout and features of the subdivision, including the number, location, and size of each lot and other important features such as streets, alleys, and easements. A plat must include a survey, legal description of the land, and a unique name for that County.

The process of platting is highly regulated and includes various steps and levels of governmental approval, including the County Road Commission, the County Drain Commissioner, the Michigan Department of Transportation, the Michigan Department of Natural Resources, the Michigan Department of Environment, Great Lakes, and Energy, and the local municipality's health department. Due to the complicated and lengthy process required to plat a subdivision under the Michigan Land Division Act, many developers have moved away from platting and have begun creating condominiums (including site condominiums) under the Michigan Condominium Act.

Michigan Condominium Act (Public Act 59 of 1978)

The first multiple-owner housing was common-interest community housing marketed as cooperatives. In 1962, the Federal Home Administration created a model condominium act that was the impetus for the adoption of horizontal real property acts by a number of states, including Michigan. Despite the creation of Michigan's Horizontal Real Property Act, the initial growth of this type of housing was slow because people were unfamiliar with the concept and financial institutions were uncertain whether it was prudent to make loans for the development or purchase of units in condominiums. However, during the 1970s condominiums started to become more accepted and widely used. In 1978, Michigan replaced its Horizontal Real Property Act with the Condominium Act.

Condominiums were originally thought of as adjacent, joined properties. (Think: ownership of a single unit in an apartment building.) However, the definition of a condominium has broadened to include all types of uses including residential, commercial and recreational. The concept of "site condominiums" was also created.

Platted Subdivision vs Site Condominiums

The site condominium is a form of development that closely resembles the more

traditional form of land subdivision known as a “subdivision” or a “plat”. Although both types of development have the same basic characteristics, site condominiums are a newer form of development and are not, therefore, as familiar to homebuyers and neighbors as the more customary plats. An important concept related to any type of condominium development is that condominiums are a form of OWNERSHIP, not a type of physical development.

An individual homesite building in a platted subdivision is called a “lot”. In a site condominium, each separate building site or homesite is referred to by the Condominium Act as a “unit”. Each unit is surrounded by “limited common area”, which is defined as common elements reserved in the master deed for the exclusive use of specific co-owners. The remaining area in the site condominium is “general common area”, defined as the common elements reserved in the master deed for the use of all of the co-owners. The nature and extent of ownership of a platted lot and a condominium unit, with the associated limited common area, are essentially equivalent from both a practical and legal standpoint.

Both site condominiums and subdivisions are required to comply with the minimum requirements of the municipality’s zoning ordinance for area and bulk, including minimum lot size, lot width, setbacks and building height.

A site condominium is established by recording at the County Register of Deeds office in the county in which the land is located a master deed, bylaws and condominium subdivision plan (“plan”). On the other hand, a platted subdivision is created by the recording of a subdivision plat (“plat”). The plan depicts the condominium units and limited and general common areas, while the plat defines the lots. Both have substantially the same geometrical appearance and characteristics. The master deed and bylaws on the one hand and the declaration on the other have essentially the same functions with respect to the site condominium or platted subdivision, namely, establishment of: (i) building and use restrictions; (ii) rights of homeowners to use common areas; (iii) financial obligations of owners; and, (iv) procedures for operation of the subdivision.

In most plats, roads are dedicated to the public and maintained by the county road commission or the municipality in which the subdivision is located. Site condominium roads can be either public or private. Sanitary sewer and water supply are public in both. Storm water detention can vary between public and private dedication in both platted and condominium subdivisions.

The same types of public health, safety and welfare regulations apply to both forms of development. Procedurally, the methods of applying for and obtaining plat or condominium plan approval are similar at the municipal level.

Both development types require City Council approval, following a recommendation by the Planning Commission. Unlike subdivisions, site condominiums do not require the review and approval of the Michigan Department of Consumer and Industry Services.

For this reason it can sometimes take a substantially shorter period of time to obtain necessary public approvals of site condominiums than platted subdivisions.

Developers and municipalities often prefer the site condominium approach because of better control of market timing. It should be emphasized that the site condominium choice never sacrifices any public protections that would otherwise be present in the case of a platted subdivision under similar circumstances.

The platted subdivision approach and the newer site condominium technique are two different statutory methods of reaching essentially the same practical and legal result of dividing real estate into separate residential building sites. Both methods are required to meet substantially the same public health, safety and welfare requirements. The site condominium is sometimes chosen over the platted subdivisions because of perceived benefits to purchasers, homeowners, and developers.

County Issues

County Drain commission

The office of the Drain Commissioner is responsible to administer the Drain Code (Act 40, PA of 1956), administers the Subdivision Control Act (Act 288, PA of 1967) as it applies to storm water management, and administers the Lake Level Act (Part 307, Act 451, PA of 1994) as it pertains to the establishment and maintenance of lake levels. With new construction, drainage easements are obtained for specific uses such as storm water conveyance, storm water detention, ponding, floodplain or as access routes for operating, maintaining or repairing county drains.

County Road Commission

Your local road commission is primarily responsible for traffic and safety, construction and preservation, routine maintenance and winter maintenance/snow removal for all the roads it has jurisdiction over. In relationship to land division and new construction, the road commission reviews applications to install new roads and driveways. Their primary concern is determining whether there is adequate distance and grade angle between existing roadways, intersection, etc and new construction.

County Health Department

Your local health department's primary responsibility in regards to land development is to insure the land's suitability for wells and septic systems where public water and sewer is not available.

Michigan Zoning Enabling Act (Public Act 110 of 2006)

In addition to state and county regulation, all land division is subject to local municipal ordinances as well. The Michigan Zoning Enabling Act 110 of 2006 provides the authority for local units of government to create zoning boards and local ordinances to regulate the development and use of land. Zoning allows local government to identify how land can be used. Examples of zoning classifications include residential,

commercial, agricultural, industrial, or hotel/hospitality, among other more specific designations. These general classifications are further divided. For example, residential zoning may be divided into R1- single family houses, R2 - Duplexes, etc.

Zoning ordinances also set standards for lot size, density, setbacks and building height. Because each municipality sets their own ordinances, land developers need to familiarize themselves with their own municipality to insure compliance. Once the land division has been approved at all governmental levels, building permits can be issued.