

ATTORNEY WRITES

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Everything You Always Wanted to Know About . . . Plats!

What is a plat? A plat is a type of real estate development or subdivision. Why should riparian property owners care about plats? Because most lakefront and lake area properties in Michigan are located within plats.

There are three ways to develop or divide up land in Michigan: simple land divisions (sometimes referred to as unplatted or “metes and bounds” land divisions), plats, and site condominiums. The easiest way to split a property to create two or more separate parcels is by means of a simple land division. Land divisions are governed by Sections 1, 8 and 9 of the Michigan Land Division Act (“LDA”), MCL 560.101 *et seq.* Generally, a simple land division involves a two-step process. First, a landowner must have a survey done to create the legal descriptions (and have the field work done) for the proposed new parcels. Second, the proposed land division (and all resulting parcels and access easements, if any) must be approved by the local governmental unit where the property is located (i.e., either a city, township or village). Prior to approving a land division, the municipality will check to make sure that all resulting parcels comply with the municipality’s zoning ordinance, as well as any other applicable ordinances (for example, the municipality’s land division ordinance, if any, and any ordinance provisions regarding private roads or access easements, utility easements or buildability). Given the limits on the number of parcels that can lawfully be created by simple land divisions, this process is usually not well-suited for larger developments.

Until the 1980s, most larger developments or subdivisions in Michigan were developed via the platting process. Even as it exists yet today, the platting process is a fairly time-consuming, confusing, and expensive governmental review and approval process for development. Once a plat is approved, it essentially has the “seal of approval” for the development due to the extensive reviews and approvals by state, county, and local government officials and bodies.

The plat itself is typically a fairly large document (often, the size of a blueprint), which has an extensive surveyed map, together with legal descriptions, a dedication, and approval signatures by governmental authorities. The plat map is almost always quite detailed and shows various items such as the lots created, streets or roads, drainage areas, natural features (such as lakes, rivers, streams, and wetlands), parks, walks, and other amenities. The plat itself can be anywhere from one to half a dozen pages or more in size, and must be recorded with the Register of Deeds office in the county where the property is located. Once a plat has been approved and recorded, it is the set blueprint for the development involved. In most cases, the plat cannot be fully approved and recorded unless it has been approved by the local municipality where the property is located, the county drain commissioner, the county road commission (if any public roads are created), one or more state agencies, and the local health department.

Beginning in the 1980s, developers started using a new technique to develop or subdivide land called a “site condominium.” The Michigan Condominium Act (“Condominium Act”), MCL 559.101 *et seq.*, had been used prior to the mid-1980s for conventional condominiums; that is, for high rises, duplexes, and multi-family condominium buildings. Given the increased costs and delays involved in the platting system, innovative developers discovered that the Condominium Act could be used to create conventional single-family residential

subdivisions, so long as they have some common areas (such as a private road or private parks). Eventually, the Michigan Attorney General confirmed that the Condominium Act can be used to develop what appear to be conventional housing subdivisions. Hence, the “site condominium” was created.

A site condominium usually closely resembles a plat and a plat map. However, instead of having individual lots, purchasers obtain a “unit.” While some plats have deed restrictions that create property owners’ associations for the plat involved, all site condominiums must have extensive deed restrictions and a condominium association. All purchasers of units in a site condominium must belong to the condominium association, which effectively acts like another layer of government. If a prospective property purchaser does not like rules and regulations or being governed by a property owners’ association, that person should not buy a site condominium!

In general, site condominiums are cheaper to develop and can have the government review and approval process completed much more quickly than plats. Hence, almost all residential developments or subdivisions of any size that have been developed during the past few decades in Michigan have been site condominium projects.

How can someone tell if the property they own or are purchasing is a platted lot, site condominium, or metes and bounds parcel? Platted lots are typically legally described by numbers. For instance, if a property is described as “Lot 1 of Acme Hills,” almost certainly a platted lot is involved. Properties in a site condominium are described as units. For example, if one purchases “Unit 5 in the Pine Hill Condominium,” the property being purchased is a site condominium unit. Finally, parcels created by simple land divisions typically involve convoluted legal descriptions (called “metes and bounds”) which are often confusing to lay

people; for example, “Commencing at the Northeast corner of Section 1; thence South 05 degrees, 28 minutes, 38 seconds East 125.23 feet to the point of beginning; thence ...”.

There are many common myths involving plats. Given that platted lots (as well as any parks, roads, and other items created via the plat) have gone through extensive governmental approvals, platted lots and other portions of a plat cannot be altered, extinguished or varied willy-nilly. For example, platted lots cannot be split, divided or have a boundary line altered unless an expensive replat (which requires extensive surveying and the approval of multiple layers of government) is done or the lot alteration is expressly approved by the local governmental unit (but only if that governmental unit has an ordinance in place for dealing with such matters). *See* MCL 560.263. Although landowners throughout Michigan commonly split or change the boundaries of platted lots without any local governmental approvals, that is, in fact, illegal.

In order to vacate/abandon or alter a platted road, park, alley or walkway, the property owner seeking such a plat alteration must file and pursue an expensive plat vacation lawsuit in circuit court pursuant to MCL 560.221 *et seq.* Pursuant to such a lawsuit, many property owners in the plat must be joined as defendants (together with several governmental units). Such lawsuits can be complex, expensive, and time-consuming. Furthermore, in the end, whether to grant the requested vacation/abandonment or alteration is within the discretion of the circuit court judge. One myth is that the local unit of government can simply issue a quit-claim deed to the adjoining property owner to vacate or abandon a dedicated platted road, park, walk or alley – that is simply not true and any such purported “vacation by quit-claim deed” would be void without formal circuit court action.

What is a plat dedication? Plat dedications are language typically printed on the map of a plat (together with dedicated areas shown on the map), and it is a process whereby the creators of a plat (often referred to as the platters, proprietors or developers) formally create permanent road rights-of-way (including streets, alleys, drives, and boulevards), parks, beaches or walkways. The dedication can be either public (for example, to a local road commission or members of the public) or private (that is, for use only by the lot owners within the plat). Once a plat with a dedication has been recorded and even one lot has been sold to a third party, the dedication (and all items created by the dedication as shown on the plat) becomes permanent. Accordingly, no dedicated road, park, walk or other dedicated item in a plat can be vacated, altered or changed absent a successful circuit court vacation lawsuit.

Can a dedicated road, park, alley or walk be abandoned due to nonuse, blockage by adjoining platted lot owners or the simple passage of time? Generally, no. There are many so-called “ghost roads” or “paper plat roads” in old plats throughout Michigan that have not been used or developed for 50 or 100 years, or ever. The same is true with regard to platted parks and walkways in plats. However, absent unusual circumstances, those dedicated ways or items still exist and could be opened up or used at any time, to the consternation of adjoining or nearby platted lot owners.

Until the mid-1990s, it was fairly easy to convince circuit court judges to vacate dedicated platted road ends at lakes. However, legislation that became effective in 1996 makes it virtually impossible to have a circuit court vacate a dedicated platted public road end (or the equivalent) at a lake, river or stream. State officials and the courts now generally frown upon limiting or curtailing any public access to bodies of water (no matter how remote or ill-suited a water access site may be).

Most plats at lakes in Michigan were developed 50, 75 or even over 100 years ago. Accordingly, many issues and problems can arise in those old plats. First, the surveying work was often substandard, such that platted lots can overlap and lot lines are often in dispute. Second, given that cottage sites in the old plats were typically fairly small (for example, early platted lots might only be 40 feet wide), overcrowding is a significant problem. In the old days, cottages were generally small and for summer use only. Not much lakefront was needed for each lot, as the favored activities from a century ago were swimming, canoeing, and fishing, rather than using large docks, powerboats and personal watercraft as is the case today. Third, not all of the plats ran to the water as originally platted. That creates uncertainty as to whether or not the first tier lots are actually riparian. Fourth, platted road ends, parks, and walkways can cause significant issues such as overcrowding, the misuse of such access sites by backlot property owners and conflicts among users. Finally, many older platted lots are unbuildable due to their small size, topography, wetlands, or absence of in-place access roads or utilities.